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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	Civil No. 84-0496KN
13 Plaintiff,)	Filed: January 24, 1984
14 v.)	15 U.S.C. § 1 (Antitrust
15 ASSOCIATION OF ENGINEERING)	Violation Alleged)
16 GEOLOGISTS,)	15 U.S.C. § 4 (Equitable
17 Defendant.)	Relief Sought)

18 COMPLAINT

19 The United States of America, plaintiff, by its attorneys,
20 acting under the direction of the Attorney General of the United
21 States, brings this civil action to obtain equitable relief
22 against the above-named defendant and complains and alleges as
23 follows:
24

25 I

26 JURISDICTION AND VENUE

27 1. This complaint is filed under Section 4 of the Sherman
28 Act, as amended (15 U.S.C. § 4), in order to prevent and restrain

1 the continuing violation by the defendant, as hereinafter alleged,
2 of Section 1 of said Act (15 U.S.C. § 1).

3 2. The defendant, Association of Engineering Geologists
4 (hereinafter referred to as the "Association"), transacts business
5 and is found within the Central District of California.

6 II

7 DEFENDANT

8 3. The Association is made the defendant herein. The
9 Association is a nationwide private trade organization
10 incorporated under the laws of the State of California which
11 maintains an office in Brentwood, Tennessee. The Association has
12 approximately 2,700 members in the United States with varying
13 degrees of expertise in engineering geology, hydrogeology, and
14 engineering geophysics. Approximately 360 of these members reside
15 in the Central District of California.

16 III

17 CO-CONSPIRATORS

18 4. Various other persons not made defendants herein have
19 participated as co-conspirators with the defendant in the
20 violation hereinafter alleged, and have performed acts and have
21 made statements in furtherance thereof.

22 IV

23 TRADE AND COMMERCE

24 5. Engineering geology is the discipline of applying
25 geologic data, techniques, and principles to the study of
26 naturally occurring rock and soil materials or subsurface fluids.
27 The purpose is to assure that geologic factors affecting the
28 planning, design, construction, operation, and maintenance of
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1 engineering structures and the development of groundwater
2 resources are recognized, adequately interpreted and presented for
3 use in engineering practice.

4 6. Engineering geologists are involved in the field of
5 applied geoscience. Their work includes aspects of civil
6 engineering involving analysis of rocks, sediments, and soils.
7 Some of the principal activities in which engineering geologists
8 participate, for both public and private construction projects,
9 are:

- 10 (a) the investigation of foundations for dams, bridges,
11 power plants, pumping plants, large buildings and
12 towers;
- 13 (b) the evaluation of natural conditions along tunnel,
14 pipeline, canal and highway routes;
- 15 (c) the exploration and use of rock, soil and sediment
16 for use as construction material;
- 17 (d) the investigation and development of surface and
18 groundwater resources; and
- 19 (e) the evaluation and control of landslide, flood and
20 earthquake hazards to permit safe development of
21 urban areas.

22 7. Total annual sales of engineering geology services in the
23 United States are about \$50 million.

24 8. In selecting an engineering geologist, clients consider
25 such factors as quality of service, price, reputation, and
26 experience. Advertising and oral and written solicitation, as
27 well as referrals, enable engineering geologists to inform
28 potential clients about these factors. Advertising and

1 solicitation benefit consumers by increasing the amount of
2 information available to them and by furthering competition among
3 engineering geology firms.

4 9. In July 1976 the Association adopted the Articles that
5 are the subject of its current Code of Ethics, and in June 1978
6 the Association adopted Guidelines to these Articles. Today, the
7 Articles and Guidelines are integrated, published and distributed
8 to members of the Association as one document called the "Code of
9 Ethics," a copy of which is contained in the Association's 1982
10 Directory. Members of the Association agree to abide by the
11 Association's Code of Ethics and the Association's by-laws provide
12 for the suspension or expulsion of any member who violates the
13 Code of Ethics.

14 10. The Association's Code of Ethics restricts advertising,
15 price competition, and solicitation by members of the
16 Association.

17 11. The provisions of the Code of Ethics applicable to
18 advertising, price competition, and solicitation are Article (5),
19 Guideline b.; Article (7), Guidelines b., d., e., f., g., and h.;
20 and Article (8), Guidelines a., b., and c. Exhibit A, attached to
21 this Complaint, sets forth the text of these Articles and
22 Guidelines and the Preamble to the Code of Ethics.

23 12. The services provided by members of the Association
24 affect individuals, corporations, governmental agencies, and other
25 business entities throughout the United States. In the course of
26 making proposals and rendering services, members of the
27 Association travel throughout the United States and make
28 substantial use of interstate mail and telephone services in the

1 transport of funds, documents, plans, reports, and other
2 communications. Many members of the Association in one state
3 compete with or affiliate themselves with engineering geologists
4 in other states.

5 13. The activities of the Association and its members, which
6 are the subject of this Complaint, are within the flow of and have
7 a substantial effect upon interstate commerce.

8 V

9 VIOLATION ALLEGED

10 14. Beginning at least as early as 1976, and continuing up to
11 and including the date of the filing of this Complaint, the
12 defendant and co-conspirators have been engaged in a combination
13 and conspiracy in unreasonable restraint of the aforesaid
14 interstate trade and commerce in violation of Section 1 of the
15 Sherman Act. Said violation is continuing and will continue
16 unless the relief hereinafter prayed for is granted.

17 15. The aforesaid combination and conspiracy has consisted of
18 an agreement, understanding, and concert of action among the
19 defendant and co-conspirators to restrain competition among
20 engineering geologists by unreasonably restricting advertising,
21 price competition, and solicitation.

22 16. In furtherance of the aforesaid combination and
23 conspiracy, the defendant and co-conspirators have done those
24 things which they have combined and conspired to do, including,
25 among other things:

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- 1 (a) prohibiting commercial advertising;
- 2 (b) requiring that members charge only those fees for
- 3 engineering geology services which are customary in
- 4 their respective areas;
- 5 (c) prohibiting the submission of price proposals where
- 6 price is the overriding or primary consideration in
- 7 the award of the work;
- 8 (d) prohibiting members from reducing charges after
- 9 being informed of proposals of other engineering
- 10 geologists; and
- 11 (e) prohibiting solicitation of engineering geology
- 12 engagements.

13 VI

14 EFFECTS

15 17. The aforesaid combination and conspiracy has had the

16 following effects, among others:

- 17 (a) advertising, price competition, and solicitation for
- 18 clients by engineering geologists have been
- 19 unreasonably restricted;
- 20 (b) competition in the sale of engineering geology
- 21 services has been unreasonably restrained;
- 22 (c) consumers of engineering geology services have been
- 23 deprived of information as to the services of
- 24 engineering geologists and of the benefits of free
- 25 and open competition in the sale of such services;
- 26 and

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1 (d) members of the Association have been unreasonably
2 restrained in their ability to make their services
3 readily known and available to consumers and on such
4 terms and conditions that reflect the unilateral
5 competitive judgment of members.

6 PRAYER

7 WHEREFORE, plaintiff prays:

8 1. That the Court adjudge and decree that the defendant and
9 co-conspirators have engaged in an unlawful combination and
10 conspiracy in restraint of trade in violation of Section 1 of the
11 Sherman Act by the adoption of anticompetitive Articles and
12 Guidelines in its Code of Ethics regarding advertising, price
13 competition, and solicitation complained of herein.

14 2. That the defendant be required to cancel all Articles and
15 Guidelines in its Code of Ethics and every other resolution or
16 statement of policy which have the purpose or effect of
17 unreasonably restricting advertising, price competition, or
18 solicitation by members of the Association.

19 3. That the defendant, its members and all other persons
20 acting or claiming to act on its behalf be enjoined and restrained
21 from, in any manner, directly or indirectly, continuing,
22 maintaining, or renewing the aforesaid combination and conspiracy;
23 from engaging in any other combination, conspiracy, contract,
24 agreement, understanding, or concert of action having similar
25 purposes or effects; and from adopting, ratifying, or following
26 any rules, practice, plan, program, or device having similar
27 purposes or effects.

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1 4. That the defendant be required to notify in language
2 approved by the plaintiff all of its members and the general
3 public that it has cancelled and rescinded all Articles and
4 Guidelines in its Code of Ethics and every other resolution or
5 statement of policy which have the purpose or effect of
6 unreasonably restricting advertising, price competition, or
7 solicitation by members of the Association.

8 5. That the Court impose such additional restrictions on the
9 defendant as are necessary to insure that any rule or policy
10 adopted by the Association pertaining to advertising, price
11 competition, or solicitation by engineering geologists is not
12 applied, interpreted, or otherwise enforced in a manner that
13 unreasonably restrains advertising, price competition,
14 solicitation, the dissemination of information, or other aspects
15 of competition among engineering geologists.

16 6. That the defendant be required to submit semiannually for
17 a period of five years to the Department of Justice information
18 and copies of correspondence with members of the Association
19 concerning the application, interpretation, or enforcement of any
20 rule or policy pertaining to advertising, price competition, or
21 solicitation by engineering geologists.

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1 7. That the plaintiff have such other and further relief as
2 the Court may deem just and proper.

3 8. That the plaintiff recover the costs of this suit.

4 DATED:

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7 *Paul M. McGrath*
8 J. PAUL McGRATH
9 Assistant Attorney General

JAMES E. FIGENSHAW

10 *Mark Leddy*
11 MARK LEDDY

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ALEXANDER H. WILLIAMS III
United States Attorney
Central District of California

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EXHIBIT A

PREAMBLE

Each member of the Association, regardless of class of membership, shall consider it his or her duty and responsibility to adhere to the Code of Ethics. This Code shall be accepted as a way of professional life by members; further, members shall encourage others by example and counsel to do likewise.

* * *

Article (5) - The Engineering Geologist shall announce his availability for professional work in a manner which will maintain personal dignity and that of the profession.

Guidelines:

* * *

- b. In connection with this practice he shall not use any commercial advertising media such as newspaper and magazine space advertisements, indiscriminate direct mailings, and radio and television time, as well as items bearing his name, such as pencils, blotters, calendars, etc.

* * *

Article (7) - The Engineering Geologist shall compete for employment with others in the Profession on the basis of qualifications and a fair charge for his or her services.

Guidelines:

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- b. He shall compete fairly with other engineering geologists by charging fees customary for practice in the same area and for the same type of work.

* * *

- d. He may, where price competition is clearly not involved, discuss with a prospective client: Qualifications, scope of work, availability, and basis for charges for services.

- e. He may submit a priced proposal, either written or verbal which includes a stated fee or estimated range of fees in any form in response to:
 - 1. A public advertisement for bids.
 - 2. Any invitation, unless there is reason to believe that price will be the overriding consideration in award of the work.
- f. He shall not be a party to requesting two or more proposals for comparative purposes where price is to be the primary consideration in award of the work.
- g. He shall submit a proposal for an engineering geology engagement only when invited to do so, or when he judges it to be in the best interest of a client or potential client.
- h. He shall not solicit an engineering geology engagement by reducing charges after being informed of proposals of others.

* * *

Article (8) - In cases where negotiations proceed on the basis of prequalification and subsequent negotiation in fixed order, the Engineering Geologist submitting a proposal shall assume a passive role until such time as his or her turn for negotiations has been specified by the client.

Guidelines:

- a. He shall not continue to seek employment on a specific engagement after being advised that another engineering geologist has been selected, subject to approval of detailed arrangements.
- b. He shall not solicit or accept employment from a client who already has an engineering geologist under contract for the same work, not yet completed or paid for.
- c. He shall not, in the event that another engineering geologist has made a study and report on a specific project, approach the prospective client regarding subsequent phases of the project, unless such contact is initiated by the client.