

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

.....  
UNITED STATES OF AMERICA,

Plaintiff

v.

THE LAKE ASPHALT AND PETROLEUM COMPANY OF  
MASSACHUSETTS; ALLIED CHEMICAL CORPORATION;  
H. H. McGUIRE & CO., INC.; TRIMOUNT BITUMINOUS  
PRODUCTS CO.; ROCK-ASPHALT CORPORATION;  
MYSTIC BITUMINOUS PRODUCTS CO., INC.;  
WACHUSETTS BITUMINOUS PRODUCTS COMPANY;  
AMERICAN OIL PRODUCTS COMPANY; D. J. CRONIN  
ASPHALT, INC.; and KOPPERS COMPANY, INC.

Defendants  
.....

CIVIL ACTION

No. 59-786-w

Filed  
October 20, 1960

FINAL JUDGMENT AGAINST KOPPERS COMPANY, INC.

The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and the defendant Koppers Company, Inc. having appeared herein and having admitted in open court, in the course of the trial and after the taking of testimony, the one specific violation of Section 1 of the Sherman Act hereinafter set forth in paragraph II hereof, and without receiving any other evidence applicable to said defendant,

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and of the defendant Koppers Company, Inc. The complaint states a claim upon which relief may be granted against said defendant 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 Sherman Act, as amended.

## II

The defendant Koppers Company, Inc. was engaged in a combination and conspiracy in restraint of interstate and foreign commerce in fixing the price of asphalt sold to the Commonwealth of Massachusetts during the year 1959 for use by the Commonwealth for the purpose of highway maintenance by it in Bristol County, in violation of Section 1 of the Sherman Act.

## III

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

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

## V

The defendant Koppers Company, Inc. is hereby enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any 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 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 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 bona fide 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

The defendant Koppers Company, Inc. 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) in place of its then prevailing prices, 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

The defendant Koppers Company, Inc. 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 hereto, with each bid for asphalt submitted to any governmental body. Such sworn statement shall be signed by the vice president and general manager of the defendant's division dealing with paving materials, 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

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 the defendant Koppers Company,

Inc. made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of said defendant, and without restraint or interference, to interview officers and employees of said defendant, which may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust Division, the said 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 of this Court is retained for the purpose of enabling either 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: October 20, 1960

(signed) Charles E. Wyzanski, Jr.  
United States District Judge

APPENDIX A

AFFIDAVIT

The undersigned hereby certify that:

1. The attached bid to \_\_\_\_\_  
(name of recipient of bid) dated \_\_\_\_\_  
has been arrived at by Koppers Company, Inc. ("Koppers")  
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 com-  
municated by the undersigned nor, to their best knowledge and  
belief, by any employee or agent of Koppers, to any person not  
an employee or agent of Koppers, and will not be communicated  
to any such person prior to the official opening of the at-  
tached bid.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of vice president of  
division dealing with paving  
materials.

\_\_\_\_\_  
Signature of person who prepared bid.

\_\_\_\_\_  
Notarization

\_\_\_\_\_  
Signature of person who signed bid.