

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. R & G Sloane Manufacturing Co., Inc., The Susquehanna Corp., Borg-Warner Corp., Celanese Corp., Plastiline, Inc., U.S. District Court, C.D. California, 1976-1 Trade Cases ¶60,846, (Apr. 12, 1976)

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United States v. R & G Sloane Manufacturing Co., Inc., The Susquehanna Corp., Borg-Warner Corp., Celanese Corp., Plastiline, Inc.

1976-1 Trade Cases ¶60,846. U.S. District Court, C.D. California. Civil No. 71-1522-ALS. Entered April 12, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 3756). Case No. 2180, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Plumbing Supply Manufacturers—DWV Plastic Pipe Fittings Prices—Agreements Between Competitors—Selling Prices—Refusal to Sell—Price Information—Consent Decree.—Manufacturers of plumbing supplies were prohibited by a consent decree from agreeing on prices of DWV plastic pipe fittings with any other fittings manufacturer, excluding any person from competing in production or sale of fittings or refusing to sell them to any other fittings manufacturer. They were prohibited from communicating fittings price information to any other fittings manufacturer, except to verify information for use in litigation. They were permitted to include existing and prospective customers of fittings on lists of general mailings to the trade. They were permitted to engage in bona fide and arm's-length negotiations of purchases and sales of fittings. They were permitted to distribute to the trade fittings price lists or discount schedules if accompanied by a statement that the customer is free to resell at any price he chooses. They were required for a period of five years to certify by affidavit at the time of publication of every price list or discount schedule or other terms and conditions of sale of fittings, that said information was independently arrived at and was not the result of agreement or understanding with a competitor.

Acquisitions and Mergers—Plumbing Supply Manufacturers—Manufacture or Sale of DWV Plastic Pipe Fittings—Horizontal Transactions—Consent Decree.—Manufacturers of plumbing supplies were permitted to engage in bona fide, arm's-length negotiations of purchases and sales of all or the major part of the capital assets used in the manufacture of DWV plastic pipe fittings or all or the major part of the capital stock of a company engaged in manufacture or sale of fittings, subject to compliance of any acquisition with the antitrust laws.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F.B. McAleer, Robert J. Ludwig, Attys., Antitrust Div., Dept. of Justice, Washington, D. C., Raymond P. Hernacki, Draper W. Phillips, Dennis R. Bunker, Leon W. Weidman, and Ronald M. Griffith, Attys., Antitrust Div., Dept. of Justice, Los Angeles, Cal. **For defendants:** Reed A. Stout and Marcus A. Mattson, of Lawler, Felix & Hall, for R & G Sloane Manufacturing Co., Inc. and Susquehanna Corp.; Homer I. Mitchell and Patrick Lynch, of O'Melveny & Myers, for Celanese Corp.; Julian O. von Kalinowski, Paul G. Bower, and Bruce W. Owens, of Gibson, Dunn & Crutcher, for Borg-Warner Corp.; Karl B Rodi, Thomas R. Phillips, and William O. Rockwood, of Rodi, Pettker, Galbraith, Bond, Fischbach & Phillips, for Plastiline, Inc.

Final Judgment

STEPHENS, D. J.: Plaintiff, United States of America, having filed its Complaint on June 29, 1971; the defendants, having appeared herein and filed their answers to such Complaint denying the substantive allegations thereof; and plaintiff and defendants R & G Sloane Manufacturing Company, Inc., The Susquehanna Corporation, Celanese Corporation, Borg-Warner Corporation, and Plastiline, Inc. (hereinabove incorrectly referred to as Plastiline, Incorporated), by their respective attorneys, having 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 admission by any party with respect to 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 consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a claim upon which relief may be granted 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 (15 U. S. C. § 1, as amended).

II

[*Definitions*]

As used in this Final Judgment:

- (a) "Defendants" means R & G Sloane Manufacturing Company, Inc., The Susquehanna Corporation, Celanese Corporation, Borg-Warner Corporation, and Plastiline, Inc.;
- (b) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (c) "DWV plastic pipe fittings" means fittings used in drainage, waste or vent (DWV) systems in fixed residential, modular and mobile homes and other structures, made from either varying proportions of acrylonitrile, butadiene and styrene monomers (ABS) or from polyvinyl chloride (PVC).

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall also apply to each of its subsidiaries, successors, assigns, officers, agents, servants, and employees and to all other 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 activities between a defendant, its officers, agents, servants or employees, and (a) its parent or subsidiary companies, or (b) affiliated corporations in which 50% or more of the voting stock is owned by a defendant, its parent or subsidiary company, or which is in fact controlled by any defendant, or such defendant's parent or subsidiary companies. Specifically, said provisions shall not apply to activities between defendant R & G Sloane Manufacturing Company, Inc. and defendant The Susquehanna Corporation for so long as 50% or more of the voting stock of said R & G Sloane Manufacturing Company, Inc. is owned by said The Susquehanna Corporation.

IV

[*Prices; Communication; Permitted Activity*]

A. The defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any implied or expressed contract, agreement, or understanding with any manufacturer of DWV plastic pipe fittings, to:

- (1) Fix, determine, establish, maintain, suggest or stabilize the prices, discounts or other terms or conditions for the sale of DWV plastic pipe fittings to any person, subject to the provisions of Section D hereof;
- (2) Exclude or eliminate any person from competing in the production, marketing or sale of DWV plastic pipe fittings;
- (3) Refuse to sell DWV plastic pipe fittings to any other manufacturer thereof.

B. The defendants and each of them are enjoined and restrained from directly or indirectly requesting from, or providing, verifying or communicating to, any other manufacturer of DWV plastic pipe fittings information concerning prices, discounts, or other terms or conditions for the sale of DWV plastic pipe fittings except (1) as provided in Section D hereof, (2) solely to verify past prices, discounts, or other terms or conditions of sale for use in litigation, and (3) defendants may include their existing and prospective customers of DWV plastic pipe fittings on their general mailings to the trade.

C. The provisions of this Final Judgment are applicable to defendant Borg-Warner Corporation and its subsidiaries and affiliates, only in the event that Borg-Warner enters into the manufacture of DWV plastic pipe fittings.

D. Nothing in this Final Judgment shall preclude:

(1) Bona fide and arm's length purchases, sales and negotiations for purchases or sales of DWV plastic pipe fittings between any defendants or between any defendant and any other manufacturer of DWV plastic pipe fittings, including the expression of the price as a discount or chain of discounts applied to list prices;

(2) Bona fide and arm's length negotiations between any defendants or between any defendant and any other manufacturer for the purchase or sale of all or the major part of the capital assets used or employed in the manufacture or sale of DWV plastic pipe fittings or all or a major part of the capital stock of a company engaged in the manufacture or sale of such fittings, including the contracts resulting therefrom, provided that no implication respecting the legality of such acquisition is to be implied from the foregoing;

(3) Any defendant from publishing or distributing to the trade price lists and/or discount sheets, including the expression of the price as a discount or chain of discounts from the published list price for the sale of DWV plastic pipe fittings, provided that any such list or discount sheet shall include a statement indicating that the customer is free to resell such DWV plastic pipe fittings at any price he may choose.

V

[Certification]

Each defendant is ordered and directed for a period of five years from the date of entry of this Final Judgment:

To certify by affidavit by an official with pricing responsibility for DWV plastic pipe fittings, at the time of every newly published price list and/or discount schedule or other terms and conditions relating to the sale of DWV plastic pipe fittings, that said published price list and/or discount schedule or other terms relating to the sale of DWV plastic pipe fittings were independently arrived at by said defendant and were not the result of an agreement or understanding with any competitor; and further that each consenting defendant retain in its files the aforesaid certifications which shall be made available to plaintiff for inspection upon reasonable written demand.

VI

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment, 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege, access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and officer records and documents in the possession or under the control of said defendant, who may have counsel present, relating to any matters contained in this Final Judgment, and subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers, agents or employees of said defendant, who may have counsel present, regarding any such matters. Said defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and subject to any legally recognized privilege, shall submit such reports in writing to the Department of Justice with respect to any of the matters

contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this section 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 plaintiff, 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.

VII

[*Notification*]

Within thirty (30) days after the date of entry of this Final Judgment, each defendant is ordered and directed to serve (a) upon its directors and officers, and (b) upon its regional managers, plant managers and sales managers, regional and local, whose product responsibility includes DWV plastic pipe fittings, a copy of this Final Judgment. Within 60 days after the date of entry of this Final Judgment, each defendant shall file an Affidavit of Compliance with the Court, copy to plaintiff's counsel, reciting the steps taken to comply with the provisions of this paragraph.

VIII

[*Retention of Jurisdiction*]

Jurisdiction of this cause is retained 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 and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof. Entry of the Final Judgment is in the public interest.