

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co., U.S. District Court, N.D. California, 1979-1 Trade Cases ¶62,517, (Jan. 29, 1979)

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United States v. Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co.

1979-1 Trade Cases ¶62,517. U.S. District Court, N.D. California, No. C77-1579 CFP, Entered January 29, 1979.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 51857). Case No. 2599, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Furnace Pipe and Fittings: Consent Decree.— Four California furnace pipe and fitting firms were enjoined by a consent decree from fixing prices and exchanging information concerning prices, conditions, price changes and future prices in connection with the sale of furnace pipe and fittings. The exchange of information prohibition should not apply to *bona fide* transactions and to the transmission of price lists regularly issued in the course of business, previously released and circulated to the trade generally. One of the defendants was ordered to send copies of its current price book to each account or former account in the Northern California Market to which it sold furnace pipe and fittings during a two-year period immediately preceding. April 1975.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, William S. Farmer, Jr., Irene Saal Holmes, Attys., Dept. of Justice. For defendants: Melby & Anderson, by Henry Melby, Glendale, Cal., for Enderle Metal Products Co.; Ehrlich, Allison & Sparks, by Philip Ehrlich, San Francisco, Cal., for Noll Manufacturing Co.; Garfield, Tepper & Ashworth, by Franklin Garfield, Century City, Cal., for Sugden Engineering Co.; Kipperman, Shawn, Kecker & Brockett, by Steven M. Kipperman, San Francisco, Cal., for Wellmade Products Co.

Final Judgment

POOLE, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 21, 1977, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without this Final Judgment constituting evidence against or admission by any party hereto with respect to any such issue;

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 the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter of this action 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

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As used in this Final Judgment:

- (A) "Person" means any individual, partnership, corporation, association, firm or other business or legal entity;
- (B) "Furnace pipe and fittings" means pipe, ducts and fittings used to install heating and air conditioning systems in residential and commercial structures;
- (C) "Manufacturer" means a person who produces and sells furnace pipe and fittings, and includes each of the defendants;
- (D) "Northern California market" means Reno, Nevada and California generally north of Bakersfield;

III

[Applicability]

The provisions of this Final Judgment shall apply to each defendant and to each of defendants' officers, directors, employees, agents, subsidiaries, successors and assigns, 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. For the purpose of this Final Judgment, each defendant together with its controlled subsidiaries and each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person.

IV

[Price Fixing]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly:

- (A) To fix, establish, raise, maintain or stabilize the price or prices at which furnace pipe and fittings are sold to third persons whom furnace pipe and fittings may be sold.

V

[Exchange of Information]

Each defendant is enjoined and restrained from:

- (A) Communicating to, requesting from, or exchanging with any other manufacturer, information concerning:
 - (1) Prices or terms or conditions upon which furnace pipe and fittings would then be or are then being sold or offered for sale by any manufacturer;
 - (2) Future prices or terms or conditions upon which furnace pipe and fittings will be sold or offered for sale;
 - (3) Consideration of changes or revisions in the prices or terms or conditions upon which any manufacturer sells or offers to sell furnace pipe and fittings;
- (B) Complaining or otherwise commenting to any manufacturer concerning prices charged by that manufacturer.

VI

[Business Transactions]

Nothing in Section V hereof shall prohibit:

- (A) The communication of information, by employees of defendant who routinely conduct furnace pipe and fittings purchase and sale transactions, to such employees of another manufacturer in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendant and such other manufacturer;

(B) The transmission by a defendant, without additional comment or explanation, to another manufacturer upon the request of said manufacturer, of such defendant's price list or price book (or any change therein) for furnace pipe and fittings regularly issued in the course of business, which price book or price list (or said change) such defendant had previously released and circulated to the trade generally, prices included in such price list or price book (or said change).

VII

[*Current Prices*]

Defendant Enderle Metal Products Company shall:

(A) Send copies of its current price book to each account or former account in the Northern California Market to which it sold furnace pipe and fittings during the two (2) year period immediately preceding April 1975

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with this Section VII.

VIII

[*Notice*]

Each defendant is ordered and directed to:

(A) Within sixty (60) days after the entry of this Final Judgment furnish a conformed copy hereof to: (1) each of its own officers and directors; (2) each of its own employees and agents who has any responsibility for the pricing or sale of furnace pipe and fittings; and (3) each officer, director and aforementioned employee and agent of a domestic subsidiary of said defendant engaged in the manufacture or sale of furnace pipe and fittings; and advise and inform each such person that violation of this Final Judgment could result in a conviction for contempt of court and imprisonment and/or fine.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with Paragraph (A) of this Section VIII.

(C) Furnish a copy of this Final Judgment to each successor to an officer, director, or employee described in Paragraph (A) of this Section, together with the advice specified by said paragraph, within thirty (30) days after such succession occurs.

(D) For a period of five (5) years from the entry of this Final Judgment, obtain, and retain in its files, from each officer, director, employee and agent furnished with a copy of this Final Judgment pursuant to Paragraph (A) or Paragraph (C) of this Section VIII, a signed statement evidencing each such person's receipt of a copy of this Final Judgment.

IX

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Duly authorized representatives 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 a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) 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 the 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, directors, employees and agents of the defendant, who may have counsel present regarding

any such matters. Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, 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.

(B) No information or documents obtained by the means provided 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 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.

(C) If at any time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

[Retention of Jurisdiction]

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, or for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and punishment of violations hereof.

XI

[Public Interest]

Entry of this Final Judgment is in the public interest.