

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Durable Building Materials Council, Inc.; Fischer Lime & Cement Co.; Fay Realty Co.; Crump Lime and Cement Co., Inc.; Standard Builders Supplies, Inc.; John A. Denie's Sons Co.; Fant & Anderson Co.; Memphis Lime and Cement Co., U.S. District Court, W.D. Tennessee, 1960 Trade Cases ¶69,891, (Jan. 5, 1961)

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United States v. Durable Building Materials Council, Inc.; Fischer Lime & Cement Co.; Fay Realty Co.; Crump Lime and Cement Co., Inc.; Standard Builders Supplies, Inc.; John A. Denie's Sons Co.; Fant & Anderson Co.; Memphis Lime and Cement Co.

1960 Trade Cases ¶69,891. U.S. District Court, W.D. Tennessee, Western Division. Civil No. 4068C. Filed January 5, 1961. Case No. 1563 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Price Fixing—Noncompetitive Bids—Trade Association—Specific Relief—Consent Decree.—Cement dealers and a trade association were enjoined by a consent decree from entering into any agreement with any other cement supplier or trade association to fix prices, eliminate or suppress competition, submit noncompetitive bids, cause or permit an association to circulate a price list, and exchange price information on bids or sales. Also prohibited was any influence upon another person to submit noncompetitive bids and to exchange bid information. Membership in a trade association, the activities of which are inconsistent with the consent decree, are prohibited, and defendant trade association is to be dissolved. For five years, a sworn statement to the effect that the prices quoted have been arrived at independently must be submitted with each bid on government business.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, Baddia J. Rashid, William D. Kilgore, Jr., Wilford L. Whitley, Jr., John F. Hughes, and Sidney Harris, Attorneys, Department of Justice.

For the defendants: Thomas L. Robinson for Durable Building Materials Council, Inc.; John S. Montedonico for Fischer Lime and Cement Co.; Charles B. Dudley for Fay Realty Co.; George P. Douglass for Crump Lime and Cement Co., Inc.; George E. Morrow for Standard Builders Supplies, Inc.; Edward P. A. Smith for John A. Denie's Sons, Inc.; Caruthers Ewing for Fant & Anderson Co.; and Don G. Owens for Memphis Lime and Cement Co.

Final Judgment

BOYD, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on September 19, 1960, the defendants having appeared and the plaintiff and defendants by their respective attorneys having consented to the entry of this Final Judgment before any testimony has been taken herein,

Now, therefore, upon said consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims upon which relief may be granted against the defendants 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 Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Cement" includes all types and grades of portland cement and masonry cement;
- (B) "Person" shall mean any individual, corporation, partnership, association or other legal entity;
- (C) "Durable" shall mean the defendant Durable Building Materials Council, Inc.

III

[*Applicability*]

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

IV

[*Practices Enjoined*]

Defendants are each enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any supplier of cement or any association or central agency of or for such suppliers, to:

- (A) Fix, determine, establish or maintain prices or other terms or conditions for the sale of cement to any third person;
- (B) Eliminate or suppress competition in the sale of cement;
- (C) Submit noncompetitive, collusive, or rigged bids for supplying cement to any customer or prospective customer;
- (D) Cause or permit defendant Durable or any similar organization to publish, print or circulate any price sheets or price lists for the sale of cement;
- (E) Exchange information concerning bids, prices or other terms or conditions for the sale of cement prior to such information becoming public knowledge.

V

Defendants are each enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to any other person that he quote or charge noncompetitive or specified prices or other terms or conditions of sale for cement to any third person;
- (B) Disclosing to or exchanging with any other supplier of cement, prior to the opening of bids submitted for the supplying of cement,
 - (1) the intention to submit or not to submit a bid,
 - (2) the fact that a bid has or has not been submitted, or
 - (3) the content of any bid.

VI

[*Dissolution of Trade Association*]

Defendants are each ordered and directed to forthwith dissolve and disband the defendant Durable, and the remaining defendants are each enjoined and restrained from belonging to or participating in any of the activities

of any trade association or other organization, the activities or objectives of which are inconsistent with any of the terms of this Final Judgment.

VII

[*Independent Prices*]

Each of the defendants, other than defendant Durable, are ordered and directed within sixty days following the date of entry of this Final Judgment to cease utilizing any cost or pricing formulae, or part thereof, which has not been independently arrived at by such defendant on the basis of its individual cost figures and individual judgment as to profits, as a means of determining in whole or in part the price or prices at which it will sell cement.

VIII

Each defendant, except defendant Durable, shall within sixty days following the entry of Final Judgment:

- (A) Withdraw its presently effective price lists for cement (or, where no price list has been issued withdraw its presently prevailing prices);
- (B) Individually review its prices for cement on the basis of its individual cost figures and individual judgment as to profits; and
- (C) Issue a new price list for cement (or, where no price list has been issued, issue new prices) on the basis of such independent review.

IX

Each defendant, other than the defendant Durable, is ordered and directed for a period of five years from 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 cement submitted to any governmental body or agency thereof. 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.

X

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any said defendant, made to its principal office, be permitted:

- (A) 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 matters contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon request, each of said defendants shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

Jurisdiction 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 of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of the violations hereof.

APPENDIX 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 cement;
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.

Dated:

Signature of principal officer.

.....

Signature of person who prepared bid

.....

Signature of person who signed bid.

Notarization