

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lake Asphalt and Petroleum Co. of Massachusetts; H. H. McGuire & Co., Inc.; Trimount Bituminous Products Co.; Rock-Asphalt Corp.; Mystic Bituminous Products Co., Inc.; Wachusett Bituminous Products Co.; American Oil Products Co.; and D. J. Cronin Asphalt, Inc., U.S. District Court, D. Massachusetts, 1960 Trade Cases ¶69,835, (Oct. 17, 1960)

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United States v. The Lake Asphalt and Petroleum Co. of Massachusetts; H. H. McGuire & Co., Inc.; Trimount Bituminous Products Co.; Rock-Asphalt Corp.; Mystic Bituminous Products Co., Inc.; Wachusett Bituminous Products Co.; American Oil Products Co.; and D. J. Cronin Asphalt, Inc.

1960 Trade Cases ¶69,835. U.S. District Court, D. Massachusetts. Civil Action No. 59-786-W. Dated October 17, 1960. Case No. 1482 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Price Fixing—Sales of Asphalt—Allocation of Markets and Customers—Bidding Practices—Trade Association—Regulating Price—Consent Decree.—Sellers of asphalt were prohibited by a consent decree making or influencing noncompetitive bids, quotations, prices, contract conditions, or sales; from allocation of territories or customers; from refraining or inducing others to refrain from bidding; and from exchanging information as to prices or bids. Independent prices are to be established, and a sworn statement to that effect included with each bid submitted to a government body during a five-year period. The consent judgment, also, is to be prima facie evidence of an unlawful combination and conspiracy in suits which had been filed by Massachusetts state and local government bodies, and defendants are enjoined from denying that effect, but are otherwise free to rebut the prima facie case or present available defenses.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Baddia J. Rashid, John D. Swartz, John J. Galgay, Bernard Wehrmann, Elhanan C Stone, Attorneys for the Department of Justice.

For the defendants: Thomas E. Dwyer for Trimount Bituminous Products Co., Philip T. Jones for Lake Asphalt and Petroleum Co. of Mass., James M. Mallory for H. H. McGuire & Co., Inc., John L. Murphy, Jr., for American Oil Products Co., John L. Murphy, Jr., for Rock-Asphalt Corp., J. F. Connolly for D. J. Cronin Asphalt, Inc., Willard P. Lombard for Mystic Bituminous Products Co., and Seymour Weinstein for Wachusett Bituminous Products Co.

Final Judgment

WYZANSKI, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and defendants signatory hereto having admitted the allegations contained in the Government's complaint herein solely for the purpose and to the extent necessary to give to the following adjudication the prima facie effect stated in Section I below in the suits specified below, and for no other purpose, Now, therefore, before any testimony has been taken herein without trial and upon the consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

That on the basis of said limited admission the defendants signatory hereto have engaged in an unlawful combination and conspiracy in violation of [Section 1 of the Sherman Act](#) as charged in the said complaint, this

adjudication being for the sole purpose of establishing the prima facie effect of this Final Judgment, in the suits specified below, and for no other purpose;

Each defendant is enjoined and restrained from denying that this Final Judgment has such prima facie effect in any such suit; provided, however, that this section shall not be deemed to prohibit any such defendant from rebutting such prima facie evidence or from asserting any defense with respect to damages or other defenses available to it. The specified suits referred to above are the suits instituted in this Court by the Commonwealth of Massachusetts wherein the defendants signatory hereto are named as defendants and numbered 60-229-S on the docket of this Court and any other suit instituted by any Massachusetts city or town against any of the defendants signatory hereto prior to the date of entry of this Final Judgment, and which alleges violation of the Federal antitrust law and claims damages growing out of the purchases of Asphalt from any such defendant.

II

[*Jurisdiction*]

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendants signatory hereto, and each of them, under Section 1 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 Sher-man Act, as amended.

III

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (B) "Asphalt" means a paving material derived from crude petroleum and sold in the form of asphalt cutbacks and asphalt emulsions;
- (C) "Governmental body" means the United States, any State, County or Municipality and any Agency thereof.

IV

[*Applicability*]

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

V

[*Combinations and Conspiracies Prohibited*]

The defendants signatory hereto are jointly and severally enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any other person to quote or charge non-competitive or specified prices or terms or conditions of sale for asphalt to any third person;
- (B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or with any other vendor of asphalt or any association or central agency of or for such vendors, to:
 - (1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of asphalt to any third person;
 - (2) allocate territories or customers for the sale of asphalt;

- (3) refrain from submitting bids for the supply of asphalt to any governmental body or to any other person;
- (4) submit a bid for the supply of asphalt to any governmental body or other person which bid is not intended to attract the award of a contract;
- (5) refrain from competing in the sale of asphalt.

(C) Communicating, circulating, exchanging, among themselves or with other vendors of asphalt, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of asphalt; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bonafide negotiations between vendors of asphalt.

(D) Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for asphalt vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E) Disclosing to or exchanging with any other vendor of asphalt:

- (1) the intention to submit or not to submit a bid to a governmental body;
- (2) the fact that a bid has or has not been submitted, or
- (3) the content of any bid.

VI

[*Independent Prices*]

Each of the defendants signatory hereto 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 asphalt, (2) to determine prices of asphalt based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

[*Affidavit Required with Each Bid*]

Each of the defendants signatory hereto is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A ¹ hereto, with each bid for asphalt submitted to any governmental body. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

[*Enforcement and Compliance*]

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 any defendant signatory hereto 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 defendant, relating to any of the matter 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, the defendant 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 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 Retained*]

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.

Footnotes

1 [Appendix A is an affidavit, which reads as follows.—CCH]

The undersigned hereby certify that:

1. The attached bid to (name of recipient of bid) dated has been arrived at by (name of defendant) unilaterally and without collusion with any other vendor of asphalt.
2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor to their best knowledge and belief, by any employee or agent of (name of defendant), to any person not an employee or agent of (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

..... Date Signature of principal offcer. Signature of person who prepared bid.
..... Notarization Signature of person who signed bid.