

UNITED STATES DISTRICT COURT

DISTRICT OF KANSAS

[KANSAS CITY DOCKET]

UNITED STATES OF AMERICA,

Plaintiff,

v.

SOCONY MOBIL OIL COMPANY, INC.;
SKELLY OIL COMPANY; THE CONSUMERS
COOPERATIVE ASSOCIATION; AMERICAN
PETROFINA COMPANY OF TEXAS; UNION
ASPHALTS & ROAD OILS, INC.; THE
AMERICAN OIL COMPANY; APCO OIL
CORPORATION; and PHILLIPS PETROLEUM
COMPANY,

Defendants.

CIVIL ACTION

No. 2487

Entered: July 24, 1969

FINAL JUDGMENT

The plaintiff, United States of America, having filed its Complaint herein on April 5, 1966, and all defendants, by their attorneys, having consented to the entry of a Final Judgment herein against them without trial or adjudication of any issue of fact or law herein, and without admission by them with respect to any such issue and this Court having determined, pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure, that there is no just reason for delay in entering a Final Judgment as to all of plaintiff's claims asserted in said Complaint against these defendants;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the United States of America and the said defendants, the Court hereby determines that the proceeding herein is terminated as to said defendants and directs entry of Final Judgment as to all of plaintiff's claims herein against said defendants and as to said defendants, 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 hereto. The Complaint states claims for relief against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity.

(B) "Liquid asphalt" shall mean an asphaltic by-product produced in refining crude oil used in the construction, maintenance and repair of roads, streets and highways,

including but not limited to various types and grades, the most common of which are emulsions, asphaltic cement (AC), medium curing (MC), slow curing (SC), and rapid curing (RC).

(C) The "mid-continent area" shall mean the States of Montana, North Dakota, South Dakota, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas and Oklahoma.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, and to each of its subsidiaries, successors, and assigns and to each of its directors, officers, agents and employees, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other manufacturer, distributor or seller of liquid asphalt to:

- (A) Fix, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of liquid asphalt to any third person;
- (B) Submit collusive or rigged bids or price quotations for the sale of liquid asphalt to any third person;

- (C) Allocate or divide markets or territories for the distribution or sale of liquid asphalt to any third person;
- (D) Furnish or receive information concerning prices, discounts, or other terms or conditions of sale at or upon which any liquid asphalt is to be offered for sale to any third person.

V

Each defendant is enjoined and restrained from, directly or indirectly:

- (A) Communicating to any manufacturer, distributor, or seller of liquid asphalt any price, discount or other term or condition of sale of liquid asphalt to any third person prior to the communication of such price, discount, term or condition to the public or trade generally;
- (B) Disclosing to any manufacturer, distributor or seller of liquid asphalt, prior to the public opening of a sealed bid or sealed quotation, the intention to submit or not submit a bid or a quotation, the fact that a bid or quotation has or has not been submitted or made, or the content or terms of any bid or quotation for the sale of any liquid asphalt to any third person, except

information which is disclosed or exchanged in order to submit a joint bid or quotation which has been requested in writing by the buyer or which bid is known by the buyer to be a joint bid.

- (C) Joining, participating in or belonging to any trade association, organization, or industry group with knowledge that any of the activities thereof are contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

For a period of five (5) years following the date of entry of this Final Judgment, each defendant is ordered and directed to furnish, simultaneously with each sealed bid and each sealed quotation for the sale of liquid asphalt submitted by it to any Federal, State, or local agencies or any other governmental awarding authorities in the mid-continent area of the United States, an affidavit by the official of such defendant having authority to determine the price or prices bid or quoted that said bid or quotation was not the result of any agreement, understanding, plan or program between such defendant and any other manufacturer, distributor, or seller of liquid asphalt not a named party to such sealed bid.

VII

For the purpose of securing or determining compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(A) Access, during the office hours of such defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment;

(B) To interview officers or employees of such defendant, who may have counsel present, subject to the reasonable convenience of such defendant and without interference or restraint from it, regarding any such matters; and upon such request defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section VII 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 plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing or determining compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment 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, or for the modification or termination of any of the provisions hereof, and for the enforcement of compliance therewith and punishment of violations thereof.

/s/ ARTHUR J. STANLEY, JR.

United States District Judge

Dated: July 24, 1969