

APPENDIX A:
FINAL JUDGMENT

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Armco Drainage & Metal Products, Inc., U.S. District Court, D. North Dakota, 1961 Trade Cases ¶69,942, (Feb. 24, 1961)

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United States v. Armco Drainage & Metal Products, Inc.

1961 Trade Cases ¶69,942. U.S. District Court, D. North Dakota, Southeastern Division. Civil Action No. 3804. Dated February 24, 1961. Case No. 1536 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Consent decree—Combinations and agreements—Price fixing—Allocation of territories.—A manufacturer of corrugated culvert has been prohibited, by a consent decree, from practices related to price fixing, allocation of territories, and elimination of competition (including coercion to accomplish any of the specified results) in the sale of corrugated culvert, and to send a copy of the decree to persons in the States of North and South Dakota known to be engaged in the manufacture and sale of corrugated culvert.

For the plaintiff: W. Wallace Kirkpatrick, Acting Assistant Attorney General, William D. Kilgore, Jr., George H. Schueller, Max Freeman, Earl A. Jinkinson, and Francis C. Hoyt, Attorneys, Department of Justice.

For the defendant: Breed, Abbott & Morgan, by Kendall B. DeBevoise, and Lashkowitz & Lashkowitz, by Shelley Lashkowitz

Final Judgment

DAVIES, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 17, 1960, and the defendant having appeared herein; and the plaintiff and the defendant, 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 any evidence or admission by the plaintiff or the defendant 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 the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states claims upon which relief may be granted against the defendant 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

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation or other business or legal entity;

(B) "Corrugated culvert" means any tube or channel commonly used for drainage purposes, constructed from corrugated culvert sheets, whether plain, dipped, galvanized or paved, including full circle culvert, part circle culvert, nestable culvert and arches.

III

The provisions of this Final Judgment shall apply to the defendant and to its directors, officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, defendant Armco Drainage & Metal Products, Inc., and its parent corporation and subsidiaries of such parent shall be deemed to be one person,

IV

The defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing, or claiming any right under, any contract, combination, agreement, understanding, plan or program with any person which has the purpose or effect of

(1) Fixing, establishing, determining, maintaining, adhering to stabilizing or suggesting prices or terms and conditions of the sale of corrugated culverts to any third person;

(2) Allocating to, or dividing with or among, any person or persons sales quotas or customers for corrugated culverts;

(3) Refraining from competing in the sale of corrugated culverts;

(B) Compelling, threatening, intimidating, or otherwise causing or attempting to compel, threaten, intimidate or otherwise cause, any person to do anything that has any of the purposes or effects listed in the foregoing Subsection (A);

(C) Being a member of, contributing anything of value to, or participating in the activities of, any trade association or central agency of or for manufacturers of corrugated culverts with knowledge that any of the association's or agency's activities is inconsistent with any provision of this Final Judgment.

V

The defendant is ordered and directed to send, within thirty (30) days of the date of the entry of this Final Judgment, a copy of this Final Judgment to each person in the States of South Dakota and North Dakota who, to defendant's knowledge, is engaged in the manufacture and sale of corrugated culverts.

VI

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 the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of 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 the defendant and without restraint or interference to interview officers and employees of the defendant, who may have counsel present, regarding such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party, or as otherwise required by law.

VII

Jurisdiction 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 for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.