

File

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

UNITED STATES OF AMERICA	)	
	)	Civil Action No.: 82-338-CIV-5
v.	)	
	)	Filed: April 8, 1982
ASHLAND-WARREN, INC.,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendant named herein and complains and alleges as follows:

COUNT ONE

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain the violations by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).
2. The defendant transacts business and is found in the Eastern District of North Carolina.

II

DEFENDANT

3. Ashland-Warren, Inc. is made a defendant herein. Ashland-Warren, Inc. is organized and exists under the laws of the State of Delaware. Ashland-Warren, Inc. does business throughout the United States. During the period of time covered by this complaint, Ashland-Warren, Inc. operated in North Carolina through three divisions: Thompson-Arthur Paving

Company, Barrus Construction Company and Warren Brothers Company (or the Asheville Division). After August 1980, those three operating divisions have done business as APAC-Carolina, Inc.

4. Whenever in this complaint reference is made to any act, deed or transaction of the defendant, such allegation shall be deemed to mean that the defendant engaged in such act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

### III

#### CO-CONSPIRATORS

5. Various firms and individuals, not made defendants herein, participated as co-conspirators with the defendant in the violations alleged herein and performed acts and made statements in furtherance thereof.

### IV

#### TRADE AND COMMERCE

6. During the period of time covered by this complaint, the North Carolina Department of Transportation invited highway construction contractors to submit sealed competitive bids on highway construction projects. Such invitations are known as highway lettings and occur several times each year in Raleigh, North Carolina. The State of North Carolina awards contracts to the lowest responsible bidder following the opening of the sealed bids by its Department of Transportation.

7. In the development of a nationwide network of inter-connecting highways, the United States of America and the State

of North Carolina have cooperated in the financing and construction of highways in the State of North Carolina. Within the period of time covered by this complaint, there was in existence a program financed and administered by the State of North Carolina and the United States of America for the development and improvement of such highways. This program was undertaken in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et seq., commonly known as the Federal-Aid Highway Act. Under this program, funds from the United States of America, through its agency, the Federal Highway Administration, became available for use by the Department of Transportation of the State of North Carolina to pay the costs of program-related highway construction within North Carolina. The highway construction which is the subject of this complaint was eligible for such funds as part of the Federal-Aid highway system.

8. The highways which are the subject of this complaint are part of the network of interconnecting highways over which motor vehicles and a substantial amount of goods move in a continuous and uninterrupted stream of interstate commerce from and through one state to another.

9. During the period of time covered by this complaint, there was a substantial, continuous and uninterrupted flow of essential materials from suppliers outside the State of North Carolina to the job or plant sites within the State for use by highway contractors in the highway construction which is the subject of this complaint.

10. During all times material to this complaint, the activities of the defendant and co-conspirators, as alleged herein, were within the flow of and substantially affected, interstate commerce.

VIOLATION ALLEGED

11. Beginning in at least 1975, and continuing until at least August 1979, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

12. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators, the substantial terms of which were:

a. to allocate among themselves highway construction projects let by the State of North Carolina in the counties of Buncombe, Henderson, Transylvania, Yancey, Mitchell, Madison, Haywood, Jackson, Swain, Macon, Graham, Cherokee and Clay ("western North Carolina"); and

b. to submit collusive, noncompetitive and rigged bids, or to withhold bids, on highway construction projects let by the State of North Carolina in western North Carolina.

13. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as charged, they combined and conspired to do. Among other things, the defendant and co-conspirators:

a. discussed the submission of prospective bids on highway construction projects in western North Carolina;

b. selected the low bidder on highway construction projects in western North Carolina;

c. submitted intentionally high, complementary bids or withheld bids on highway construction projects in

western North Carolina on which the defendant or a co-conspirator had been selected as the low bidder; and

d. submitted bid proposals and affidavits containing false, fictitious and fraudulent statements and entries.

## VI

### EFFECTS

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

a. the prices for the highway construction projects subject to the aforesaid combination and conspiracy were fixed at an artificial and noncompetitive level;

b. competition for each of those highway construction projects was restrained, suppressed and eliminated; and

c. the State of North Carolina and the United States of America were denied the benefits of free and open competition on those highway construction projects.

### COUNT TWO

The United States further alleges:

#### I

15. Each and every allegation contained in paragraphs 1 through 10 of Count One of this complaint is realleged with the same force and effect as if each paragraph was set forth here in full detail.

#### II

### VIOLATION ALLEGED

16. Beginning sometime in or about April 1979, and continuing thereafter, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and



conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

17. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among the defendant and co-conspirators, the substantial terms of which were:

a. to allocate to another company highway construction Project 5.2811036, let by the State of North Carolina on May 1, 1979; and

b. to submit collusive, noncompetitive and rigged bids on highway construction Project 5.2811036.

18. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as charged, they combined and conspired to do. Among other things, the defendant and co-conspirators:

a. discussed the submission of prospective bids on highway construction Project 5.2811036;

b. selected another highway construction company to be the low bidder on Project 5.2811036;

c. submitted intentionally high, complementary bids on Project 5.2811036; and

d. submitted bid proposals and affidavits containing false, fictitious and fraudulent statements and entries.

### III

#### EFFECTS

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

- a. the price for Project 5.2811036 was fixed at an artificial and noncompetitive level;
- b. competition for Project 5.2811036 was restrained, suppressed and eliminated; and
- c. the State of North Carolina and the United States of America were denied the benefits of free and open competition on Project 5.2811036.

### COUNT THREE

The United States further alleges:

#### I

20. Each and every allegation contained in paragraphs 1 through 10 of Count One of this complaint is realleged with the same force and effect as if each paragraph was set forth here in full detail.

#### II

### VIOLATION ALLEGED

21. Beginning sometime in or about September 1978, and continuing thereafter, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

22. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- a. to allocate to the defendant highway construction Project 9.5070102, originally let by the State of North Carolina on October 3, 1978, and relet on November 28, 1978; and

b. to submit collusive, noncompetitive and rigged bids on Project 9.5070102.

23. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as charged, they combined and conspired to do. Among other things, the defendant and co-conspirators:

a. discussed the submission of prospective bids on Project 9.5070102;

b. selected the defendant to be the low bidder on Project 9.5070102;

c. submitted intentionally high, complementary bids on Project 9.5070102, on which the defendant had been selected as the low bidder; and

d. submitted bid proposals and affidavits containing false, fictitious and fraudulent statements and entries.

### III

#### EFFECTS

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

a. the price for Project 9.5070102 was fixed at an artificial and noncompetitive level;

b. competition for Project 9.5070102 was restrained, suppressed and eliminated; and

c. the State of North Carolina and the United States of America were denied the benefits of free and open competition on Project 9.5070102.

#### COUNT FOUR

The United States further alleges:



I

25. Each and every allegation contained in paragraphs 1 through 10 of Count One of this complaint is realleged with the same force and effect as if each paragraph was set forth here in full detail.

II

VIOLATION ALLEGED

26. Beginning sometime in at least 1974, and continuing thereafter until at least October 1979, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

27. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators, the substantial terms of which were:

a. to allocate highway construction projects let by the State of North Carolina in the following counties, among others: Randolph, Guilford, Forsyth, Alamance, Rockingham, Montgomery, and Richmond; and

b. to submit collusive, noncompetitive and rigged bids, or to withhold bids, on highway construction projects let by the State of North Carolina in those counties specified in paragraph a, above.

28. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as charged, they combined and conspired to do. Among other things, the defendant and co-conspirators:

- a. discussed the submission of prospective bids on highway construction projects in the aforesaid counties;
- b. selected the low bidder on highway construction projects in the aforesaid counties;
- c. submitted intentionally high, complementary bids or withheld bids on highway construction projects in the aforesaid counties on which the defendant or a co-conspirator had been selected as the low bidder; and
- d. submitted bid proposals and affidavits containing false, fictitious and fraudulent statements and entries.

### III

#### EFFECTS

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

- a. the prices for the highway construction projects subject to the aforesaid combination and conspiracy were fixed at an artificial and noncompetitive level;
- b. competition for each of those highway construction projects was restrained, suppressed and eliminated; and
- c. the State of North Carolina and the United States of America were denied the benefits of free and open competition on those highway construction projects.

#### PRAYER

WHEREFORE, plaintiff respectfully requests:

1. That the Court adjudge and decree that the defendant and co-conspirators engaged in unlawful combinations and conspiracies in restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, as alleged in Counts One, Two, Three and Four of the complaint.

2. That the defendant, its officers, directors, agents, employees, representatives, successors, assigns and all persons acting or claiming to act on defendant's behalf, be perpetually enjoined from continuing, maintaining or renewing the aforesaid combinations and conspiracies as alleged in Counts One, Two, Three and Four of the complaint and from engaging in any other combination, conspiracy, agreement or understanding having similar purposes or effects.

3. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

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

Dated:



WILLIAM F. BAXTER  
Assistant Attorney General



ROBERT E. BLOCH



JOSEPH H. WIDMAR



LAURA METCOFF KLAUS

ANTHONY V. NANNI

Attorneys,  
U.S. Department of Justice

Attorneys,  
Antitrust Division, Room 3266  
U.S. Department of Justice  
Washington, D.C. 20530  
202/633-2540

SAMUEL T. CURRIN  
United States Attorney  
Eastern District of  
North Carolina