

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The General Fireproofing Company; The Globe-Wernicke Co.; The Shaw-Walker Company; Yawman and Erbe Manufacturing Company, Inc.; Art Metal, Incorporated; Steelcase, Inc.; Sperry Rand Corporation; and All-Steel Equipment, Inc., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,489, (Nov. 9, 1962)

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United States v. The General Fireproofing Company; The Globe-Wernicke Co.; The Shaw-Walker Company; Yawman and Erbe Manufacturing Company, Inc.; Art Metal, Incorporated; Steelcase, Inc.; Sperry Rand Corporation; and All-Steel Equipment, Inc.

1962 Trade Cases ¶70,489. U.S. District Court, W.D. New York. Civil Action No. 8994. Entered November 9, 1962. Case No. 1577 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Metal Office Furniture—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to fix prices, differentials discounts, or extras for the sale of metal office furniture.

Price Fixing—New Price Schedules—Zone Pricing—Consent Judgment.—Manufacturers were individually required by a consent judgment to independently review and establish new list prices and conditions for the sale of metal office furniture, abandon a three zone system and zone price differentials for a period of not less than five years, and withdraw current price lists.

Allocation of Markets-Sales—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to divide, allocate, or apportion customers, territories, or markets for the sale of metal office furniture.

Resale Price Fixing—Manufacturer-Distributor Agreement—Consent Judgment.—Manufacturers were individually prohibited by a consent judgment from entering into any agreement with any dealer or distributor fixing the price at which metal office furniture is sold, except as authorized under fair trade laws.

Trade Association Participation—Consent Judgment.—Manufacturers were prohibited by a consent judgment from participating in activities of trade associations, industry groups, or other organizations, with knowledge that such activity would violate any provision of the judgment, if-such organizations were consenting defendants to the judgment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Gerald E. Kandler, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Donovan, Leisure, Newton & Irvine, by J. R. Withrow, Jr., William F. Rogers, and James Clabault, of counsel, for The Shaw-Walker Company; Bergson & Borklaud, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation; Hellings, Ulsh, Morey & Stewart, by William P. Stewart, for Art Metal, Incorporated; Howrey, Simon, Baker & Murchison, by William Simon and John S. Voorhees, for The General Fireproofing Company; Eastman, Stichter & Smith, by Wayne E. Stichter, for the Globe-Wernicke Co.; Raichle, Moore, Banning & Weiss, by James C. Moore, Jr., and Frank G. Raichle, for Yawman and Erbe Manufacturing Company; McDermott, Will & Emery, by Theodore roenke, for Ail-Steel Equipment, Inc.; Warner, Norcross, & Judd, by Leonard D. Verdier, Jr., for Steelcase, Inc.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960 and the defendants, by their respective attorneys, having severally 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 an admission by any party with respect to any such issue, and the Court having considered the matter and being duly advised.

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

Ordered, Adjudged and Decreed as follows :

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim 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" commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) "Metal office furniture" shall mean metal desks, metal filing cabinets (except fire resisting filing cabinets) and metal tables, and each of them;

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

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, 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, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries, or any of them.

IV

[Price Fixing—Allocation of Markets]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program among themselves or with any person engaged in the manufacture of metal office furniture to:

(A) Fix, establish or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of metal office furniture to any third person;

(B) Divide, allocate or apportion customers, territories or markets for the sale of metal office furniture;

(C) Exchange any information concerning prices or other terms or conditions for the sale of metal office furniture except in connection with bona fide purchase or sales transactions.

V

[Resale Price Fixing]

(A) Each defendant is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any dealer or distributor to fix, establish, maintain or adhere to any prices, discounts, terms or other elements of price for the sale of metal office furniture to any third person.

(B) Nothing in this Final Judgment shall prohibit any defendant, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any metal office furniture manufactured, distributed or sold by it.

VI

[*New Price Schedules—Zone Pricing*]

(A) Each defendant is ordered and directed individually and independently, within six (6) months of the date of entry of this Final Judgment, to:

(1) Review, determine and establish its domestic list prices and other terms and conditions of sale for metal office furniture on the basis of its individual costs, profits, and other lawful considerations, and as a part of such independent review to consider the competitive advantages and disadvantages of the geographic location of its factories, the availability and cost of transportation from such point or points and its freight and other shipping cost experience;

(2) Abandon, with respect to the sale of metal office furniture, for a period of not less than five (5) years from the date of entry of this Final Judgment the three (3) zone system and the zone price differentials employed by it on December 28, 1960; and

(3) Withdraw its then current domestic price lists for metal office furniture and to adopt and publish the list prices arrived at pursuant to subparagraphs (1) and (2) of this Subsection (A).

(B) In the event any defendant changes its list prices published pursuant to subsection (A) of this Section VI within the period of six (6) months following the effective date of their adoption, said defendant shall, upon motion duly filed by plaintiff, have the burden of going forward with the evidence to show that such changes were made unilaterally and in good faith and were not made to match systematically the pricing system of another defendant. For a period of four (4) years following the adoption of the list prices established pursuant to subsection (A) of this Section VI, any defendant who has changed any such prices during the above-noted six-month period shall retain its records relied upon in making such change.

(C) In addition to the period of time prescribed in subsection (A) hereof, any defendant may, at its option, take an additional period of time not to exceed two (2) months to publish its new domestic list prices and other terms and conditions of sale for metal office furniture. In the event that any defendant shall elect to exercise said option, the time period in subsection (B), as to such defendant, shall be extended for a time equal to such additional period; provided, however, that if no defendant publishes its price list pursuant to subsection (A) within a period of two (2) months from the effective date of this Final Judgment then there shall be no extension of the time period prescribed in subsection (B).

VII

[*Distribution of Order*]

Each defendant is ordered and directed, on or before the withdrawal of its current domestic price lists as provided for in Section VI, to serve by mail upon each of its branch offices and its metal office furniture distributors and dealers, current as of the date of the entry of this Final judgment, a conformed copy of this Final Judgment, and, to file an affidavit with the Clerk of this Court that it has done so, with a copy to the Department of Justice.

VIII

[Trade Associations]

Each defendant is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or Other organization would violate any provision of this Final Judgment, if such trade association, industry group, or other organization were a consenting defendant to this Final Judgment.

IX

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purposes, 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 a defendant made to its principal office, be permitted subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding any subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided for in this Section shall be divulged by any representative of the Department of Justice to any person except 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[Jurisdiction Retained]

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 or 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 thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.