

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

REA CONSTRUCTION COMPANY,)

Defendant..)

Civil Action No. C-80-225

Filed: July 9, 1980

Entered: September 19, 1980

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein, 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. The Complaint states a claim 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" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;

- B. "Asphalt" means a paving material consisting of aggregates using asphalt cement as the cementing agent; and
- C. "Concrete" means a paving material consisting of aggregates using Portland cement as the cementing agent.

III

This Final Judgment applies to the defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained 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) Fix, determine, establish, maintain or stabilize the prices, discounts or other terms or conditions for the sale of asphalt to any person or government agency;

(B) Submit noncompetitive, collusive or rigged bids on any contract for asphalt or concrete paving with any person or government agency; or

(C) Allocate contracts, rotate or divide markets, customers or territories with respect to contracts for asphalt or concrete paving with any person or government agency.

V

Defendant is enjoined and restrained from communicating to, requesting from or discussing with any other manufacturer of asphalt or concrete or any other asphalt or concrete paving company information about (a) any past, present, future or proposed bid, or the consideration of whether to make any bid, for the sale of asphalt or concrete to any third person or for any contract for asphalt or concrete paving; (b) any past, present, future or proposed price, discount or other term or condition for the sale of asphalt or concrete or the consideration of whether to make any change in any actual or proposed price, discount or other term or condition for the sale of asphalt or concrete; or (c) asphalt or concrete production or sales volume or costs; provided, however, that this Section V shall not apply to (1) any communication relating to prices for asphalt that is made to the public or the trade generally and is not made solely to any other contractor or seller of asphalt and (2) any necessary communication in connection with a bona fide contemplated or actual purchase, sales, subcontract or joint venture transaction between the parties to the communication.

VI

A. Defendant shall, within 60 days after entry of this Final Judgment, furnish a copy of it to each of its employees who has any responsibility for bidding or estimating contracts for asphalt or concrete paving or any responsibility for or authority over the establishment of prices for asphalt.

B. Each defendant shall furnish a copy of this Final Judgment to each person who becomes an employee described in subsection A of this section, within 60 days after he assumes the position that brings him within that description.

C. Defendant shall take additional affirmative steps to advise each of its employees described in subsections A and B of this section of its and of their obligations. These steps shall include distribution to each of them, at least once every two years, of copies of this Final Judgment and of a written directive about the defendant's policy requiring compliance with the Sherman Act and with the judgment. The directive shall include an admonition that noncompliance will result in appropriate disciplinary action, which may include dismissal, and advice that the defendant's legal advisors are available to confer about any compliance questions. The defendant shall require that each of them submit to it a signed statement, which it shall retain in its files, acknowledging each receipt of copies of the judgment and the directive, acknowledging that he has read them, acknowledging that he has been advised and understands that noncompliance will result in appropriate disciplinary action, which may include dismissal, and acknowledging that he has been advised and understands that noncompliance with the judgment may also result in conviction for contempt of court and fine or imprisonment, or both.

D. Defendant shall file with the court and serve on the plaintiff, within 90 days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection A of this section.

VII

Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its asphalt and concrete business, 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 plaintiff, its consent to be bound by this Final Judgment.

VIII

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 agent made to the defendant at its principal office, subject to any legally recognized privilege:

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

1. Access, during office hours of the defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

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

B. The defendant shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may be reasonably requested.

No information or documents obtained by the means provided in this Section VIII 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 the defendant to the plaintiff, the defendant 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 the defendant 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 plaintiff shall give ten days' notice to the defendant before divulging the material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

IX

Jurisdiction is retained by this court for the purpose of enabling any 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.

X

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

XI

Entry of this Final Judgment is in the public interest.

James B. McMillan

J.