

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Detroit Sheet Metal and Roofing Contractors Association, Inc.; John D. Busch & Sons, Inc.; J. D. Candler Roofing Company; Wallace Candler, Inc.; The Philip Carey Mfg. Co.; Robert Hutton & Co., Inc.; The R. C. Mahon Co.; Schreiber Roofing Co.; The Chas. Sexauer Roofing Company; Sullivan-Bernhagen Co., Inc.; William G. Busch; William W. Busch; Clarence L. Candler; Gerald W. Morrison; O. Dallas Wood; Thomas Marshall; R. C. Mahon; G. Walter Scott; Harold G. Schreiber; Frank Dempsey; E. G. Bush; William P. Sullivan, Sr; T. F. Beck; Bernard Beck; A. J. Bershback; Don Chaffee; Arthur Hesse; and Joseph A. Wittstock., U.S. District Court, E.D. Michigan, 1955 Trade Cases ¶67,986, (Mar. 7, 1955)

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United States v. Detroit Sheet Metal and Roofing Contractors Association, Inc.; John D. Busch & Sons, Inc.; J. D. Candler Roofing Company; Wallace Candler, Inc.; The Philip Carey Mfg. Co.; Robert Hutton & Co., Inc.; The R. C. Mahon Co.; Schreiber Roofing Co.; The Chas. Sexauer Roofing Company; Sullivan-Bernhagen Co., Inc.; William G. Busch; William W. Busch; Clarence L. Candler; Gerald W. Morrison; O. Dallas Wood; Thomas Marshall; R. C. Mahon; G. Walter Scott; Harold G. Schreiber; Frank Dempsey; E. G. Bush; William P. Sullivan, Sr; T. F. Beck; Bernard Beck; A. J. Bershback; Don Chaffee; Arthur Hesse; and Joseph A. Wittstock.

1955 Trade Cases ¶67,986. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 12433. Filed March 7, 1955. Case No. 1153 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing and Information—Built-up Roofs.—Built-up roofing contractors and a trade association were enjoined by a consent decree from

entering into any understanding with any other person (1) to fix, determine, or maintain prices or other terms or conditions of sale or installation of built-up roofs, or (2) to collect, compile, disseminate, or exchange any information relating to prices or other conditions of sale or installation of built-up roofs.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Bidding Practices.—Built-up roofing contractors and a trade association were prohibited by a consent decree from entering into any understanding with any other person (1) to collect, compile, disseminate, or exchange any information relating to bids prior to the final submission of such bids to the awarding authority, (2) to fix or maintain any rules in computing bids to be submitted to any awarding authority, (3) to effect the award of any contract for the construction or installation of built-up roofing being-made to any particular contractor, (4) to influence or interfere with the free choice of a contractor by any awarding authority, (5) to restrict any contractor from doing business with, or submitting any bid to, any awarding authority, or (6) to refrain from bidding or competing in the sale or installation of built-up roofing. Each of the defendants was enjoined from disclosing to any other contractor any bids in advance of final submission to the awarding authority; urging any person to refrain from submitting a bid or to submit any sham, factitious, or unreasonable bid; urging any manufacturer of built-up roofing materials to deny its bonded roof guarantee or status as a bonded roofer to any person; or participating in any bid depository

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Dissolution of Trade Association.—A roofing contractors' association and defendant built-up roofing contractors, who were members of the association, were ordered by a consent decree to dissolve the trade association, and the members were enjoined from organizing, contributing anything of value to, or participating in, any of the

activities of any trade association of built-up roofing contractors the purpose of which is inconsistent with any of the provisions of the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and W. D. Kilgore, Jr., Marcus A. Hollabaugh, Max Freeman, and John W. Neville.

For the defendants: Fred R. Walker for Wallace Candler, Inc., O. Dallas Wood, T. F. Beck, and A. J. Bershback. Charles Wright, Jr., for R. C. Mahon Co., R. C. Mahon, and G. Walter Scott. Crawford, Sweeny, Dodd and Kerr, by A. Stewart Kerr, for Joseph A. Wittstock. Arthur I. Gould for Bernard Beck. Dickinson, Wright, Davis, McKean and Cudlip for Philip Carey Mfg. Co. Julian G. McIntosh for Arthur Hesse. Edward P. Frohlich for Clarence L. Candler, Gerald W. Morrison, and J. D. Candler Roofing Co. Melvin S. Huffaker for John D. Busch and Sons, Inc., William G. Busch, and William W. Busch. David E. Roberts for Sullivan-Bernhagen Co., Inc., and William P. Sullivan, Sr. George S. Dixon for Don Chaffee. Friedman, Meyers and Keys, by Joseph H. Jackier, for Schreiber Roofing Co. and Harold G. Schreiber. Clark, Klein, Brucker and Waples, by Robert C. Winter, for Robert Hutton & Co., Inc.; Thomas Marshall; Chas. Sexauer. Roofing Co.; Frank Dempsey; E. G. Bush; and Detroit Sheet Metal and Roofing Contractors Assn., Inc.

Final Judgment

THEODORE LEVIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint on January 19, 1953; all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and all parties, by their attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

[Sherman Act]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action against the defendants 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," as amended, commonly known as the Sherman Act.

II

[Definitions]

As used hereafter in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation, or other business or legal entity.

(B) "Built-up roof" or "built-up roofing" shall mean all types of roofs or roofing commonly installed on flat or low pitched surface of buildings from, various combinations of felt, tar, asphalt, slag, and gravel, and other similar or like function performing materials.

(C) "Built-up roofing contractor" shall mean any person engaged in the construction and installation of built-up roofs.

(D) "Awarding authority" shall mean any person entitled or authorized to invite bids or let or negotiate a contract for the construction and installation of built-up roofs.

(E) "Bonded roof" shall mean any built up roof ultimately guaranteed as to quality, workmanship and durability by the manufacturer of the materials used in the construction of such roof.

(F) "Bonded roofer" shall mean a built-up roofing contractor authorized to construct bonded roofs.

III

[*Applicability of Judgment*]

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

For the purposes of this Final Judgment a defendant and its officers, directors, managers, agents, representatives, employees and subsidiaries and the officers, directors, managers, agents, representatives and employees of its subsidiaries and of its successors and assigns shall be considered one person so long as, and only so long as, such relationship exists.

IV

[*Collusive Pricing and Bidding Practices*]

(A) Each of the defendants, with respect to the sale of materials for, and the installation of, built-up roofing, are, jointly and severally, enjoined and restrained from, directly or indirectly, entering into, renewing, maintaining, furthering, inducing, urging or influencing others to enter into, adhere to or maintain any contract, agreement, understanding, plan, program or common course of action with any other person the purpose or effect of which is to:

- (1) Fix, determine, establish or maintain prices or other terms or conditions of sale or installation;
- (2) Collect, compile, discuss, compare, disseminate, communicate, or exchange any information relating to prices or other conditions of sale, or installation, or relating to bids prior to the final submission of such bids to the awarding authority;
- (3) Fix, determine, establish, or maintain, any rules, methods and policies in computing or determining bid or bids to be submitted to any awarding authority;
- (4) Effect the award of any contract for the construction or installation of built-up roofing being made to any particular built-up roofing contractor;
- (5) Allocate customers, influence or interfere with, or attempting to influence or interfere with, the free choice of a built-up roofing contractor by any awarding authority;
- (6) Hinder, restrict, limit or prevent, or attempt to hinder, restrict, limit or prevent any built-up roofing contractor from, in any manner, doing business with, or submitting any bid to, any awarding authority, or any other person;
- (7) Refrain from bidding or competing in the sale or installation of built-up roofing.

(B) This Section IV of this Final Judgment shall not be construed to prevent any defendant; acting singly and not in concert with any other person, from failing to bid or from submitting bona fide specific bids or from entering into bona fide contracts, agreements, arrangements or understandings, not otherwise prohibited by this Final Judgment,, for specific sales to customers, including awarding authorities, and agreeing on prices and terms or conditions of sale with regard to such individual transactions.

V

[*Individual Bidding Practices*]

Each of the defendants is enjoined and restrained from, directly or indirectly:

(A) Disclosing or making known to any other built-up roofing contractor, any bids for the construction or installation of built-up roofing in advance of the final submission of said bids to the awarding authority;

(B) Urging, influencing or suggesting, or attempting to urge, influence or suggest to any other person that such other person refrain from submitting a bid for the construction or installation of built-up roofing or change or alter a bid therefor submitted by such person to any awarding authority;

(C) Urging, influencing or suggesting, or attempting to urge, influence or suggest to, any other person, that such other person make or submit to any awarding authority any sham, false, factitious or unreasonable bid for the construction or installation of built-up roofing;

(D) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any manufacturer of built-up roofing materials that such manufacturer deny its bonded roof guarantee or status as a bonded roofer to any person or withhold or revoke any such guarantee or status theretofore granted by such manufacturer;

(E) Participating in any bid depository of any kind whatever with respect to the construction or installation of built-up roofing.

VI

[*Dissolution of Association*]

(A) The Detroit Sheet Metal and Roofing Contractors Association, Inc., is hereby ordered dissolved, and defendants who are members of said Association are ordered and directed to take such steps as may be necessary to effect, as early as possible and, in any event, not later than August 15, 1955, formal dissolution of said Association under laws of the State of Michigan upon the expiration of the following contracts:

(1) Dated May 17, 1954, between Detroit Sheet Metal and Roofing Contractors Association and United Slate, Tile and Composition Roofers, Damp & Waterproof Workers Association, Local No. 149;

(2) Dated July 1, 1954, between Detroit Sheet Metal and Roofing Contractors Association and the Sheet Metal Workers International Association, Local No. 105.

Defendant Association is ordered and directed to file with this Court a certified copy of the dissolution of said Association promptly thereafter, and to serve a copy thereof upon the Assistant Attorney General in charge of the Antitrust Division;

(B) The defendants are jointly and severally enjoined and restrained from, directly or indirectly, organizing, furthering, contributing anything of value to, becoming a member of, or participating in any of the activities of any trade association or other organization of built-up roofing contractors or any other trade association or organization, the purpose, conduct or activities of which, in any manner, are inconsistent with any of the provisions of this Final Judgment.

VII

[*Inspection and Compliance*]

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 any defendant, be permitted, subject to any legally recognized privilege, (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 of the 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 written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such written information with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of the enforcement of this Final Judgment. No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the 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.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of 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 carrying out of this Final Judgment, for the amendment or modification of any of the provisions, for the enforcement of compliance therewith, and for the punishment of violations thereof.