

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Brunswick-Balke-Collender Co., Wayne Iron Works, Universal Bleacher Co., Fred Medart Manufacturing Co., Consolidated Foundries and Manufacturing Corp., Safway Steel Products, Inc., and Fred H. Corray., U.S. District Court, E.D. Wisconsin, 1962 Trade Cases ¶70,346, (May 14, 1962)

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United States v. Brunswick-Balke-Collender Co., Wayne Iron Works, Universal Bleacher Co., Fred Medart Manufacturing Co., Consolidated Foundries and Manufacturing Corp., Safway Steel Products, Inc., and Fred H. Corray.

1962 Trade Cases ¶70,346. U.S. District Court, E.D. Wisconsin. Civil Action No. 59-C-163. Filed May 14, 1962. Case No. 1470 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Consent Judgment—Pricing Practices—Withholding of Government Consent—Folding Gymnasium Bleachers.—Defendant corporations, engaged in the sale and distribution of folding gymnasium bleachers, were prohibited by consent from suggesting to manufacturers uniform pricing practices or standards of manufacture (except as to safety features or standards), entering into pricing arrangements with manufacturers, or circulating advance information concerning prices, bids or terms of sale. Noting that injunctive provisions submitted by the government in its proposed consent judgment were like those submitted by the defendants, who consented to entry of the judgment, the court entered judgment without trial notwithstanding the failure of the government to do more than approve the judgment in form.

For the plaintiff: Earl A. Jinkinson and Francis C. Hoyt, Attorneys, Department of Justice.

For the defendants: Erwin C. Heininger for Brunswick-Balke-Collender Co., Earl E. Pollock for Wayne Iron Works, Walker Smith for Universal Bleacher Co., Lewis A. Stocking for Safway Steel Products, Inc., and Floyd G. Kops for Consolidated Foundries and Manufacturing Corp.

Final Judgment

TEHAN, Chief Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on July 30, 1959, and the defendants having appeared herein, and defendant Consolidated Foundries and Manufacturing Corporation having filed an answer denying the allegations of the complaint, and judgment having been entered as to defendant Fred H. Corray on June 19, 1961, and defendants Brunswick Corporation (formerly Brunswick-Balke-Collender Company), Wayne Iron Works, Universal Bleacher Company, and Safway Steel Products, Inc., having filed .1 proposed final judgment materially identical to this Final Judgment, and the plaintiff having filed with the Court a proposed final judgment, the injunctive provisions of which are materially identical to those of the final judgment proposed by said defendants, and now said defendants and defendant Consolidated Foundries and Manufacturing Corporation having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission in respect to any such issue, and the plaintiff having objected to entry of this Final Judgment, and this Court having determined in its opinion of March 27, 1962 [[1962 TRADE CASES ¶ 70,282](#)], that this Final Judgment contains all provisions necessary and proper to prevent and restrain such alleged violations and all injunctive relief prayed for in the complaint:

Now, therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and pursuant to the Court's opinion dated March 27, 1962, it is hereby ordered, adjudged and decreed as follows:

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants under Sections 1 and 2 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) "Persons" shall mean any individual, partnership, firm, association, corporation, or other legal or business entity;
- (B) "Folding gymnasium bleachers" shall mean series of tiered, bench like seats, capable of being folded or rolled out, used for seating at athletic, theatrical or other events;
- (C) "Bid" shall mean any offer for the sale of folding gymnasium bleachers made pursuant to an invitation therefor extended to more than one manufacturer or distributor of folding gymnasium bleachers.

III

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

IV

These defendants are jointly and severally enjoined and restrained from:

- (A) Urging or suggesting, or attempting to urge or suggest, to any manufacturer of folding gymnasium bleachers any price, bid, quotation, discount, allowance, standards of design, or other terms or conditions to be used by such manufacturer in the sale of folding gymnasium bleachers;
- (B) Entering into, adhering to, maintaining or claiming any rights under any contract, combination, agreement, understanding, plan or program with any manufacturer of folding gymnasium bleachers or any association or central agency of or for such manufacturer to fix, determine, establish or maintain prices, bids, quotations, pricing methods, discounts, allowances, or other terms or conditions of sale of folding gymnasium bleachers;
- (C) Circulating to or exchanging with any manufacturer of folding gymnasium bleachers by means of an association of manufacturers or otherwise any price lists or price quotations applicable to folding gymnasium bleachers in advance of the general publication, circulation or communication of price lists or price quotations to customers and dealers;
- (D) Circulating, exchanging or using in any manner any price list or purported price list, or making any bid containing or purporting to contain any prices or terms for the sale of folding gymnasium bleachers, which have not been arrived at or determined by such defendant;
- (E) Disclosing to or exchanging with any manufacturer of folding gymnasium bleachers the amount or other terms or conditions of any folding gymnasium bleacher bid prior to the award of the bid or prior to the disclosure of such information by the prospective customer;
- (F) Being a member of or contributing anything of value to, or participating in the activities of any association or central agency of or for manufacturers of folding gymnasium bleachers with knowledge that its activities are inconsistent with any of the provisions of this Final Judgment, or which purports to test or certify compliance with any safety standards for folding gymnasium bleachers.

V

These defendants are jointly and severally enjoined and restrained from combining or conspiring or from entering into, adhering to, maintaining or furthering directly or indirectly any contract, agreement, understanding, plan or program with any defendant or any person engaged in the manufacture of folding gymnasium bleachers, or any association or central agency of or for such persons, to:

- (A) Refuse to submit a bid for the sale of folding gymnasium bleachers or to submit a collusive bid therefor;
- (B) Allocate territories, customers or markets, or proportionate shares thereof, for the sale of folding gymnasium bleachers;
- (C) Refrain from competing in the sale of folding gymnasium bleachers in any market, territory or sale.

VI

Nothing contained in this Final Judgment shall be deemed to prohibit any defendant from participating with other manufacturers of folding gymnasium bleachers to promulgate safety standards for folding gymnasium bleachers, or from urging the support and adoption of legislation or any other governmental regulation for safety features in the construction of folding gymnasium bleachers.

VII

Each of the defendants, other than defendant Fred H. Corray, is ordered and directed not later than sixty (60) days following the date of entry of this Final Judgment individually and independently (1) to review its then prevailing prices for folding gymnasium bleachers, (2) to determine prices for folding gymnasium bleachers based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices to establish the prices determined under (2) above, which prices shall become effective not later than one hundred and fifty (150) days following the date of entry of this Final Judgment. Nothing contained herein shall prevent such defendants from deviating from, modifying, or otherwise thereafter changing the price list as established herein if such changes are otherwise consistent with the other terms of this Final Judgment. This Section VII shall not apply to any defendant which since July 30, 1959, has individually or independently established its own prices in a manner consistent with the procedure set forth in this Section.

VIII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice given to any defendant at its principal office, shall be permitted, subject to any legally recognized privilege, (a) access during the office hours of such defendants and the right to copy or reproduce all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of such defendants relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendants and without restraint or interference, to interview officers and employees of such defendants who may have counsel present regarding any such matters. Upon such written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division, the signatory defendants shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section VIII 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court is retained 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 or termination of any of the provisions herein, for the enforcement of compliance therewith, and punishment of violations thereof.