

File

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

RMI COMPANY; TITANIUM METALS
CORPORATION OF AMERICA;
CRUCIBLE, INC.; LAWRENCE
AVIATION INDUSTRIES, INC.;
and MARTIN MARIETTA
ALUMINUM, INC.,

Defendants.

Civil Action No. 81-4177

Filed: 6-14-82

Jury Trial Demanded

FIRST AMENDED 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 in three counts. As a first claim, the United States of America, in its capacity as a purchaser and consumer of titanium mill products, and/or products made from titanium mill products, brings this suit against the above-named defendants, under Section 4A of the Clayton Act, 15 U.S.C. §15a, to recover its actual damages resulting from defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. §1 (Count One). As a second claim, the United States of America brings this suit against the defendants under the False Claims Act (31 U.S.C. §§231-233) for double the amount of damages sustained, plus forfeitures (Count Two). As a third claim, the United States of America brings this suit against the defendants under the common law doctrine of Recoupment of Public Funds Paid by Mistake (28 U.S.C. §1345) to recover its actual damages resulting from defendants' illegal inflation of the price for titanium mill products or products containing titanium mill products paid by the government (Count Three).

COUNT ONE

I

JURISDICTION AND VENUE

1. As a first claim, the United States of America, in its capacity as a purchaser of titanium mill products and/or products made from titanium mill products, brings this suit against the named defendants under Section 4A of the Clayton Act, 15 U.S.C. §15a, to recover damages which it has sustained due to defendants' combination and conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The claims alleged in this Count are asserted as an alternative to those alleged in Count Two and Count Three to the extent that any transaction complained of may give rise to liability under more than one Count.

2. Each of the corporate defendants named in this Complaint resides, is found, has an agent, or transacts business in New York and in the Eastern District of New York. The non-corporate defendant named in this Complaint resides, is found, or has an agent in New York and in the Eastern District of New York. Unlawful acts perpetrated pursuant to the combination and conspiracy alleged have been performed, in whole or in part, within the Eastern District of New York. Each of the defendants is subject to the jurisdiction of this Court, and as to each defendant, venue is properly set in this District, under Section 4A or 12 of the Clayton Antitrust Act, 15 U.S.C. §§15a and 22 (1976), and/or 28 U.S.C. §§1391 and 1392 (1976).

II

DEFENDANTS

3. RMI Company is made a defendant herein. RMI Company, an Ohio partnership with its principal place of business in Niles, Ohio, was formed on March 30, 1971. The two partners

are National Distillers and Chemical Corporation and United States Steel Corporation. RMI Company's predecessor was a corporation known as Reactive Metals, Inc., organized and existing under the laws of the State of Delaware, with its principal place of business in Niles, Ohio. RMI has continued the business of, and is the successor in interest to, Reactive Metals, Inc. During the period covered by this Complaint, RMI Company and/or its predecessor (both hereinafter referred to as "RMI") engaged in the production and sale of titanium mill products in various states of the United States.

4. Each of the corporations named below is hereby made a defendant herein. Each of these corporate defendants is organized and exists under the laws of the state listed opposite it, with its principal place of business in the locale indicated. During all or part of the period of time covered by this Complaint, each of said defendant corporations engaged in the production and sale of titanium mill products in various states of the United States.

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Crucible, Inc.	Delaware	Robinson Township, Pennsylvania
Lawrence Aviation Industries, Inc.	New York	Port Jefferson Station, New York
Martin Marietta Aluminum, Inc.	California	Bethesda, Maryland
Titanium Metals Corporation of America	Delaware	Pittsburgh, Pennsylvania

5. Wherever in this Complaint reference is made to any act, deed or transaction of any defendant company, such allegation shall be deemed to mean that such company 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

6. Various corporations and individuals, not made defendants in this Complaint, participated as co-conspirators in the violation alleged herein, and performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

7. As used herein, the term "titanium mill products" means titanium bar, billet, plate, sheet and strip.

8. As used herein, the term "Producer" means any entity other than a defendant selling to the United States products containing titanium mill products or parts made therefrom, or purchasing titanium mill products for resale to the United States.

V

TRADE AND COMMERCE

9. Titanium is a silvery gray, semi-precious metal found naturally in an ore called rutile and in other sources. It is characterized chiefly by its high strength-to-weight ratio and high degree of corrosion resistance. Historically, the primary uses of titanium have been in aircraft and aerospace applications, with a small but growing proportion of the metal being used in various industrial applications such as tubing for nuclear power, chemical processing, and desalinization plants.

10. Titanium is extracted from ore and converted into a material called sponge. The titanium sponge is then melted to form large cylinders known as ingots. These ingots are in turn made into various smaller forms known as titanium mill

products. Titanium mill products may contain only pure titanium (and be designated "commercially pure"), or may contain titanium alloyed with various other elements.

11. In 1974, sales of titanium mill products by the defendant companies were in excess of \$130 million.

12. During the period of time covered by this Complaint:

(a) the defendant companies and co-conspirators sold and shipped substantial quantities of titanium mill products in a continuous and uninterrupted flow of interstate commerce to customers located in states other than the states in which such titanium mill products were manufactured;

(b) substantial quantities of the materials used by the defendant companies and co-conspirators in the manufacture of titanium mill products regularly moved from their source to titanium mill product manufacturing facilities located in other states; and

(c) the sale and shipment of titanium mill products to customers in interstate commerce and the purchase and shipment in interstate commerce of materials used in the manufacture of titanium mill products were substantially affected by the combination and conspiracy charged in this Complaint.

13. During the period of the conspiracy, the United States purchased substantial quantities of titanium mill products directly from the defendants. Also during the period of the conspiracy, the United States purchased from Producers titanium mill products and large numbers of aircraft, aircraft engines, missiles and other products which contained titanium mill products or parts made from titanium mill products. Substantial quantities of such titanium mill products were purchased in this manner under pre-existing, fixed-quantity

cost-plus contracts, and other contracts that were equivalent to pre-existing, fixed-quantity cost-plus contracts, from Producers that purchased titanium mill products or parts made therefrom directly from the defendants or that purchased such products or parts from the defendants through other companies under pre-existing fixed-quantity cost-plus contracts and other contracts that were equivalent to such contracts.

14. The products purchased by the United States during the period of the conspiracy which contained titanium mill products or parts made therefrom included, inter alia, the F-15 and F-4 aircraft, made by McDonnell Douglas Corporation, the F-14 and A-6 aircraft made by Grumman Aerospace Corporation, the F-111 and F-16 aircraft made by General Dynamics Corporation, the AWACS aircraft made by Boeing Co., the C-5 and C-130 aircraft made by Lockheed Corp., the AV-8A aircraft made by LTV Corp., the F-5/RF-5 aircraft made by Northrop Corp., the A-10 aircraft made by Fairchild Industries, Inc., and the B-1 aircraft made by Rockwell International Corp.; the engines used in aircraft, including, inter alia, the F-100, TF-30, and J-52 made by Pratt & Whitney Aircraft Group of United Technologies, the J-79, TF-39, and TF-34 made by General Electric Co., and the TF-41 and J-56 made by Allison Division of General Motors; missiles and related products, including the "Minuteman" series, made by Boeing and other contractors, and the "Trident" series made by Lockheed; power plants for Navy vessels; products purchased for and used by the Army; products purchased for and used by the National Aeronautics and Space Administration; and parts for such products.

VI

VIOLATION ALLEGED

15. Beginning at least as early as 1970 and continuing until sometime in 1976, the exact dates being unknown to the

plaintiff, the defendants 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).

16. 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 of titanium mill products.

17. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have, among other things, done those things which they combined and conspired to do.

VII

EFFECTS

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

(a) Prices of titanium mill products have been raised, fixed, maintained and stabilized at artificial and non-competitive levels;

(b) Competition in the sale of titanium mill products has been restrained;

(c) The United States, as a purchaser of titanium mill products and products containing titanium mill products, has been deprived of the benefits of free and open competition in the purchase of titanium mill products.

19. As a result of the illegal combination and conspiracy alleged herein, and the acts of defendants in furtherance thereof, the United States of America has been compelled to pay substantially higher prices for titanium mill products and for products containing titanium mill products or parts made therefrom than would have been the case but for the illegal

conduct complained of herein, and has been injured and financially damaged in an amount which is presently undetermined.

VIII

STATUTE OF LIMITATIONS AND FRAUDULENT CONCEALMENT

20. By stipulated agreement entered in the action United States v. RMI Co., et al., Civil Action No. 78-1108, in the Western District of Pennsylvania, all defendants herein except Martin Marietta Aluminum, Inc. have stipulated that this action is deemed to have been filed on September 28, 1978. Plaintiff had no knowledge of the said combination and conspiracy, or of any facts which might have led to the discovery thereof, until some time within four years of that date, and it first became fully aware of the scope of the unlawful conspiracy during the course of the grand jury proceedings which culminated in the return of an indictment against certain of the defendants. It could not have uncovered the conspiracy at an earlier date by the exercise of due diligence, inasmuch as defendants had fraudulently concealed the unlawful conspiracy by, among other things, holding secret meetings to exchange information relating to prices, mailing draft and final price lists to each other in unmarked envelopes, and using code names to refer to particular employees of defendants.

IX

PRAYER

21. WHEREFORE, the plaintiff:

A. Prays that the herein alleged combination and conspiracy among defendants be adjudged and decreed to be in unreasonable restraint of interstate commerce and in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

B. Demands judgment against defendants for the damages suffered by it due to the alleged combination and conspiracy in violation of the antitrust laws, as provided for in Section 4A of the Clayton Act, 15 U.S.C. §15a, together with such interest thereon as is permitted by law, and the costs of this suit.

C. Prays that it recover such other amounts and have such other and further relief as the Court shall deem just.

X

DEMAND FOR JURY TRIAL

22. Pursuant to Federal Rules of Civil Procedure 38(b), plaintiff hereby makes its demand for a trial by jury of all issues so triable.

COUNT TWO

23. As a second claim, the United States of America, in its capacity as a purchaser of titanium mill products and/or products made from titanium mill products, brings this suit against defendants under §§3490, 3491, 3492 and 5438 of the Revised Statutes (31 U.S.C. §§231-233), commonly known as the False Claims Act. The claims alleged in this Count are asserted as an alternative to those alleged in Counts One and Three to the extent that any transaction complained of may give rise to liability under more than one Count.

24. The allegations contained in paragraphs 2 through 20, and the demand for jury trial contained in paragraph 22, are here realleged with the same force and effect as though set forth in full detail.

25. None of the defendants was in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, during the times involved in this action.

26. During the period of the aforesaid conspiracy, the United States through, among others, the Defense Industrial Supply Center, purchased titanium mill products directly from the defendants. In connection with the purchase of the said titanium mill products, the United States sought and obtained bids, quotations and price lists for titanium mill products from defendants.

27. Also, during the period of the aforesaid conspiracy, the United States purchased products containing titanium mill products or parts made therefrom from Producers. Those products included aircraft, aircraft engines, missiles, and other products, which were purchased by the United States through, among others, the Air Force, the Navy, the Army, and the National Aeronautics and Space Administration. These products, and the companies making them, included, inter alia, those listed in paragraph 14 above. Certain parts of these products were processed from titanium mill products by a number of companies, including, inter alia, Ladish Co., Wyman Gordon Co., Aluminum Co. of America, Ex-Cell-O Corp., TRW Inc., Edgewater Corp., California Drop Forge, Arcturus Mfg. Corp., Teledyne Inc., American Welding & Mfg. Co., Aerojet- General Corp., and Resistoflex Corp. In addition, certain companies purchased titanium mill products from defendants and resold said titanium mill products to the United States or to other Producers or intermediate companies. These companies included, inter alia, E.D.P. Industries, Inc.

28. In connection with the production of said products or parts, or the purchase of titanium mill products for resale to the United States, Producers sought and obtained bids, quotations and price lists for titanium mill products from defendants, and also sought bids, quotations and price lists from intermediate companies that purchased titanium mill

products or products made therefrom either directly or indirectly from defendants.

29. Pursuant to the combination and conspiracy, and as a result of the acts done in furtherance thereof, defendants have made sales to the United States, Producers and intermediate companies and have received payments from the United States, Producers and intermediate companies for titanium mill products on the basis of bids, quotations and price lists which they submitted and which they directly or implicitly represented to be bona fide, independent, competitive, and not the product of any collusion or agreement. The defendants further directly or implicitly represented the prices of such bids, quotations and price lists to be normal and reasonable, and arrived at independently without communication or agreement for the purpose of restricting competition as to any matter relating to such prices, knowing said representations to be false and fraudulent in that the said bids, quotations and price lists were the product of collusion and agreement, and knowing that the prices, therefore, were unreasonable, arbitrary, noncompetitive, and secretly and wrongfully inflated.

30. With respect to the aforesaid bids, quotations and price lists, the defendants presented and/or caused to be presented numerous claims for payment to the United States, Producers and intermediate companies, knowing such claims to be false or fraudulent, in that such claims were based on bids, quotations and price lists which were false or fraudulent by reason of the aforesaid illegal combination and conspiracy, and knowing that the amounts claimed were falsely or fraudulently inflated and excessive. Defendants also knew, or had reason to know, that the claims submitted to Producers and intermediate companies would cause Producers to submit inflated and excessive claims for payment to the United States for purchase

of products containing titanium mill products or products made therefrom.

31. As a result of defendants presenting or causing to be presented to Producers and intermediate companies the aforesaid false, fraudulent and inflated claims, Producers have paid the false, fraudulent and inflated claims to the defendants or intermediate companies.

32. Based upon the payment by Producers of the aforesaid false or fraudulent claims, Producers have made inflated claims upon and received reimbursement from the United States.

33. The foregoing considered, the defendants have presented or caused to be presented for payment claims upon or against the Government of the United States, knowing such claims to be false or fraudulent; have for the purpose of obtaining or aiding to obtain payment or approval of such claims made, used, or caused to be made or used false or fraudulent documents, knowing such documents to contain false or fraudulent entries; and have agreed, combined or conspired to defraud the United States by obtaining or aiding to obtain payment of such claims, all in violation of 31 U.S.C. §231.

34. The aforesaid false or fraudulent claims were presented or caused to be presented to, and were paid by, the United States throughout the period of the conspiracy, and for some period thereafter.

35. As a result of the illegal acts of the defendants, plaintiff has been compelled to pay substantially higher prices for titanium mill products and for products containing titanium mill products or parts made therefrom, than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by the combination and conspiracy, in an amount which is presently undetermined.

XI

PRAYER

36. WHEREFORE, the plaintiff:

A. Prays that the defendants be adjudged and decreed to have presented and/or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false or fraudulent; to have made, used or caused to be used false or fraudulent documents in obtaining or aiding to obtain payment or approval of such claims; and to have agreed, combined or conspired to defraud the United States by obtaining or aiding to obtain payment of such claims, all in violation of 31 U.S.C. §231.

B. Demands judgment against defendants in favor of the United States for two thousand dollars (\$2,000) for each false or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Sections 3490, 3491, 3492, and 5438 of the Revised Statutes (31 U.S.C. §§231-233) together with interest thereon and the cost of this suit.

C. Prays that it recover such other amounts and have such other relief as the Court shall deem just.

COUNT THREE

37. As a third claim, the United States of ~~America~~, in its capacity as a purchaser of titanium mill products and/or products made from titanium mill products, brings this suit against defendants under 28 U.S.C. §1345 seeking recoupment of public funds paid by mistake. The claims alleged in this count are asserted as an alternative to those alleged in Counts One and Two to the extent that any transaction complained of may give rise to liability under more than one Count.

38. The allegations in paragraphs 2 through 12, 14 through 18, 26 through 28 and the demand for jury trial contained in paragraph 22 are herein realleged with the same force and effect as though set forth in full detail.

39. During the course of the aforesaid conspiracy, and for some time thereafter, defendants made sales to the United States, Producers and intermediate companies of titanium mill products. Defendants received payments for the aforesaid sales from the United States, both directly and indirectly through Producers and intermediate companies on the basis of bids, quotations and price lists which the United States understood not to have been the product of or to have been affected by collusion, agreement or a conspiracy to fix and raise the price of titanium mill products.

40. Defendants' prices of titanium mill products, submitted to the United States for reimbursement by the Producers or the defendants, were paid by the United States based on its understanding that defendants' prices for titanium mill products were not the product of and were not affected by collusion, agreement or a conspiracy to fix and raise prices.

41. Prices of titanium mill products paid by the United States either directly or through various Producers or intermediate companies were materially erroneous because they were illegally inflated.

42. Defendants caused the prices to be illegally inflated by engaging in the aforesaid conspiracy.

43. The United States paid the inflated prices of titanium mill products in the mistaken belief that the prices were not the product of and were not affected by collusion, agreement or a conspiracy to fix and raise prices.

44. The foregoing considered, the United States paid money to the defendants directly and through Producers and intermediate companies based on a mistaken understanding of the facts. Defendants have been unjustly enriched thereby.

XII
STATUTE OF LIMITATIONS AND
FRAUDULENT CONCEALMENT

45. The United States has brought this suit within six years of the discovery that payments were made to defendants in the mistaken belief that prices of titanium mill products were not the product of and were not affected by collusion, agreement or a conspiracy to fix prices, as required by 28 U.S.C. §2415 and 28 U.S.C. §2416(c).

46. The existence of the conspiracy to fix prices could not have been discovered earlier by the exercise of due diligence, inasmuch as defendants had fraudulently concealed the price-fixing conspiracy by, among other things, holding secret meetings to exchange information relating to prices, mailing draft and final price lists to each other in unmarked envelopes, and using code names to refer to particular employees of defendants.

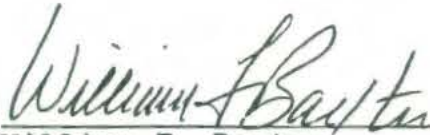
XIII

PRAYER

47. Wherefore, the plaintiff

- A. Prays that the herein alleged conspiracy among defendants be adjudged and decreed to have caused the United States to make erroneous payments to defendants, both directly and through various Producers.
- B. Demands judgment against defendants jointly and severally for the damages suffered by it due to the erroneous payments as provided for by the doctrine of Recoupment of Public Funds Paid by Mistake.

C. Prays that it recover such other amounts and have such other and further relief as the court shall deem just.



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