

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

NEW ENGLAND CONCRETE PIPE CORPORATION;
HUME PIPE OF N. E., INCORPORATED; and
CONCRETE PIPE MACHINERY COMPANY,

Defendants.

Civil Action

No. 57-631-A

Filed: December 12, 1957

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, and the defendant Hume Pipe of N. E., Incorporated, having appeared herein, and the plaintiff and said defendant, by their respective attorneys, having severally 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 evidence or admission by such defendant in respect of any such issue;

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 upon the consent of Hume Pipe of N. E. Incorporated and the plaintiff, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and of the parties signatory hereto. The complaint states a claim upon which relief may be granted against Hume 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) "Person" means any individual, partnership, firm, association, corporation, or other legal or business entity;

(B) "Concrete pipe manufacturer" means a person engaged in the business of manufacturing concrete pipe;

(C) "Concrete pipe" means concrete sewer pipe or concrete drain culvert pipe, plain and reinforced, or both of them;

(D) "Hume" means defendant Hume Pipe of N. E., Incorporated, with its principal place of business in Swampscott, Massachusetts.

III

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

IV

Hume is enjoined and restrained from collecting from or circulating, reporting or recommending to any concrete pipe manufacturer any costs or averaged costs of manufacture or sale of concrete pipe or any formulae for computing any such costs.

V

Hume is enjoined and restrained from:

- a) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other concrete pipe manufacturer any price, bid, quotation, or other term or condition to be used by such other manufacturer or manufacturers in the sale of concrete pipe;
- b) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturers to fix,

- determine, establish or maintain prices, bids, quotations, pricing methods, discounts or other terms or conditions of sale of concrete pipe to be used by Hume or by such other manufacturer or manufacturers;
- c) Circulating to, or exchanging with any concrete pipe manufacturer any price list or price quotations applicable to concrete pipe in advance of the publication, circulation or communication of such price lists or price quotations to its customers generally;
 - 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 or conditions for the sale of concrete pipe which had been agreed upon or established by agreement between two or more concrete pipe manufacturers;
 - e) Disclosing to, or exchanging with any other concrete pipe manufacturer or manufacturers the amount or other terms or conditions of any concrete pipe bid by Hume or by such other manufacturer or manufacturers in advance of the filing of such bid; and
 - f) Being a member of, contributing anything of value to, or participating in the activities of any association or central agency for concrete pipe manufacturers with knowledge that the activities are in violation of any of the provisions of this Final Judgment.

VI

Hume is enjoined and restrained from:

- a) Urging, influencing or suggesting, or attempting to urge, influence or suggest to any other concrete pipe

- manufacturer the customers, areas, or towns and cities, in or to which concrete pipe is to be sold or offered for sale or in or to which concrete pipe is not to be sold or offered for sale by such other manufacturer;
- b) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturer or manufacturers to allocate customers, territories or markets for the sale of concrete pipe;
- c) Entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program to boycott or otherwise refuse to do business with any person.

VII

Hume is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for concrete pipe, (2) to determine prices for concrete pipe 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 the entry of this Final Judgment. Nothing contained herein shall prevent Hume from deviating from, modifying or otherwise changing the price list as established herein, for the purpose of meeting competition, reducing excessive inventory, or for other lawful business reasons.

VIII

The provisions of Sections V, VI, and VII above shall not be deemed to invalidate, prohibit or restrain bona fide negotiations between Hume and any other concrete pipe manufacturer

or manufacturers concerning bona fide sales to one another.

IX

For the purpose of securing compliance with this Final Judgment, 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 Hume made to its principal office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, 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, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Hume 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 IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department 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.

X

Jurisdiction of this Court is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

Dated: December 12, 1957

/s/ Bailey Aldrich
United States District Judge

We consent to the making and entry of the foregoing
Final Judgment:

For the Plaintiff:

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ John J. Galgay
JOHN J. GALGAY

/s/ William D. Kilgore, Jr.
per H. N. B.
WILLIAM D. KILGORE, JR.

/s/ Alan L. Lewis
ALAN L. LEWIS

/s/ Worth Rowley
WORTH ROWLEY

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ Charles F. B. McAleer
CHARLES F. B. McALEER

/s/ Philip Bloom
PHILIP BLOOM

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL

Attorneys

Attorneys

For the Defendant:

/s/ Henry M. Leen
HENRY M. LEEN