

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action
)	
v.)	No. 57-631-A
)	
NEW ENGLAND CONCRETE PIPE CORPORATION;)	Filed: September 30, 1959
HUME PIPE OF N. E., INCORPORATED; and)	
CONCRETE PIPE MACHINERY COMPANY,)	
)	
Defendants.)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, and the defendants New England Concrete Pipe Corporation and Concrete Pipe Machinery Company, having appeared herein, and the plaintiff and said defendants, 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 plaintiff or such defendants 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 the plaintiff and New England Concrete Pipe Corporation and Concrete Pipe Machinery Company, 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 claims upon which relief may be granted against defendants New England and Concrete Machinery 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 or reinforced, or both of them;

(D) "New England" means defendant New England Concrete Pipe Corporation, with its principal place of business in Newton, Massachusetts;

(E) "Concrete Machinery" means defendant Concrete Pipe Machinery Company, with its principal place of business in Sioux City, Iowa.

III

The provisions of this Final Judgment applicable to a defendant signatory hereto shall apply also to its officers, agents, servants, employees, subsidiaries, successors and assigns, 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

New England 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.

New England 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 New England 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 New England 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

New England 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

New England 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 New England 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

Nothing contained in the provisions of Sections, V, VI and VII above shall be deemed (1), to invalidate, prohibit or restrain bona fide negotiations between New England and any other concrete pipe manufacturer or manufacturers concerning bona fide sales to one another, or (2), to enjoin New England from entering into, participating in, or maintaining with any other concrete pipe manufacturer or with any one acting for or in behalf of any other concrete pipe manufacturer, a joint venture agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for the sale and installation of concrete pipe of such monetary value or in such quantities that each party to the joint venture could not singly bid on or perform the contract. Provided, however, that such joint ventures shall not be used or permitted to circumvent or evade any of the other provisions of this Final Judgment or to implement other activities in derogation thereof.

IX

New England is enjoined and restrained from:

- (A) Asserting, or threatening to assert, any rights to the exclusive use of any pipemaking machinery in any designated area under (1) a contract dated May 31, 1927, between McCracken Machinery Company of Sioux City, Iowa and G. S. Rutherford of Painesville, Ohio, (2) a contract dated September 26, 1934 between P. A. Lucy, Receiver of McCracken Machinery Company of Iowa and New England; and (3) a contract dated February 15, 1936 between Concrete Machinery and New England;
- (B) Entering into or continuing in effect any other agreement or contract with Concrete Machinery or any other manufacturer of concrete pipemaking machinery having the purpose or effect of securing to New England the exclusive use of any concrete pipemaking machinery in any designated area.

X

New England and Concrete Machinery are ordered and directed to cancel forthwith the contracts described in Section IX (A) herein and to file with this Court, and with the plaintiff, a report setting forth the fact and manner of their compliance with this Section X.

XI

Concrete Machinery is enjoined from entering into or continuing in effect any contract or agreement with any concrete pipe manufacturer having the purpose or effect of (1) securing to such manufacturer the exclusive use of any concrete pipemaking machinery in any designated area within the New England States; or (2) restraining such manufacturer's use or disposition of any pipemaking machinery after purchase of such machinery from Concrete Machinery; Provided, however, that this Section XI shall not be deemed to prohibit Concrete Machinery, until payment therefor is completed, from restricting the movement or substitution of parts of machinery sold by conditional sales contract or chattel mortgage.

XII

For the purpose of securing compliance with this Final Judgment, duly authorized representative 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 New England and Concrete Machinery made to its principal office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the 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 such matters. Upon such written request of the Attorney General, or the Antitrust Attorney General in charge of the Antitrust Division, New England and Concrete Machinery

shall submit such written reports with respect 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 XII 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.

XIII

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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof

Dated: September 30, 1959

Bailey Aldrich
United States District Judge

We consent to the making and entry of the foregoing

Final Judgment:

For the Plaintiff:

/s/ Robert A. Bicks
ROBERT A. BICKS
Acting Assistant Attorney General

/s/ John J. Galgay
JOHN J. GALGAY

/s/ William D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Richard L. Shanley
RICHARD L. SHANLEY

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Gerald R. Dicker
GERALD D. DICKER

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

Attorneys

Attorneys

For the Defendants:

/s/ William F. Byrne
/s/ Tyler & Reynolds
NEW ENGLAND CONCRETE PIPE CORPORATION

/s/ Hale and Dorr - Edmund Burke
CONCRETE PIPE MACHINERY COMPANY