

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northern California Plumbing and Heating Wholesalers Association, et al., U.S. District Court, N.D. California, 1952-1953 Trade Cases ¶67,563, (Aug. 27, 1953)

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United States v. Northern California Plumbing and Heating Wholesalers Association, et al.

1952-1953 Trade Cases ¶67,563. U.S. District Court, N.D. California, Southern Division. Civil No. 29170. Filed August 27, 1953. Case No. 992 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing, Preparation of Price Publication, and Policing Prices—Wholesalers of Plumbing and Heating Supplies.—A plumbing and heating wholesalers' association, its secretary-manager, and wholesalers were enjoined by a consent decree from fixing prices; fixing discounts, mark-ups, and delivery charges; and using prices or pricing formulas contained in any publication designated by the defendants. Each defendant was enjoined from knowingly contributing to the preparation of any publication containing prices or pricing formulas and from communicating to any defendant its own prices prior to the time when such prices first are announced to prospective purchasers. Also, the association and its secretary-manager were enjoined from preparing or distributing any prices, investigating or policing prices, and inducing any defendant to maintain or change its prices.

Consent Decree—Applicability of Provisions—Persons in Active Concert Who Have Notice.—A consent decree provided, in part, that the decree shall be applicable to those persons, in active concert or participation with any defendant, who receive actual notice of the decree by personal service or otherwise.

Consent Decree—Contingent Provision—Position of Defendant as Determining the Applicability of the Prohibitions.—A consent decree entered in an action against an association, its secretary-manager, and member wholesalers provided that if, and for so long as, the secretary-manager shall (1) become engaged solely in business for himself as a wholesaler, he shall not be subject to specified provisions of the decree but shall be subject to provisions applicable to the wholesalers; (2) be employed solely by a wholesaler on a full time basis, he shall not be subject to specified provisions of the decree but shall be considered only as an employee of a wholesaler.

Consent Decree—Permissive Provision—Credit Practices.—A consent decree entered in an action against a plumbing and heating wholesalers' association, its secretary-manager, and wholesalers provided that nothing shall be deemed to adjudicate the legality or illegality of the activities of any, defendant in the granting or withholding of credit, exchanging credit information with other interested parties, or participating in the activities of any *bona fide* credit organization.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Edwin H. Pewett, Special Assistant to the Attorney General; Lloyd H. Burke, United States Attorney; and William D. Kilgore, Jr., Lyle L. Jones, and Marquis L. Smith.

For the defendants: Melvin, Faulkner, Sheehan & Wiseman, by Harold L. Faulkner, for Northern California Plumbing and Heating Wholesalers Association; Coast Pipe & Supply Company; Grinnell Company of the Pacific; Slakey Bros., Inc.; Thomas F. Smith, Inc.; Tay-Holbrook, Inc.; Delta Pipe & Supply Company; Ralph Olsen; John E. Heaslett; and Dalziel Plumbing Supplies. Morrison, Hohfeld, Foerster, Shuman & Clark, by Herbert W. Clark, for Crane Co. Pillsbury, Madison & Sutro, by M. D. L. Fuller, for Pacific Can Company. David Livingston for Dallman Company. Rhein, Dienstag & Levin, by Edward Dienstag, for Heieck & Moran (Oakland); Heieck & Moran (Sacramento); and Heieck & Moran (San Francisco). Young, Hudson & Rabinowitz; by H. S. Young, for P. E. O'Hair & Co. and Western Plumbing Supply Company, Ltd.

Final Judgment

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CARTER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 27, 1949, the defendants having appeared, and plaintiff and the defendants named in paragraph II (a) hereof 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 and without trial or adjudication of any issue of fact or law herein and upon 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 hereof 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," commonly known as the Sherman Act, as amended.

II

[*Consenting and Non-Consenting Defendants*]

(a) The unincorporated defendants *consenting* to the entry of this Final Judgment are:

Name	Identification	Location
John E. Heaslett	Secretary-Manager, Northern California Plumbing & Heating Wholesalers Association	San Francisco, California
Ralph Olsen	Partner, Olsen & Heffernan Northern California Plumbing and Heating Wholesalers Association	San Francisco, California
.....	An unincorporated association	San Francisco, California

The corporate defendants consenting to the entry of this Final Judgment are:

Name of Corporation	State of Incorporation	Principal Place of Business
Coast Pipe & Supply Company	California	San Francisco, Calif.
Crane Company	Illinois	Chicago, Ill.
Dallman Company	California	San Francisco, Calif.
Dalziel Plumbing Supplies	California	San Francisco, Calif.
Delta Pipe & Supply	California	Stockton, Calif.
Grinnell Company of the Pacific	California	San Francisco, Calif.
Heieck & Moran (Oakland)	California	Oakland, Calif.
Heieck & Moran (Sacramento)	California	Sacramento, Calif.
Heieck & Moran (San Francisco)	California	San Francisco, Calif.
P. E. O'Hair & Co.	California	San Francisco, Calif.
Pacific Can Company	Nevada	San Francisco, Calif.
Slakey Bros., Inc.	California	Sacramento, Calif.

Thomas F. Smith, Inc.	California	San Francisco, Calif.
Tay-Holbrook, Inc.	California	San Francisco, Calif.
Western Plumbing Supply Company, Ltd	California	San Jose, Calif.

(b) The defendant not consenting to the entry of this Final Judgment is George W. Lysaght, Owner, Current Price Bureau, San Francisco, California.

III

[*Definitions*]

As used in this Final Judgment:

- (A) "Northern California Area" shall mean that part of the State of California north of 35 degrees 45 minutes north latitude and includes the counties of Monterey, Kings, Tulare, Inyo and all counties north thereof;
- (B) "Plumbing supplies" shall mean the various commodities used in the plumbing industry, including enamelware and vitreous chinaware fixtures, brass goods and trim, pipes, valves and fittings, sheet metal as used in the plumbing industry, lead, solder, oakum and plumber's tools;
- (C) "Wholesaler" shall mean a person engaged in the business of purchasing plumbing supplies from various sources for resale to plumbing contractors, governmental agencies, industrial and other users and to retailers; a manufacturer who sells plumbing supplies to such purchasers through its own sales offices and branches located in the Northern California Area is also a wholesaler as defined herein only with respect to such sales;
- (D) "Person" shall mean an individual, partnership, firm, association or corporation, or any other business or legal entity;
- (E) "Prices" shall mean the selling prices of wholesalers for plumbing supplies;
- (F) "Pricing formulas" shall mean any figures, discounts, mark-ups, charges or methods used by a wholesaler to compute and determine actual prices.

IV

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant, shall apply to such defendant, its subsidiaries, officers, agents, servants, employees and attorneys, (insofar as such defendant conducts business in the Northern California Area) and to those persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise.

V

[*Price Fixing Enjoined*]

The defendant Northern California Plumbing and Heating Wholesalers Association, the defendant John E. Haslett, and each of the defendant wholesalers, are, with respect to the sale of plumbing supplies to third persons, jointly and severally enjoined from entering into, adhering to, maintaining or furthering any agreement, understanding, plan or program with any other defendant or with any other wholesaler which has the purpose or effect of:

- (A) Fixing, determining, maintaining or stabilizing prices, through the use of pricing formulas or otherwise;
- (B) Fixing, determining, maintaining or stabilizing discounts, mark-ups, delivery charges, freight additions or allowances or other terms or conditions applicable to the sale or offering for sale of any item or class of items of plumbing supplies;

(C) Using prices, pricing formulas, discounts, mark-ups, delivery charges or freight additions or allowances contained in any publication or other document designated by the said defendants or any of them.

VI

[*Pricing Publication*]

Each defendant is enjoined from:

(A) Knowingly contributing to the preparation or distribution of any publication of any other defendant or any other person which contains prices or pricing formulas for plumbing supplies of other than identified sellers;

(B) In any manner communicating to any wholesaler or to any other defendant its own prices, discounts, delivery charges, freight additions or allowances prior to the time when the same first are announced to purchasers or prospective purchasers.

VII

[*Distributing and Policing Prices*]

Each of the defendants Northern California Plumbing and Heating Wholesalers Association and John E. Haslett is enjoined from:

(A) Preparing or distributing any prices, pricing formulas, discounts, delivery charges, freight additions or allowances;

(B) Investigating, checking or otherwise policing the prices, pricing formulas, discounts, delivery charges, freight additions or allowances of any wholesaler;

(C) Inducing or attempting to induce any wholesaler or any other defendant to maintain or change his prices, pricing formulas, discounts, delivery charges, freight additions, allowances or other terms or conditions of sale; provided, however, that if, and for so long as, defendant John E. Haslett shall (1) become engaged solely in business for himself as wholesaler, said defendant Haslett shall not be subject to the terms of this Section VII but shall be considered as a wholesaler subject to each provision of this Final Judgment applicable to any other defendant wholesaler; (2) be employed solely by a defendant wholesaler on a full time basis, said defendant Haslett shall not be subject to the terms of this Section VII but shall be considered, for the remaining provisions of this Final Judgment, only as an employee of said defendant wholesaler.

VIII

[*Permissive Provision*]

Nothing herein shall be deemed to adjudicate the legality or illegality of the activities of any defendant in the granting or with-holding of credit, exchanging credit information with other interested parties, or participating in the activities of any bona fide credit organization.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on writer 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, (A) reasonable 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 and employees of such defendant who may have counsel present, regarding any such matters. Upon such request, the 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 IX 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.

X

[*Jurisdiction Retained*]

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