

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No. 8144

BESSER MANUFACTURING COMPANY,
STEARNS MANUFACTURING COMPANY, INC.
JESSE H. BESSER,
LOUIS GELBMAN and
HAMLIN F. ANDRUS,

Defendants.

FINAL JUDGMENT

A judgment having been entered herein on April 12, 1951, the defendants Besser Manufacturing Company and Jesse H. Besser having appealed from said judgment directly to the Supreme Court of the United States, the said appeal having duly come on to be heard in the Supreme Court of the United States and having been argued by counsel and the Supreme Court of the United States having thereafter issued its mandate, dated June 24, 1952, wherein it is ordered, adjudged and decreed that said judgment be affirmed, and the said mandate having been filed with this Court -

NOW, on motion of John W. Neville, Special Assistant to the Attorney General, attorney for the plaintiff in this cause, it is

ORDERED, ADJUDGED and DECREED that the said mandate of the Supreme Court of the United States be, and the same hereby is, made the judgment of this Court, and it is further

ORDERED, ADJUDGED and DECREED that the said judgment heretofore entered in this cause on April 12, 1951, as revised herein, be and the same hereby is made absolute and final.

I

Defendants Besser Manufacturing Company, Stearns Manufacturing Company, Inc., Louis Gelbman, Hamlin F. Andrus and Jesse H. Besser have combined and conspired to unreasonably restrain, and to monopolize, trade and commerce in concrete block making machines in violation of Sections 1 and 2 of the Sherman Act; and defendants Besser Manufacturing Company and Jesse H. Besser have attempted to monopolize and have monopolized said trade and commerce in violation of Section 2 of the Sherman Act.

II

As used in this Final Judgment:

- (A) "Besser Company" means Besser Manufacturing Company;
- (B) "Stearns" means Stearns Manufacturing Company, Inc.;
- (C) "Besser" means Jesse H. Besser;
- (D) "Gelbman" means Louis Gelbman;
- (E) "Andrus" means Hamlin F. Andrus;
- (F) "Patents" means United States Letters Patent and applications therefor, and all reissues, divisions, continuations or extensions thereof, and patents issued upon said applications;
- (G) "Person" means any individual, partnership, firm, corporation, association, trustee or any other business or legal entity.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors, assigns, and each of its officers, directors, agents, employees and any other person acting under, through or for such defendant.

IV

(A) Within sixty (60) days following the entry of this Final Judgment, defendants Besser Company and Besser shall present to this Court for approval their plan for divesting themselves, by January 1st, 1953, of all stock holdings and other interests, direct or indirect, in defendant Stearns.

(B) Defendants Besser Company and Besser are hereby ordered and directed to cancel and terminate any and all contracts, agreements and understandings between said defendants or either of them, and any other person, calling for the disposition of any of the capital stock of defendant Stearns, where such contracts, agreements or understandings were entered into prior to entry of this Final Judgment. Defendant Besser Company and Besser are hereby enjoined and restrained from adhering to, enforcing or claiming any rights under any of the aforesaid contracts, agreements or understandings.

V

Defendants Besser Company and Besser are each enjoined and restrained from:

(A) Acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise after entry of this Final Judgment, and from holding or exercising after such acquisition ownership or control of, the business, physical assets or good will, or any part thereof, or any capital stock or securities of any person engaged in the manufacture, sale or distribution of concrete block making machines until after said defendant has, upon reasonable notice to the Attorney General and an opportunity on the part of the latter to be heard, shown to this Court that such acquisition would not substantially lessen competition in the manufacture, sale or distribution of concrete block making machines;

(B) Causing, authorizing or knowingly permitting any officer, director, agent or employee to serve as an officer, director, agent or employee of any other person engaged in the manufacture of concrete block making machines.

VI

(A) The license agreement to which defendants Gelbman, Andrus, Stearns and Besser Company are parties, dated December 7, 1942, is adjudged to be unlawful under Sections 1 and 2 of the Sherman Act and is hereby declared null and void.

(B) Defendants are jointly and severally enjoined and restrained from conveying or receiving any patent rights under any license, contract, agreement or understanding which gives the licensee joint control with any other licensee or licensees over the number of licenses issued or to be issued, or which has the same unlawful purpose and effect as the afore-described license agreement of December 7, 1942.

(C) Except for now pending actions, appeals and proceedings pursuant thereto in Andrus and Gelbman v. Whitman; Andrus and Gelbman v. Wenzel, et al; Besser Manufacturing Company v. Whitman; defendants Besser Company, Besser, Gelbman and Andrus are enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any action, suit or proceeding for acts of infringement of any patent referred to in Section VII(A) of this Judgment occurring prior to the date of this Judgment.

VII

(A) Defendants Gelbman, Andrus, Besser Company, Besser and Stearns are each ordered and directed to grant to any applicant therefor a non-exclusive license to make, use and vend concrete block making machinery under any, some or all patents and patent applications pertaining to concrete block making machinery now owned or controlled by the defendant, or which are issued or applied for within ten years from the entry of this Final Judgment, and each of said defendants is hereby enjoined and restrained from making any sale or other disposition of any of said patents or patent applications which deprives it of the power or authority to

grant such licenses, unless it sells, transfers or assigns such patents and patent applications and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section VII, and the purchaser, transferee or assignee shall file with this Court prior to consummation of said transaction, an undertaking to be bound by the provisions of this Section VII. The reference to an "undertaking" shall not be construed as requiring the posting of a bond.

(B) Defendants Gelbman, Andrus, Besser Company, Besser and Stearns are hereby enjoined and restrained from including any restrictions or condition whatsoever in any license or sublicense granted by or pursuant to the provisions of this Section VII and in order to arrive at a fair royalty price for the use of the various patents, present and future, as above enumerated, and the form and contents of the royalty contracts —

1. Said plaintiff government and said defendants Gelbman and Andrus shall on or before April 21, 1951, each select two persons, which said four persons so selected shall act as a committee to determine such fair royalty prices and the form and contents of the royalty contracts; provided, however, that if they are unable to so agree on or before May 5, 1951, then said four persons so selected may then select and appoint a fifth person to act with them as the fifth member of said committee; and provided further that if said four are unable to agree upon the fifth member by at least a three to one vote, on or before May 12, 1951, then such questions and points not agreed upon shall forthwith be referred to this court which shall then have the right to act as the fifth member himself or select another person in his stead to aid in making the final decision;

2. It is further ordered that the same method and manner shall be used in arriving at a fair royalty price and the form and contents of the royalty contracts covering the patents, present and future, as above enumerated, owned and/or controlled by defendants Besser Manufacturing Company and Jesse H. Besser and when arrived at shall be filed as provided in sub-paragraph (C) following; and

3. It is further ordered that in the event defendant Stearns owns or controls, on the date of entry of this Final Judgment, or acquires within ten years from the said date of entry, any patents pertaining to concrete block making machinery and any person applies for a license thereunder, defendant Stearns shall immediately notify the Attorney General of such application and appoint two representatives who shall meet with two representatives from the industry for the purpose of arriving at a fair royalty price and the form and contents of the royalty contract covering the patents.

(C) It is further ordered that said final royalty prices together with the form and contents of the royalty agreement, when determined, shall be forthwith filed by the government with the United States District Court Clerk and upon so filing will then become a part of this Final Judgment just as though it were now included herein.

(D) Nothing herein shall prevent any applicant from attacking in the aforesaid proceedings, the validity or scope of any of the patents, nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

VIII.

(A) Defendant Besser Company is hereby ordered and directed, within thirty (30) days from the entry of this Final Judgment to notify each person presently leasing a concrete block making machine from said defendant that the lessee may, at its option,

(1) terminate the said lease agreement at any time prior to March 1, 1954, or

(2) continue under the terms of the lease, or

(3) enter into an agreement to purchase the machine or machines leased, and the accessory equipment used, as mutually satisfactory to the parties concerned;

provided, however, that the provisions of sub-sections 1 and 2 of this sub-paragraph (A) shall be contingent upon said lessee making his election in writing on or before December 1, 1953.

(B) Defendant Besser Company is hereby ordered and directed to sell to any existing lessee or purchaser under this Section VIII, of concrete block making machinery and accessory equipment of said defendant, repair parts upon reasonable, uniform and non-discriminatory prices, terms and conditions of sale.

IX

Defendants are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person presently or hereinafter engaged in the development or manufacture of concrete block making machinery which has the purpose or effect of preventing such person, or any other person from competing with defendants or any of them in the development, manufacture or sale of concrete block making machinery.

X

Each of the defendants is enjoined and restrained from compelling, coercing or influencing any person to refrain from manufacturing concrete block making machinery or supplying steel or other materials, used in the manufacture of said machines, to any manufacturer of such machines.

XI

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to the defendant, made to its principal office, be permitted (1) 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 matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendants, who may have counsel present, regarding such matters. No information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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, or the modification thereof, or the enforcement of compliance therewith and for punishment or violation thereof.

XIII

Judgment is entered against the defendants for all taxable costs to be taxed in this proceeding.

/s/ FRANK A. PICARD
United States District Judge

Dated: July 29, 1952

A TRUE COPY
FRANK J. DINGELL, CLERK
BY Albert A. Allen
DEPUTY CLERK