

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 76-H-1858
CHILDERS PRODUCTS COMPANY,)	Filed: April 2, 1979
INC.;)	
PREFORMED METAL PRODUCTS)	Entered: June 20, 1979
COMPANY, INC.;)	
QUALITY SERVICE METALS)	
COMPANY; and)	
INSUL-COUSTIC/BIRMA CORP.,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on November 10, 1976, and plaintiff and defendants, by their respective attorneys, having each 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 defendants, or any of them, in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II

As used in this Final Judgment:

- (A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) "Aluminum roll jacketing" is a sheet of aluminum to which a moisture barrier has been applied. Aluminum roll jacketing is commonly wrapped around the piping in petrochemical and power generating facilities to protect the pipes, or insulation around the pipes, from the weather and other external forces.
- (C) "Defendant corporation" shall refer to defendants Childers Products Company, Inc.; Preformed Metal Products Company, Inc.; Quality Service Metals Company; and Insul-Cooustic/Birma Corp.

III

The provisions of this Final Judgment are applicable to each defendant herein and shall apply also to each of such defendant's subsidiaries, successors, assigns, directors, officers, agents, servants and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Defendant corporations are enjoined and restrained, individually and collectively, from entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan, program, combination or conspiracy with any other person, directly or indirectly, to:

(1) fix, determine, maintain, or stabilize prices or other terms or conditions for the sale of aluminum roll jacketing to any third person; or

(2) fix, determine, maintain, stabilize or adhere to discounts for the sale of aluminum roll jacketing to any third person or to limit, reduce, remove or eliminate such discounts.

(B) For a period of ten (10) years from the date of entry of this Final Judgment, each defendant corporation is enjoined and restrained from communicating to any other person engaged in the sale of aluminum roll jacketing prices at which, or terms or conditions upon which, aluminum roll jacketing is then being sold or offered for sale by said defendant to any third person.

(C) Each defendant corporation is enjoined and restrained from communicating to any other person engaged in the sale of aluminum roll jacketing information concerning:

(1) future prices at which, or terms or conditions upon which, aluminum roll jacketing will be sold or offered for sale by said defendant to any third person; or

(2) any intention by said defendant to change or revise the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell aluminum roll jacketing to any third person.

(D) Nothing contained in this Final Judgment shall apply to any negotiation or communication between a defendant and any other defendant or between any defendant and any other person engaged in an actual bona fide purchase or sale of aluminum roll jacketing.

(E) Nothing contained in this Final Judgment shall prohibit the transmission, by a defendant corporation, without additional comment or explanation, to another person engaged in the production and sale of aluminum roll jacketing products, of such defendant's aluminum roll jacketing products price list, or any change therein, regularly issued in the course of business, which price list, or said change, had been previously released and circulated to the trade generally.

(F) This Final Judgment shall not be deemed to prohibit any defendant from formulating or submitting with any other defendant a bona fide joint bid or quotation, when the submission of such joint bid or quotation has been requested by the purchaser.

V

(A) Each defendant corporation shall independently and individually review and recompute its current list prices, delivery charges and all other terms and conditions for the sale of aluminum roll jacketing.

(B) Each defendant corporation shall reduce to writing the results of the independent review and recomputation required by Paragraph V(A) of this Final Judgment. This written review shall include but not be limited to:

- (1) a full explanation of the methodology employed by the defendant corporation in reviewing and recomputing its list prices, delivery charges and other terms and conditions of sale;
- (2) a full explanation of the accounting method used by the defendant corporation as part of its independent review and recomputation;

- (3) a full explanation of each of the constituent factors determining the list prices, delivery charges, and other terms and conditions for the sale of aluminum roll jacketing sold by the defendant corporation; and
- (4) the list prices, delivery charges and other terms and conditions for the sale of aluminum roll jacketing sold by the defendant corporation after the independent review and recomputation.

(C) Provided, however, if the defendant corporation has independently and individually reviewed and recomputed its list prices, delivery charges and all other terms and conditions for the sale of aluminum roll jacketing subsequent to January 24, 1977, then defendant corporation's statement in response to Paragraph V(B) above may be made in the context of said independent review and recomputation.

(D) The written results of the independent review and recomputation required by Paragraph V(B) of this Final Judgment shall be submitted to the plaintiff at the offices of the Antitrust Division, U.S. Department of Justice, Room 8C20, 1100 Commerce Street, Dallas, Texas 75242, within ninety (90) days after the entry of this Final Judgment.

VI

Each defendant corporation is ordered and directed to:

- (A) Furnish, within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers and directors, and to each of its employees and agents who have any responsibility for the pricing or sale of aluminum roll jacketing;

- (B) Furnish, for a period of ten (10) years after the date of this Final Judgment, a copy of this Final Judgment to each successor to those officers, directors, employees or agents described in Paragraph (A) of this Section, within thirty (30) days after such successor is employed by or becomes associated with such defendant;
- (C) File with this Court and to serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraph (A) of this Section; and
- (D) Obtain, from each officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (A) of this Section, and from each successor to each such officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (B) of this Section, a written statement evidencing each such person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative 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 defendant made to its principal office, be permitted, subject to any legally recognized privilege:

- (1) access during the office hours of such defendant to inspect and copy 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
- (2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, servants, or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks

each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

VIII

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 or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

/s/ Carl O. Bue

United States District Judge

Dated: June 20, 1979