

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.; WACHUSETT 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 ALLIED
CHEMICAL CORPORATION

The plaintiff, United States of America, having filed its complaint herein on October 13, 1959 and the defendant, Allied Chemical Corporation, having appeared herein and having answered said complaint and the cause having come on for trial before me without jury, and testimony having been taken therein, in accordance with the findings of fact and conclusions of law it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

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 defendant, Allied Chemical Corporation, 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, Allied Chemical Corporation, in the year 1957 engaged in an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in the sale and distribution of asphalt to the Commonwealth of Massachusetts in the year 1957, 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, Allied Chemical Corporation, and to its officers, agents, servants, employees; subsidiaries, successors and assigns, and to all persons in active concert or participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

The defendant, Allied Chemical Corporation, is 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 con-

ditions 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, 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, Allied Chemical Corporation, 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 consideration 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

The defendant, Allied Chemical Corporation, 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 principal officer of the Division of the defendant, Allied Chemical Corporation, which handles asphalt sales, 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, Allied Chemical Corporation, 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, 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 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.

/s/ C. Wyzanski
United States District Judge

A P P E N D I X A

AFFIDAVIT

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 communi-
cated 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 Division
officer.

Signature of person who prepared
bid.

Notarization

Signature of person who signed
bid.