

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Whittenberg Engineering & Construction Co., F. W. Owens & Associates, Inc., Garst-Receveur Construction Co., Struck, Inc., Sullivan & Cozart, Inc., Coupe Construction Co., Platoff Construction Co., Inc., Ale Bornstein, Inc., Hays & Nicoulin, Inc., E. L. Noe & Sons, Inc., and W. C. Schickli Construction Co., Inc., U.S. District Court, W.D. Kentucky, 1979-1 Trade Cases ¶62,537, (Nov. 15, 1978)**

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United States v. Whittenberg Engineering & Construction Co., F. W. Owens & Associates, Inc., Garst-Receveur Construction Co., Struck, Inc., Sullivan & Cozart, Inc., Coupe Construction Co., Platoff Construction Co., Inc., Ale Bornstein, Inc., Hays & Nicoulin, Inc., E. L. Noe & Sons, Inc., and W. C. Schickli Construction Co., Inc.

1979-1 Trade Cases ¶62,537. U.S. District Court, W.D. Kentucky, at Louisville, Civil Action No. C 75-0380L(A) Entered November 15, 1978.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 36146, 51860). Case No. 2491, Antitrust Division, Department of Justice.

### **Sherman Act**

**Collusive Bidding: Exchange of Information: General Contracting on Construction Work: Consent Decree.**— Eleven general contracting companies in Louisville, Kentucky were barred by a consent decree from rigging bids and exchanging information on construction jobs. The decree would not prohibit a defendant from submitting a single bid through a joint venture and it would not apply to negotiations between a defendant and any other general contractor in connection with purchase, sale, lease or rental of general contracting supplies or equipment.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Harris, John A. Weedon, William A. LeFaiver, Joan Farragher, and Deborah L. Hiller, Attys., Antitrust Div., Dept. of Justice. **For defendants:** Gordon B. Davidson and K. Gregory Haynes, for Whittenberg Engineering & Construction Co.; Frank E. Haddad, Jr., for Whittenberg Engineering & Construction Co., Sullivan & Cozart, Inc., Coupe Construction Co., Platoff Construction Co., Inc., Ale Bornstein, Inc.; Joseph E. Stopher, Robert Hanley, and Rodney Joslin, for F. W. Owens & Assoc., Inc.; Marshall P. Eldred and Kenneth J. Tuggle, for Garst-Receveur Construction Co. and Struck, Inc.; Kent McElwain, for Sullivan & Cozart, Inc.; Stanley V. Benovitz, for Ale Bornstein, Inc.; Chris C. Duvall, for E. L. Noe & Sons, Inc.; Oldham Clarke, for Coupe Construction Co.; Don H. Major, for Hays & Nicoulin, Inc., Joseph J. Kaplan, for W. C. Schickli Construction Co., Inc.

### **Final Judgment**

ALLEN, D. J.: The plaintiff, having filed its complaint herein on November 20, 1975, and the defendants, having appeared by their respective attorneys and having filed their answers to the complaint denying the substantive allegations thereof; and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment herein, without trial or adjudication of, or finding on, any issues of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issues;

Now, Therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issues of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

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I

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the complaint states claims upon which relief may be granted against defendants under [Section 1 of the Sherman Act](#), 15 U. S. C. §1.

II

[ *Definitions* ]

As used in this Final Judgment, the term:

- (A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity;
- (B) "General contracting services" shall mean the supervision of and/or the responsibility for the installation and/or removal of materials for maintenance, construction, renovation, alteration, repair or destruction purposes;
- (C) "General contractor" shall mean any person engaged in the business of providing general contracting services for customers;
- (D) "General contracting supplies" shall mean lumber, steel, wall board, masonry, concrete, plumbing, heating and air conditioning equipment and other materials used for construction, destruction, renovation, or maintenance purposes; and
- (E) "General contracting equipment" shall mean cranes, bulldozers, loaders, graders, other earth moving machinery, trucks, other vehicles, concrete mixers, concrete pumps, concrete transportation and finishing machinery, and other tools, machinery and equipment used for construction, destruction, renovation, or maintenance purposes.

III

[ *Applicability* ]

The provisions of this Final Judgment applicable to any defendant shall also apply to its subsidiaries, successors, assigns, officers, directors, agents, servants 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; *provided, however*, that this Final Judgment shall not apply to transactions or activities solely between a defendant and its directors, officers, employees, parent companies, subsidiaries or any of them when acting in such capacity.

IV

[ *Collusive Bidding* ]

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any other general contractor to:

- (A) Submit any noncompetitive, collusive, or complementary bid for any project requiring general contracting services;
- (B) Include any agreed-upon charge in any bid on a project requiring general contracting services;
- (C) Compensate unsuccessful bidders on a project requiring general contracting services;
- (E) Exchange information concerning bid amounts or bid ranges with respect to general contracting jobs.

V

**[ Exchange of Information]**

Each defendant is enjoined and restrained from furnishing to or exchanging with any other defendant or with any other general contractor any information concerning the prices, terms or other conditions of sale or lease which any general contractor has submitted, intends to submit or is considering submitting to any prospective customer prior to the release of such information to the public or to the trade generally.

**VI**

**[ Permitted Activities]**

Nothing in this Final Judgment shall be:

(A) Applicable to any prices, terms or other conditions of sale, lease or rental offered by a defendant to any other general contractor or offered by any other general contractor to a defendant in negotiating a purchase, sale, lease, or rental of general contracting supplies or general contracting equipment between that defendant and such other general contractor;

(B) Deemed to prohibit a defendant from entering into, participating in, or maintaining with any other person a joint venture or sub-contract agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for rendering general contracting services, provided that the transaction is denominated as a joint venture or sub-contract agreement in the bid submitted to the prospective customer.

**VII**

**[ Compliance]**

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every bid or quotation for the rendering of general contracting services a written certification, signed by an officer of such defendant responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other general contractor, except as specifically permitted by Paragraph VI of this Final Judgment.

**VIII**

**[ Notice]**

Each defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment to each of its officers, directors, sales managers and service managers within thirty (30) days after the date of entry of this Final Judgment;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in subparagraph (A) hereof within thirty (30) days after each such successor is employed;

(C) Attach to each copy of this Final Judgment furnished pursuant to subparagraphs (A) and (B) hereof a statement advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and/or upon such defendant for violation of this Final Judgment; and

(D) File with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs (A) and (C) hereof.

**IX**

**[ Inspections]**

(A) For the purpose of determining or 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant 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 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, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Paragraph IX 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 any time information or documents are furnished by a defendant to plaintiff, such defendant 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 such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

#### X

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

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or 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 herewith, and for the punishment of violations hereof.

#### XI

##### [ *Public Interest* ]

Entry of this Final Judgment is in the public interest.