

(b) To furnish to Plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by Plaintiff, on or about the anniversary date of this Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps the Defendant has taken during the preceding year to discharge its obligations under subparagraph (a) of this Section V and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VI.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to either Defendant made to its principal office, be permitted:

(1) Access during office hours of such Defendant, which may have counsel present, to inspect and copy 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; and

(2) Subject to the reasonable convenience of such Defendant, and without restraint or interference from it, to interview officers, directors,

employees and agents of such Defendant, each of whom may have counsel present, regarding any such matters.

(b) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to either Defendant's principal office, such Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VI 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 either Defendant to Plaintiff, such Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that Defendant is not a party.

VII.

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, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for punishment of violations thereof.

VIII.

Entry of this Final Judgment is in the public interest.

March 9, 1978

Date.

/s/ Thomas A. Flannery

UNITED STATES DISTRICT JUDGE

U.S. v. NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Civil No.: 2412-72

Year Judgment Entered: 1978

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Society of Professional Engineers., U.S. District Court, D. District of Columbia, 1978-2 Trade Cases ¶62,226, (Aug. 3, 1978)**

[Click to open document in a browser](#)

United States v. National Society of Professional Engineers.

1978-2 Trade Cases ¶62,226. U.S. District Court, D. District of Columbia, Civil Action No. 2412-72, Filed August 3, 1978.

Case No. 2287, Antitrust Division, Department of Justice.

### **Sherman Act**

#### **Price Fixing: Professional Services: Engineers: Ban on Fee Bidding: Litigated Final Judgment.—**

An association of professional engineers was barred by a final judgment from participating, adopting or disseminating any plan against competitive fee bidding. The association was ordered to amend its rules containing any references as to fee bidding prohibitions and fee schedules or guides. Affiliation to the association must be refused, under the provisions of the judgment, to any engineering society that prohibits in any way competitive fee bidding and a certification to that effect will be considered a prerequisite to affiliation.

**For plaintiff:** Richard J. Favretto, Washington, D. C. **For defendant:** Lee Loevinger, Washington, D. C.

### **Final Judgment**

Smith, D. J.: Upon consideration of the previous proceedings and record herein, the Opinions of the Court of Appeals [ [1977-1 Trade Cases ¶61,317](#) ] and the Supreme Court [ [1978-1 Trade Cases ¶61,990](#) ] in this matter, the instructions of the Court of Appeals to modify in part the Judgment entered herein on November 26, 1975 [ [1975-2 Trade Cases ¶60,604](#) ], and the arguments of the parties concerning the withdrawal of the Court's previous Judgment and the entry of a modified Final Judgment, it is by the Court this 3rd day of August, 1978

Ordered, Adjudged, and Decreed that the Judgment entered herein on November 26, 1975, is withdrawn; and it is further

Ordered, Adjudged, and Decreed as the Final Judgment of the court that:

I

#### **[ Jurisdiction ]**

This Court has jurisdiction over the subject matter of this action and the parties hereto.

II

#### **[ Sherman Act Sec. 1 Violation ]**

The defendant is found to have violated [Section 1 of the Sherman Act](#) (15 U. S. C. §1) by combining and conspiring with its members and state societies to unreasonably restrain interstate trade and commerce in the sale of engineering services.

III

#### **[ Applicability ]**

The provisions of this Final Judgment which apply to the defendant shall also apply to the defendant's officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with the defendant who receive notice of this Final Judgment by personal service or otherwise.

IV

**[ *Ban on Fee Bidding by Engineers* ]**

The defendant is enjoined and restrained from participating in or adopting any plan, program or course of action which in any manner prohibits, discourages or limits members of the defendant from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise has the purpose or effect of suppressing or eliminating competition based upon engineering fees among members of the defendant.

V

**[ *Amendment of Association's Rules* ]**

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, constitution, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom any provisions, including Sections 9(a) [formerly Section 9(b)] and 11(c) of its Code of Ethics and any references thereto, which in any manner prohibit, discourage or limit the submission of price quotations for engineering services by members of the defendant or which state or imply that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VI

**[ *Fee Schedules* ]**

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom all references to engineering fee schedules or guides published by any engineering society. The defendant is further enjoined and restrained from adopting, endorsing or promoting any engineering fee schedule or guide.

VII

**[ *Dissemination of Prohibited Activities* ]**

The defendant is enjoined and restrained from adopting or disseminating in any of its publications or otherwise, any Code of Ethics, opinion of its Board of Ethical Review, policy statement, rule, by-law, resolution or guideline which in any manner prohibits, discourages or limits the submission of price quotations for engineering services by members of the defendant or which states or implies that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VIII

**[ *Notice* ]**

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to send a copy of this Final Judgment to each of its affiliated state engineering societies and local chapters and to each State Board of Engineering Registration in the United States and territories thereof, and to cause the publication of this Final Judgment in the magazine *Professional Engineer*, in such a fashion and as prominently as feature articles

are regularly published in said magazine, and to send a copy of such magazine to each member of NSPE. The defendant is further ordered and directed to send a copy of this Final Judgment to each new members of NSPE and to state prominently in any publication of its Code of Ethics the following: that, by order of the Court, Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; and that nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount. The text of such statement shall first be approved by the plaintiff.

## IX

### [ *Affiliation* ]

The defendant is ordered and directed to revoke the NSPE charter of and to refuse NSPE affiliation to:

- (A) any state engineering society which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees; and,
- (B) any state engineering society which has within its organization any local chapter which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees.

For the purpose of carrying out the provisions of this section, the defendant is ordered and directed to require, as a prerequisite for an NSPE charter or continued NSPE affiliation of any state engineering society, that such state engineering society submit to the defendant within 60 days of the effective date of this Final Judgment a written certification by an official of such state engineering society that neither it nor any of its local chapters in any manner prohibit, discourage or limit their members from submitting price quotations for engineering services at such times and in such amounts as they may choose and neither it nor any of its local chapters participate in or have any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among their members based upon engineering fees. The defendant is further enjoined and restrained from granting or continuing an NSPE charter or NSPE affiliation to any state engineering society which does not comply with the defendant's request for the certification required herein. The defendant shall retain each such certification during the period of the NSPE charter or NSPE affiliation of the state engineering societies submitting it.

## X

### [ *Reports* ]

The defendant is ordered and directed to file with the plaintiff 90 days from the effective date of this Final Judgment and on each anniversary date of the effective date of this Final Judgment for a period of five years, a report setting forth the steps it has taken to comply with the provisions of this Final Judgment.

## XI

### [ *Compliance* ]

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

(A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Final Judgment; and,

(B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of said defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this section 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## **XII**

### **[ Costs]**

The plaintiff shall recover the costs of this action from the defendant.

## **XIII**

### **[ Retention of Jurisdiction]**

Jurisdiction is retained for the purpose of ordering other specific and further relief herein as the Court upon application of the plaintiff may determine to be necessary or appropriate and consistent with the Opinion of the Court and its Findings of Fact and Conclusions of Law. Jurisdiction is also retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for any 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 the provisions thereof, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained therein or subsequently ordered upon the application of the plaintiff.



U.S. v. WHEELABRATOR-FRYE INC., ET AL.

Civil No.: 80-2346

Year Judgment Entered: 1981

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO.: 80-2346
	)	
WHEELABRATOR-FRYE INC., and	)	FILED: September 15, 1980
PULLMAN INCORPORATED,	)	
	)	ENTERED: April 29, 1981
Defendants.	)	

FINAL JUDGMENT

Plaintiff United States of America, having filed its complaint herein on September 15, 1980, and defendants Wheelabrator-Frye Inc. ("WFI") and Pullman Incorporated ("Pullman") having appeared, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

I

This Court has jurisdiction over the subject matter herein and the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II

Definitions

As used in this Final Judgment:

A. "Rust Chimney" means the Rust Chimney Division of the Rust Engineering Company, a subsidiary of WFI, and all assets of the Division including leaseholds, executory contracts, accounts receivable, engineering drawings, customer lists, goodwill and physical assets; and shall include the exclusive right to use the name "Rust Chimney" for a period of three years from the date of sale of Rust Chimney, provided that such name is used in conjunction with the name of the purchaser, and provided further that WFI shall not use the name "Rust Chimney," for a period of five years from the date of sale of Rust Chimney.

B. "Metallurgical" means the Metallurgical Division of Whiting Corporation, a subsidiary of WFI, and all assets of the Division including executory contracts, accounts receivable, inventory, work-in-process, engineering drawings, customer lists, goodwill, patents, trademarks and physical assets; and shall include the exclusive right to use the name "Whiting Furnace" for a period of three years from the date of sale of Metallurgical in connection with the sale of industrial furnaces, provided that such name is used in conjunction with the name of the purchaser, and provided further that WFI shall not use the name "Whiting Furnace," for a period of five years from the date of sale of Metallurgical.

C. "Industrial Furnace" means the Industrial Furnace Group of Pullman-Swindell Division, a division of Pullman, and

all assets of the Group including executory contracts, accounts receivable, engineering drawings, customer lists, licenses, goodwill and physical assets; and shall include the exclusive right to use the names "Swindell Furnace" and "Swindell-Dressler Furnace" for a period of three years from the date of sale of Industrial Furnace, in connection with the sale of industrial furnaces, provided that such names are used in conjunction with the name of the purchaser, and provided further that WFI shall not use the names "Swindell Furnace" or "Swindell-Dressler Furnace," for a period of five years from the date of sale of Industrial Furnace.

### III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, successors and assigns, and to each of their officers, directors, agents, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

A. Within 12 months of the date of WFI's acquisition of the engineering and construction business of Pullman or the date of the merger of Pullman into WFI, whichever shall first occur (collectively the "Date of Acquisition"), WFI shall divest itself of:

- (1) Rust Chimney, and
- (2) Either Metallurgical or Industrial Furnace, at WFI's option.

B. Divestiture shall be made only to a person or persons who represent to the Court that it or they intend to continue in the divested business and have the capacity to do so.

C. WFI shall promptly report the details of any proposed divestiture, including relevant underlying documentation, to the plaintiff. Plaintiff shall have the right to make reasonable requests for additional information relating thereto. Following the receipt of any plan of divestiture and such additional information, plaintiff shall have 30 days in which to object to the proposed divestiture by submitting written notice to WFI. If plaintiff objects to the proposed plan of divestiture, the proposed divestiture shall not be consummated unless plaintiff withdraws its objection or the Court gives its approval to the plan. If plaintiff does not object, the plan shall be submitted to the Court for approval. If WFI shall have submitted a pending plan of divestiture of a business prior to the close of the 12-month period under subsection A, the time period for divestiture of such business shall be extended until the Court acts upon such plan and any approved sale is consummated.

D. If WFI shall not have divested Rust Chimney within 10 months after the Date of Acquisition, plaintiff and WFI shall promptly initiate the selection of a trustee (the "Rust Chimney Trustee") for appointment by the Court. If WFI shall not have divested Metallurgical or Industrial Furnace within 10 months after the Date of Acquisition, plaintiff and WFI shall promptly initiate the selection of a trustee (the "Furnace Trustee") for appointment by the Court. The Rust Chimney Trustee and the Furnace Trustee shall not be the same

person. The Court shall appoint such trustees from a list of not more than 6 persons nominated one-half by plaintiff and one-half by WFI for each trustee position.

E. If WFI shall not have divested Rust Chimney within the time period for divestiture, the Rust Chimney Trustee shall have the power and authority to sell Rust Chimney. If, within such time period, WFI shall not have divested either Metallurgical or Industrial Furnace, the Furnace Trustee shall have the power and authority to sell either Metallurgical or Industrial Furnace, but not both, at the Furnace Trustee's option. Any sale by either trustee shall be in accordance with the provisions of this Final Judgment. Each trustee shall have full and complete access to the books, records and facilities of the business for which he has the duty to sell, and WFI shall develop such financial information relevant to the assets to be divested as each trustee may reasonably request.

F. The power and authority of the trustee or trustees to sell shall be at whatever price and terms obtainable. The trustee or trustees shall serve at the cost and expense of WFI on such terms and conditions as this Court may set, and shall account for all monies derived from the sale and all expenses incurred. After approval by this Court of the account of each trustee, including fees for his or her services, all remaining monies shall be paid to WFI and that trust shall be terminated.

G. Divestiture hereunder shall be complete and final, provided that WFI may retain a security interest to secure payment of any unpaid portion of the purchase price or

to secure performance of the contract of sale. If WFI reacquires any previously divested business more than 12 months after the Date of Acquisition, it shall immediately provide written notice to plaintiff and the Court. The Court shall thereupon appoint a trustee, in accordance with subsection D, to sell any such reacquired business in accordance with subsections D, E and F.

H. Until the Date of Acquisition, Pullman shall continue the normal business operations of Industrial Furnace and maintain its personnel, assets and working capital at a level commensurate with its business activity, but in no event shall Pullman permit such assets or working capital (adjusted for inflation) to fall below the levels on December 31, 1979, or the level of such personnel to fall below the average during the 12 months preceding September 1, 1980.

I. WFI shall continue the normal business operations of Rust Chimney separately from the Pullman chimney business until Rust Chimney is divested and of Metallurgical and Industrial Furnace (upon its acquisition by WFI) separately from each other until one or the other is divested, and shall during such time period maintain the personnel, assets and working capital of each business at a level commensurate with its level of business activity, but in no event shall WFI permit such assets or working capital (adjusted for inflation) to fall below the level on December 31, 1979, or the number of such personnel to fall below the average level during the 12 months preceding September 1, 1980.

J. WFI shall not employ without the consent of plaintiff any person who is an employee of the divested

business at the time of the divestiture for a period of three years from the date of divestiture. Such consent shall not be unreasonably withheld.

V

A. WFI shall maintain records of its efforts to sell Rust Chimney, Metallurgical and Industrial Furnace, including identification of any persons to whom each business has been offered, the terms and conditions of each offer to sell, the identification of any persons expressing interest in purchasing each business, and the terms and conditions of each offer to purchase.

B. Every three months from entry of this Final Judgment until the divestiture has been completed, WFI shall file with this Court and serve on plaintiff an affidavit together with relevant documentation (including the names of parties who have been contacted) as to the fact and manner of compliance with Section IV of this Final Judgment.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege:

A. Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to WFI or Pullman made to its principal office, be permitted



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

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding any such matters.

B. No information or documents obtained by the means provided in Sections V and VI hereof 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.

C. If at the time information or documents are furnished by defendants to plaintiff, WFI or Pullman represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said 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 10 days' notice shall be given by plaintiff to said defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VII

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, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

Entry of this Final Judgment is in the public interest.

Barrington Parker  
\_\_\_\_\_  
District Judge

Entered: 4/29/81