

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE AMERICAN SOCIETY OF
MECHANICAL ENGINEERS, INC.
and THE NATIONAL BOARD OF
BOILER AND PRESSURE VESSEL
INSPECTORS,

Defendants.

Civil No. 70 CIV 3141

Filed: July 22, 1970

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 these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. § 4), in order to prevent and restrain continuing violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

2. The defendant The American Society of Mechanical Engineers, Inc., maintains offices, transacts business, and is found within the Southern District of New York.

3. The defendant The National Board of Boiler and Pressure Vessel Inspectors transacts business within the Southern District of New York.

II

DEFENDANTS

4. The American Society of Mechanical Engineers, Inc. (hereinafter referred to as "ASME"), is incorporated and exists as a non-profit membership corporation under the laws of the State of New York with its principal place of business in New York City, New York. Its membership consists mainly of professional mechanical engineers located throughout the United States.

5. The National Board of Boiler and Pressure Vessel Inspectors (hereinafter referred to as "National Board"), is a private unincorporated membership association with its principal place of business in Columbus, Ohio. The National Board's membership consists of the chief boiler inspectors of various states, municipalities and other jurisdictions which adhere to the ASME Code.

III

CO-CONSPIRATORS

6. Various individuals, groups, firms and corporations not named as defendants herein, including members of the ASME BPV Committee, staff personnel of the National Board and the ASME BPV Committee, and others, have participated as co-conspirators in the offenses hereinafter charged, and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

7. The term "boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for

use external to itself by the direct application of heat. The term "boiler" includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

8. The term "pressure vessel" means a vessel in which pressure is obtained from an external source or by the application of heat from an indirect source.

9. The terms "boiler" and "pressure vessel" may include appurtenances and devices attached thereto.

V

TRADE AND COMMERCE

10. Various types and sizes of boilers and pressure vessels are manufactured and sold by several hundred manufacturing firms throughout the United States for shipment in interstate commerce. These products are also manufactured and exported by manufacturers located in several countries in Europe, Asia and Latin America. In 1967 sales of boilers and pressure vessels in the United States amounted to over \$1 billion. Boilers and pressure vessels produced abroad and exported to the United States accounted for only a small percentage of these sales.

11. During the latter part of the nineteenth century, boiler and pressure vessel explosions presented a serious safety problem. The ASME has formulated and promulgated the ASME Boiler and Pressure Vessel Code for safe construction of boilers and pressure vessels. This Code sets forth minimum construction requirements, including materials specifications, for the design, fabrication, inspection,

and certification of boilers and pressure vessels. This Code has been formally adopted by the ASME; however, the ASME Boiler and Pressure Vessel Committee (BPV Committee) has primary responsibility for the formulation and interpretation of the Code. In its present form the provisions of the ASME Code relating to power boilers have been adopted by 42 states, and the provisions relating to pressure vessels have been adopted by 24 states.

12. The ASME Code Symbol Stamp (hereinafter "ASME Stamp"), is issued by the BPV Committee to authorized manufacturers who use it to impress its symbol upon boilers or pressure vessels after they have been inspected, to reflect manufacture in accordance with the provisions of the ASME Code. The ASME has granted authority to use the ASME Stamp to a large number of domestic manufacturers, but has consistently refused to grant such authority to manufacturers located outside the United States and Canada.

13. The ASME Stamp affords municipal and state authorities and industrial purchasers quick visual assurance, without the necessity of detailed proof, that a boiler or pressure vessel has been manufactured and inspected in accordance with the requirements of the ASME Code. Many large industrial purchasers designate in their bid specifications that, in addition to meeting the standards of the ASME Code, boilers and pressure vessels bear the mark of the ASME Stamp. The ASME Stamp has over the many years of its use acquired enormous commercial value and legal significance as a shorthand symbol of quality.

14. The National Board has its own stamp which it authorizes manufacturers to apply to those boilers and

pressure vessels which bear the mark of the ASME Stamp. In addition to specifying the ASME Stamp mark, a number of jurisdictions specify that the National Board stamp mark be on all boilers and pressure vessels submitted for approval, and many industrial purchasers also require that the National Board stamp mark be on boilers and pressure vessels they buy. The National Board has consistently refused to authorize use of its stamp to manufacturers of boilers and pressure vessels located outside the United States and Canada.

15. The National Board also registers boilers and pressure vessels, and collects data on such vessels for use by boiler and pressure vessel officials in various jurisdictions. Registration with the National Board facilitates the reciprocal acceptance of vessels which have been approved by one state and then moved to another state. The National Board has consistently refused to accept for registration boilers and pressure vessels produced outside the United States and Canada.

16. Most inspectors who perform shop inspections on boiler and pressure vessels in the United States have been tested and certified by the National Board. The National Board, through these inspectors, provides the means for uniform administration and enforcement of the ASME Code. Officials and members of the National Board maintain a close liaison with members and officials of the ASME BPV Committee.

17. The BPV Committee is composed of 25 members of the ASME. Its Executive Committee is composed of nine members of the ASME. In 1969, seven of these nine members were officers or employees of domestic boiler and pressure

vessel manufacturers, of companies which sell supplies, accessories or components to domestic manufacturers or of insurance firms which do business with domestic manufacturers. The majority of the membership of the BPV Committee is composed of persons similarly associated or doing business with domestic boiler or pressure vessel manufacturers.

18. During the last twenty years, foreign manufacturers and American manufacturers with plants abroad have evinced a strong and continuing interest in exporting boilers and pressure vessels to the United States. Many have demonstrated the technical and manufacturing capability to satisfy the standards of the ASME Code.

VI

OFFENSE CHARGED

19. Beginning at least as early as 1949, and continuing thereafter up to and including the date of the filing of this complaint, the defendants and co-conspirators have, in violation of Sections 1 and 2 of the Sherman Act, combined and conspired in unreasonable restraint of the aforesaid interstate and foreign trade and commerce in boilers and pressure vessels and have combined and conspired to monopolize such trade and commerce. This combination and conspiracy will continue unless the relief hereafter prayed for is granted.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are to discriminate against and exclude from sale in the United States qualified boilers and pressure vessels manufactured

outside the United States and Canada by unreasonably and arbitrarily refusing to:

- (a) authorize use of the ASME Stamp by manufacturers of such boilers and pressure vessels;
- (b) authorize use of the National Board stamp by manufacturers of such boilers and pressure vessels;
- (c) register with the National Board, boilers and pressure vessels produced by manufacturers of such boilers and pressure vessels.

21. For the purpose of effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore alleged, they combined and conspired to do.

VII

EFFECTS

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

- (a) American purchasers of boilers and pressure vessels have been deprived of product options with respect to price, design, and quality which would otherwise be available;
- (b) importation of boilers and pressure vessels into the United States market has been restricted;
- (c) competition generally in the sale of boilers and pressure vessels in the United States has been restrained.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain interstate and foreign trade and commerce in boilers and pressure vessels and to monopolize such trade and commerce, in violation of Sections 1 and 2 of the Sherman Act.

2. That each of the defendants, its officers, directors, agents, employees and members, and all persons acting or claiming to act on its behalf, be enjoined from continuing or maintaining or renewing, directly or indirectly, the combination or conspiracy hereinbefore alleged, or from engaging in any other practice, plan, program, or device having a similar effect.

3. That the ASME be required to issue its stamp on a non-discriminatory basis to all qualified domestic or foreign applicants for manufacturing operations located outside the United States and Canada.

4. That the National Board be required to issue its stamp on a non-discriminatory basis to all qualified domestic or foreign applicants for manufacturing operations outside the United States or Canada.

5. That the National Board be required to register on a non-discriminatory basis, boilers and pressure vessels which are manufactured outside of the United States or Canada which meet the technical standards of the ASME Code.

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Robert B. Hummel
ROBERT B. HUMMEL

Attorneys, Department of Justice