

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
WASTE MANAGEMENT, INC. and
EMW VENTURES INCORPORATED
Defendants.

Civil Action No. 81-CIV-1113

Filed: 2/25/81

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 to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. §25, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.

2. EMW Ventures Incorporated transacts business and is found within the Southern District of New York.

II.

DEFINITIONS

3. As used herein, the term:

(a) "Dallas, Texas market" means Dallas County and those portions of Ellis, Kaufman, Rockwall, Collin and Denton Counties within approximately ten miles of the boundary of Dallas County;

(b) "Houston, Texas market" means Harris County and those portions of Fort Bend, Brazoria, Galveston, Chambers, Liberty, Montgomery and Waller Counties within approximately ten miles of the boundary of Harris County.

III.

DEFENDANTS

4. Waste Management, Inc. (hereinafter "WMI") is made a defendant herein. WMI is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at Oak Brook, Illinois. WMI is the second largest company in the United States engaged in the waste management business. It provides integrated solid and chemical waste management services, consisting of storage and collection, transfer, interim processing and disposal, to commercial and industrial, residential and municipal customers, as well as to other waste management companies. In 1979, WMI had total assets of \$407.2 million, total revenues of \$381.5 million and net income of \$36.7 million. WMI operates through approximately 140 divisions or wholly-owned subsidiaries in 27 states, including American Container Services, Inc. in Dallas, Texas (hereinafter "ACS"); Texas Waste Management, Inc. in Lewisville, Texas; and Texas Waste Systems, Inc. in Houston, Texas (hereinafter "Texas Waste").

5. EMW Ventures Incorporated (hereinafter "EMW") is made a defendant herein. EMW is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at New York, New York. Through its wholly-owned subsidiaries EMW owns and controls Waste Resources Corporation, the fourth largest waste management company in the United States. Through Waste Resources, EMW provides integrated solid waste management services, including storage and collection and disposal, to commercial and industrial, residential and municipal customers through 28 subsidiaries in ten states,

including Texas Industrial Disposal, Inc., Dallas, Texas (hereinafter referred to as "TIDI") and Gulf Coast Disposal, Inc., Houston, Texas. In 1980 EMW had total assets of \$45.9 million and revenues from waste management services of \$54.0 million.

IV.

TRADE AND COMMERCE

6. Solid waste collection is the collection of paper, food, construction material and other solid wastes from residential, commercial and industrial customers through direct contracts with the generator of the waste or through municipal contracts or franchise agreements with a local governmental entity. Increased concerns about the environment have resulted in a demand for more sophisticated methods of collecting and disposing of all wastes, including solid wastes. Several well-financed, national waste management companies have been established which now operate in many areas across the country. The financial and technical resources of these newer companies has enabled them to expand rapidly by using expensive capital equipment and increasingly advanced collection and disposal technology. These national companies have improved collection route productivity and have increased the integration of the transfer, processing and disposal functions with the collection activities of the business. The most common method of solid waste disposal is burial in a sanitary landfill. Landfills may be owned or operated by a municipality, but many are owned by private solid waste collection firms.

7. Direct contract services are provided by a solid waste collector through a contract with the generator of the solid waste. Such services are provided by private firms to residential, commercial and industrial customers under relatively short-term contracts, usually for one year or less.

8. Solid waste is generally collected by rear or side loading, front loading and roll-off vehicles. Rear and side loading vehicles are generally used to collect solid waste from

residential customers. These trucks utilize a two or three person crew which manually loads the waste into the rear or side of the vehicle. Front loading vehicles generally collect solid waste from large apartment complexes and commercial customers, including retail and wholesale stores, office buildings and industrial parks. Customers served by front loaders deposit their waste in metal containers which can be lifted over the front of the truck by means of a hydraulic hoist and emptied into the storage section of the vehicle. Roll-off vehicles are generally used to collect waste from manufacturing and processing plants and industrial customers who generate large amounts of waste and store it in large metal containers. Roll-off trucks use a hydraulic hoist system to load a large container onto its body. Roll-off containers are transported individually to the disposal site where they are emptied before being returned to the customer's premises.

9. Containerized service is different from other types of solid waste collection service. Such service involves the storage of solid waste in large metal containers which are emptied by specially designed collection vehicles usually operated by one person. Containerized service provides the customer with a completely mechanized method of solid waste collection. Customers for this type of service are generators of larger amounts of waste than customers for other collection services. Containerized service is provided most often with front load or roll-off equipment.

10. Front loader and roll-off services are submarkets of the containerized solid waste collection market. Front loader service is different from roll-off service. Front loader customers are generators of smaller amounts of solid waste than roll-off customers. The equipment used is different for each type of service. Front loader vehicles employ a compaction system to increase storage capacity of the truck as well as a hydraulic hoist system to lift and empty containers. They can empty several

metal containers ranging in size from one to ten cubic yards before they must be driven to a disposal site. Front loader service is provided to customers on routes over which the collection vehicle makes frequent, pre-scheduled stops to empty containers at several customer locations. Prices for front loader service are influenced principally by the density of the routes served by each such vehicle. Roll-off services, on the other hand, are not always pre-scheduled and customers are not always located on routes. Prices for roll-off services are influenced principally by the distance of the customer's location from the collector's location and the disposal site, as well as the time necessary to travel those distances. Customers are charged each time their roll-off containers are removed to the disposal site. Roll-off vehicles have no compaction system and are designed to carry only one large container at a time to a disposal site. Roll-off containers are often used with a stationary compactor to increase their storage capacity. Roll-off trucks can not service front loader containers, nor can front loader vehicles service roll-off containers.

11. In 1980, total revenues from direct contract front loader service in the Dallas, Texas market were approximately \$18 million. EMW's subsidiary, TIDI, had \$6.2 million in revenues from providing such services, largest in the Dallas, Texas market. WMI's subsidiary, ACS, had \$5.6 million in revenues from providing such services, second largest in the Dallas, Texas market.

12. WMI and EMW are competitors for direct contract front loader service in the Dallas, Texas market. In 1980, EMW's subsidiary, TIDI, accounted for approximately 35% of total revenues from such service and WMI's subsidiary, ACS, accounted for approximately 32% of total revenues from such services in the Dallas, Texas market. The combined share of these firms is approximately 67%.

13. The market for direct contract front loader service in the Dallas, Texas market is highly concentrated. The four largest firms in that market account for approximately 89% of total revenues. In addition, several front loader firms have been eliminated from the Dallas, Texas market since 1978 through acquisitions by competitors or financial failure. The acquisition of EMW by WMI would increase that combined market share to approximately 95% of total revenues.

14. In 1980, total revenues from direct contract roll-off service in the Dallas, Texas market were approximately \$9 million. EMW's subsidiary, TIDI, had \$3.4 million in revenues from providing such service, largest in the Dallas, Texas market. WMI's subsidiary, ACS, had \$2.6 million in revenue from providing such service, second largest in the Dallas, Texas market.

15. WMI and EMW are competitors for direct contract roll-off services in the Dallas, Texas market. In 1980, EMW's subsidiary, TIDI, accounted for approximately 38% of total revenues from such service and WMI's subsidiary, ACS, accounted for approximately 29% of total revenues from such service in the Dallas, Texas market. The combined share of these firms is approximately 67%.

16. The market for direct contract roll-off service in the Dallas, Texas market is highly concentrated. The four largest firms in that market account for approximately 85% of total revenues. The acquisition of EMW by WMI would increase that combined market share to approximately 90% of total revenues.

17. In 1980, total revenues from direct contract front loader service in the Houston, Texas market were approximately \$33 million. WMI's subsidiary, Texas Waste, had \$4.9 million in revenues from such service, second largest in the Houston, Texas market. EMW's subsidiary, Gulf Coast Disposal, had \$3.0 million in revenues from such service, third largest in the Houston, Texas market.

18. WMI and EMW are competitors for direct contract front loader service in the Houston, Texas market. In 1980, WMI's subsidiary, Texas Waste accounted for approximately 15% of total revenues from such service and EMW's subsidiary, Gulf Coast Disposal, accounted for approximately 9% of total revenues from such service. The combined share of these firms is approximately 24%.

19. The market for direct contract front loader service in the Houston, Texas market is highly concentrated. The four largest firms in that market account for approximately 66% of total revenues. In addition, several front loader firms have been eliminated from the Houston, Texas market since 1978 through acquisitions by competitors or financial failure. The acquisition of EMW by WMI would increase that combined market share to approximately 70% of total revenues.

20. WMI and EMW are engaged in interstate commerce and in activities affecting interstate commerce. WMI operates in 27 states through 24 wholly-owned subsidiaries. EMW operates in ten states through 28 wholly-owned subsidiaries. WMI and EMW and their subsidiaries spend substantial amounts to purchase vehicles and equipment from manufacturers located in several of the United States. A substantial number of such vehicles and equipment are transported in interstate commerce to subsidiaries of WMI and EMW in the several states in which they operate. A substantial portion of the operating capital of defendants' subsidiaries comes from funds borrowed from banks and other lending institutions located outside the states in which many of the subsidiaries are located, as well as from revenues from the federal government and companies engaged in interstate commerce. WMI's subsidiaries make payments into a qualified pension plan maintained outside the states in which many of the subsidiaries are located for the benefit of WMI's employees located in the various states. A

substantial portion of the managerial and financial functions of defendants' subsidiaries are provided by companies located outside the states in which many of the subsidiaries are located.

V.

VIOLATION ALLEGED

21. By the terms of a letter of intent executed by the defendants on December 19, 1980, WMI will acquire all of the issued and outstanding shares of common stock of EMW in exchange for WMI common stock valued at approximately \$86 million. Defendants have stated their intention to consummate the merger on or about February 27, 1981.

22. The effect of this acquisition by WMI may be substantially to lessen competition or to tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and the potential for increased competition between WMI and EMW in the sale of direct contract front loader service and of direct contract roll-off service in the Dallas, Texas market and of direct contract front loader service in the Houston, Texas market will be eliminated;


(b) Actual competition and the potential for increased competition generally in the sale of direct contract front loader service and of direct contract roll-off service in the Dallas, Texas market, and of direct contract front loader service in the Houston, Texas market may be substantially lessened; and

(c) Concentration in the sale of direct contract front loader service and of direct contract roll-off service in the Dallas, Texas market, and of direct contract front loader service in the Houston, Texas market will be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That pursuant to Section 15 of the Clayton Act, 15 U.S.C. §25, the Court issue a summons commanding WMI to appear in these proceedings and bring WMI within the jurisdiction of this Court for purposes of this litigation;
2. That pending final adjudication of the merits of this complaint, a temporary restraining order and preliminary injunction be issued preventing and restraining the defendants WMI and EMW, and all persons acting on their behalf, from taking any action, directly or indirectly, in furtherance of the acquisition of the common stock of EMW by WMI;
3. That the acquisition of EMW's common stock by WMI be adjudged to be in violation of Section 7 of the Clayton Act;
4. That WMI and EMW be permanently enjoined from carrying out the acquisition of EMW's common stock by WMI or any similar plan or agreement the effect of which would be to combine the businesses of WMI and EMW;
5. That the plaintiff have such other and further relief as the Court may deem just and proper; and
6. That the plaintiff recover the costs of this action.


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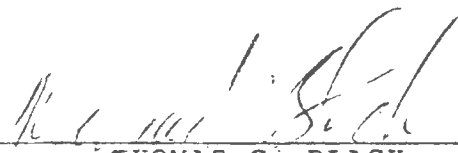
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CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

Thomas C. Black, being duly sworn, deposes and says that he is an attorney employed by the United States Department of Justice; that he has been actively engaged in the preparation of this proceeding; that he has read the foregoing Complaint and knows the contents and is familiar with the subject matter thereof; that he is informed and believes that the allegations of fact contained therein are true; and that the sources of his information are written statements, data, and documents furnished to the Department of Justice by defendants Waste Management, Inc. and EMW Ventures Incorporated, and information obtained from trade and industry sources.



THOMAS C. BLACK

Subscribed and sworn to before
me this 23rd day of February, 1981.



Notary Public

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