APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

United States v. American Locomotive Co., et al.

Case No. 545

Year Judgment Entered: April 1, 1947

U. S. vs. AMERICAN LOCOMOTIVE COMPANY, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

Civil Action No. 545.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

AMERICAN LOCOMOTIVE COMPANY, ET AL, DEFENDANTS.

FINAL JUDGMENT

Plaintiff, UNITED STATES OF AMERICA, having filed its complaint herein on June 20, 1945; and THE SYMINGTON-GOULD CORPORATION, a Maryland corporation, one of the defendants herein, having filed its answer to said complaint denying any violations of law; and United States of America and The Symington-Gould Corporation, by their respective attorneys, having severally consented to the entry of this final judgment without trial or adjudication of any issue of fact or of law and without admission by any party herein in respect of any such issue;

WHEREAS, defendant The Symington-Gould Corporation has heretofore during the pendency of this action, namely, on the 24th day of February, 1947, assigned to the public certain patent claims relating to spring nests and cast or pressed spring plates, as follows:

All claims of the following patents:

Patent No.	2,067,471	dated	January 12, 1937	
" "	2,084,542	"	June 22, 1937	
" "	2,084,543	"	June 22, 1937	
" "	2,100,181	"	November 23, 1937	
" "	2,137,151	"	November 15, 1938	

and the following claims respectively of the following patents:

Patent No.	2,047,192	dated	July 14, 1936	Claims	22, 23 and 24
" "	2,094,557	"	Sept. 28, 1937	"	7 to 12 inclusive and 19
" "	2,102,102	"	Dec. 14, 1937	"	1 to 21 inclusive

(Cont'd.)

Patent No.	2,108,653	dated	Feb. 15, 1938	Claims	10 and 11
" "	2,148,200	"	Feb. 7, 1939	"	6, 14 and 15
" "	2,205,369	"	June 18, 1940	"	5, 6 and 7

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

ARTICLE I

That this Court has jurisdiction of the subject matter hereof and of the parties hereto; that the complaint states a cause of action against the defendant The Symington-Gould Corporation 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, and acts amendatory thereof and supplemental thereto.

ARTICLE II

The Symington-Gould Corporation shall, within ten (10) days after entry of this judgment, send to each of the spring manufacturing companies heretofore holding licenses or sublicenses, under certain patents owned by The Symington-Gould Corporation; namely, American Locomotive Company, American Spiral Spring & Manufacturing Company, American Steel Foundries, Baldwin Locomotive Works, Crucible Steel Company of America, Fort Pitt Spring Company, Pittsburgh Spring and Steel Company, and Union Spring and Manufacturing Company, formal notice of the expiration as of September 10, 1946, of the license agreement of September 28, 1932, made between the Railway Steel Spring Company, predecessor of defendant American Locomotive Company, and The Symington Company, predecessor of The Symington-Gould Corporation, and all amendments and modifications thereof and supplements thereto; and The Symington-Gould Corporation is hereby enjoined and restrained from further performing, observing, or reviving the provisions of said agreement of September 28, 1932, and amendments, modifications, and supplements thereto, or any practices or arrangements with reference to the coil-

elliptic device provided for in said agreement as amended, modified and supplemented.

ARTICLE III

The Symington-Gould Corporation, its directors, officers, agents, employees, and successors, and all persons acting through, under, or for it, are hereby enjoined and restrained from bringing or maintaining any suit for the infringement of any patent claims hereinabove listed in this judgment.

ARTICLE IV

The Symington-Gould Corporation, its directors, officers, agents, employees and successors and all persons acting through, under or for any of them are hereby enjoined and restrained from agreeing, combining or conspiring with anyone to: (1) fix, maintain, or control the price at which any coil-elliptic device, or part thereof, shall be sold; (2) allocate sales of any coil-elliptic device or part among manufacturers thereof by any method, including but not restricted to the division of customers or markets; or (3) discriminate with respect to the sale of the coil-elliptic device or any part thereof by collusive bidding or in any other way. ("Coil-elliptic device" means a combination of one or more dispositions of coil springs with any one or more elliptic springs and pressed or cast spring plates.)

ARTICLE V

The Symington-Gould Corporation, its directors, officers, agents, employees, and successors, and all persons acting through, under, or for any of them are hereby enjoined and restrained, either when acting alone or pursuant to any agreement, combination or conspiracy with anyone, from: (1) requiring, as a condition of any sale or lease, any purchaser of any coil-elliptic device to purchase other mechanisms or parts used in assemblies involving the coil-elliptic device; or (2) wrongfully representing any unpatented mechanisms or parts of an assembly containing the coil-elliptic device to be part of a patented device.

ARTICLE VI

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendant The Symington-Gould Corporation given to it at its principal office, 20 Symington Place, Rochester, New York, be permitted, subject to any legally recognized privilege, (a) access during reasonable office hours of The Symington-Gould Corporation, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of The Symington-Gould Corporation, relating to any of the matters contained in this judgment, and (b) subject to the reasonable convenience of said defendant without restraint or interference from The Symington-Gould Corporation, to interview officers or employees of The Symington-Gould Corporation, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

ARTICLE VII

This judgment shall have no effect with respect to operations or activities, wherever performed, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by Acts amendatory thereof or supplemental thereto.

ARTICLE VIII

Jurisdiction of this cause is retained by this Court for the purpose of enabling either of the parties to this 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 judgment, for the modification thereof, or the enforcement of compliance therewith, and for the punishment of violations thereof.

This 1st day of April, 1947.

s/ LUTHER M. SWYGERT
United States District Judge

United States v. American Locomotive Co., et al.

Case No. 545

Year Judgment Entered: October 4, 1947

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Locomotive Company, et al., U.S. District Court, N.D. Indiana, 1946-1947 Trade Cases ¶57,621, (Oct. 4, 1947)

United States v. American Locomotive Company, et al.

1946-1947 Trade Cases ¶57,621. U.S. District Court, N.D. Indiana. Civil Action No. 545. October 4, 1947.

A consent decree entered in an action charging violations of the Sherman Act by a trade association and eight manufacturers of railway springs and spring plates prohibits the defendants jointly from fixing prices or other terms of sale of springs and plates, from fixing sales quotas or allocating orders, or from restricting production of specific types of springs and plates. The association is required to confine itself to the performance of research and experimental work and to the compilation and distribution of general trade information. A defendant is required to license, at uniform reasonable royalties, its patents and improvement patents on spring plates.

For plaintiff: John F. Sonnett, Assistant Attorney General; James E. Kilday, Sigmund Timberg, Melville C. Williams, Ewart Harris, Special Assistants to the Attorney General; Earl Hevers, Maurice Silverman, Special Attorneys; Alexander M. Campbell, United States Attorney.

For defendants: C. D. Williams, J. Tyson Stokes, John D. Black, Winston, Strawn & Shaw, for American Locomotive Company; John D. Black, Winston, Strawn & Shaw, for Railway & Industrial Spring Association; Louis S. Hardin, Fredric H. Stafford, John B. Robinson, Jr., Pam, Hurd & Reichmann, for American Steel Foundries; Arthur Littleton, Morgan, Lewis & Bockius, Robert F. Doolittle, for Baldwin Locomotive Works; Elder W. Marshall, John C. Bane, Jr., Reed, Smith, Shaw & McClay, for Crucible Steel Company of America, Pittsburgh Spring & Steel Company, Union Spring & Manufacturing Co.; Orville J. Taylor, James G. Magner, Taylor, Miller, Busch & Boyden, for Universal Railway Devices Company; L. L. Bomberger, for all defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 20, 1945; and American Locomotive Company, a New York corporation, American Steel Foundries, a New Jersey corporation, The Baldwin Locomotive Works, a Pennsylvania corporation, Crucible Steel Company of America, a New Jersey corporation, Pittsburgh Spring & Steel Company, a Pennsylvania corporation, Union Spring & Manufacturing Company, a Pennsylvania corporation, Universal Railway Devices Company, a Delaware corporation, and Railway & Industrial Spring Association, an unincorporated association, defendants herein, having filed their several answers to said complaint denying any violations of law; and United States of America and said 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 of law and without admission by any party herein in respect of any such issue; Now, therefore, it is hereby ordered, adjudged, and decreed as follows:

[*Definitions*]

ARTICLE I

As used in this judgment:

1. "Universal plates" means spring plates claimed by defendant Universal Railway Devices Company to be covered by U. S. Letters Patent No. 1,913,076, dated June 6, 1933, and U. S. Letters Patent No. 2,199,339, dated April 30, 1940.

2. "Coil-Elliptic device" means a combination of one or more dispositions of coil springs with one or more elliptic springs and pressed or cast spring plates.

3. "Railway Spring Products" means collectively:

(a) Universal plates;

(b) Coil-Elliptic devices;

(c) Railway and special springs—which are coil, helical, elliptic, or semi-elliptic springs purchased or used by railroads, locomotive and car builders and industrial users for immediate or ultimate application and attachment to railroad equipment; and

(d) Spring plate—which are pressed or cast plates used, or suitable for use, in conjunction with springs when placed at either or both ends thereof, in order to anchor and secure the disposition of such springs to the side frames, trucks and bolsters of railway cars, tenders, and locomotives.

4. "Defendant spring companies" means the defendants American Locomotive Company, American Steel Foundries, The Baldwin Locomotive Works, Crucible Steel Company of America, Pittsburgh Spring & Steel Company, and Union Spring & Manufacturing Company.

[*Jurisdiction*]

ARTICLE II

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the defendant spring companies 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, and acts amendatory thereof and supplemental thereto.

[*Applicability to Persons Other Than Defendants*]

ARTICLE III

Reference herein to any defendant shall be deemed to include such defendant, its successors, subsidiaries, assigns, officers, directors, agents, members, employees, and each person acting or claiming to act under, through, or for such defendant.

[*Agreements Cancelled; Performance Enjoined*]

ARTICLE IV

The agreement dated September 28, 1932, described in Paragraph 32 of the complaint herein; each of the various agreements described in paragraphs 33 and 34 of the complaint; the agreement dated March 5, 1934, described in paragraph 36 of the complaint; and each of the agreements described in paragraph 37 of the complaint, are hereby cancelled. Each defendant is hereby enjoined and restrained from the further performance of any such agreements, and from entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose, or with the effect, of maintaining, reviving, or reinstating any of the provisions of any such agreement or any agreement or provisions thereof similar to those so enjoined.

[*Spring Companies and Association Enjoined from Engaging in Price Fixing*]

ARTICLE V

The defendant spring companies and the defendant Railway & Industrial Spring Association are hereby enjoined and restrained from taking concerted action or agreeing, combining, or conspiring, or from performing or adhering to any program, understanding, plan, or arrangement with each other or with any person, to:

(1) Fix or have fixed, maintain, or control the prices at which any railway spring products shall be sold or resold to any other person or the terms of such sales or resales;

(2) Allocate or distribute, have allocated or distributed, or fix quotas or orders for the production or sale of any railway spring products;

(3) Refuse to make a bid for the sale of railway spring products or any of such products; or to make a bid therefor higher than, or identical with, the bid of anyone else; or to submit collusively a bid therefor in any other manner;

(4) Disclose or furnish to each other (except to the extent permitted by Article VI of this judgment) information relating to sale or tonnage shipments or railway spring products by any defendant;

(5) Refrain from the manufacture, sale, or distribution of railway spring products, or any of such products, or any type or variety of such product;

(6) Refrain from the manufacture, sale, or distribution of any equipment or product competitive with railway spring products, manufactured by any defendant or subject to patents owned by any defendant;

(7) Impose conditions limiting, restricting, or regulating the manufacture, sale or distribution of railway spring products or any of such products to or by railroads, industrial users or any other person. Provided, however, that the provisions of this article shall not be deemed to apply to, or to determine or affect the validity or invalidity of, any patent license agreement not entered into pursuant to, or used in or pursuant to, any unlawful agreement, combination, or conspiracy.

[*Association Further Enjoined*]

ARTICLE VI

Defendant Railway & Industrial Spring Association is hereby enjoined and restrained from:

(1) Collecting, soliciting, utilizing, distributing, or disclosing any data or information concerning the manufacture, sale, or distribution of railway spring products or any of such products (a) for any purpose other than that of compiling and distributing general trade information or reports; or (b) in such a manner as to disclose any data or information concerning any particular firm, corporation, organization, or person;

(2) Engaging in any other activity or performing any other function other than research and experimental work for the purpose of developing and improving the art of manufacturing railway spring products or any such product;

(3) Refusing membership to any manufacturer of railway spring products who applies for membership;

(4) Refusing to make available the results of research and experimental work to any manufacturer of railway spring products, whether a member or a nonmember, provided, however, that a nonmember may be required to contribute on a nondiscriminatory basis to the cost of such research and experimental work.

[*Collusive Bidding Enjoined*]

ARTICLE VII

Each defendant spring company is hereby enjoined and restrained from submitting bids for the sale of railway spring products for the purpose or with the intent of discouraging or precluding any person from becoming or continuing as a customer of such defendant. A course of action involving the submission of bids which provide higher prices or more unfavorable terms or conditions of sale than such defendant is then regularly offering to others similarly situated shall place on such defendant the burden of disproving such purpose or intent.

[*Tying Agreements Prohibited*]

ARTICLE VIII

The defendant spring companies are hereby enjoined and restrained, either when acting alone or pursuant to any agreement, combination, or conspiracy with anyone, from: (1) requiring as a condition of any sale or lease, any purchaser of any Coil-Elliptic device to purchase other mechanisms or parts used in assemblies involving the Coil-Elliptic device; or (2) representing or requiring the description of any unpatented mechanisms or parts of an assembly containing the Coil-Elliptic device as being part of a patented device; or (3) prevention or hindering any person, firm, company, or corporation from engaging in the manufacture or sale of the Coil-Elliptic device.

[*Licensing Required*]

ARTICLE IX

(1) Defendant Universal Railway Devices Corporation is ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend under United States Patents No. 1,913,076 and No. 2,199,339 covering Universal spring plates, or any patent applied for during the period of ten years from the date of this judgment constituting improvements to the inventions disclosed in such patents. Defendant Universal Railway Devices Corporation is hereby enjoined and restrained from making any assignment, sale, or other disposition of said patents, or any license agreement in respect of such patents, which would deprive Universal Railway Devices Corporation of the power or authority to grant licenses in accordance with this paragraph, unless it requires, as a condition of such assignment, sale, or other disposition, or license agreement, that the assignee, purchaser, transferee, or licensee shall observe the requirements of Articles IX, X, and XI of this judgment and the assignee, purchaser, transferee, or licensee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Articles IX, X, and XI of this judgment.

(2) Defendant Universal is hereby enjoined and restrained from including any restriction or condition whatsoever in any license granted by it pursuant to the provisions of this article except that (a) a uniform reasonable royalty may be charged; (b) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable; (c) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided; (d) the license must provide that the licensee may cancel the license at any time by giving thirty days' notice in writing to the licensor; and (e) the license must provide that the licensee shall immediately have the benefit of any more favorable terms granted other licensees.

(3) Upon any application for a license in accordance with the provisions of paragraph (1) of this article, defendant Universal shall advise the applicant of the royalty it deems reasonable for the patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date application for the license was received by Universal, the applicant for a license may apply forthwith to this Court for a determination of a reasonable royalty, and Universal shall, upon receipt of notice of filing such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon Universal Railway Devices Corporation or its assignee, vendee, or transferee to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to the holders of all other licenses issued under the name patent or patents. Pending the completion of negotiations or of any such Court proceeding, the application shall have the right to make, use, and vend under the patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: Universal Railway Devices Corporation, its assignee, vendee, or transferee may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, a license shall then issue and the applicant shall accept such license providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant. If the applicant fails to accept such license or to pay the interim royalty therein provided, such action shall be ground for the dismissal of his application. Where an interim license has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and all other licensees under substantially the same patents to the date the applicant filed his application with the Court for the fixing of a reasonable royalty.

(4) Defendant Universal is hereby enjoined and restrained from bringing or maintaining any suit for any infringement of Patent No. 1,913,076 or Patent No. 2,199,339 alleged to have occurred prior to the date of this judgment.

[*Access to Records for Purpose of Securing Compliance*]

ARTICLE X

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice of the United States of America shall, upon written request of the Attorney General or an Assistant Attorney General, and upon reasonable notice to any defendant spring company, or defendant Railway and Industrial Spring Association, be permitted, subject to any legally recognized privilege, (a) access during reasonable office hours of such defendant spring company or the defendant Association, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant spring company or the defendant Association, relating to any of the matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant spring company or the defendant Association and without restraint or interference from it, to interview officers or employees of such defendant spring company or the defendant Association, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means permitted by this article shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Copies of Judgment to Be Sent to Licensees*]

ARTICLE XI

Defendant Universal Railway Devices Corporation, within thirty days after the entry of this judgment, shall send to each present licensee under the patents subject to article IX a copy of this judgment. In the case of licenses applied for after the entry of this judgment and subject to article IX, a copy of this judgment shall be sent to each such applicant promptly after the application is made.

[*Judgment Does Not Prohibit Activities Lawful Under Webb-Ponterene Act*]

ARTICLE XII

This Judgment shall have no effect with respect to operations or activities, wherever performed, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereof or supplemental thereto.

[*Jurisdiction Retained*]

ARTICLE XIII

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to this 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 judgment, for the modification thereof, or the enforcement of compliance therewith, and for the punishment of violations thereof.

United States v. Gasoline Retailers Assoc., et al.

Case No. 2626

Year Judgment Entered: 1961

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GASOLINE RETAILERS ASSOCIATION, INC. ET AL., Defendants.	)	CIVIL ACTION NO. 2626 [Entered May 17, 1961]

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 30, 1959; the defendants (except James G. Terry, now deceased) having appeared herein and filed their motions to dismiss the complaint; the plaintiff having filed its motion to dismiss as to defendants James G. Terry (now deceased), Harry Gold, and Russell Bassett; the plaintiff having filed its motion for summary judgment and for settlement of relief requested; and the Court having considered the matter and being duly advised;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The defendants have combined and conspired among themselves and with certain co-conspirators to restrain trade and commerce in the sale of gasoline in violation of 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" shall mean any individual, corporation, association, partnership, union, or other business or legal entity;

(B) "Association" shall mean the defendant Gasoline Retailers Association, Inc.;

(C) "Local 142" shall mean the defendant General Drivers, Warehousemen and Helpers Union No. 142, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America;

(D) "Defendants" shall mean the defendants Local 142, the Association and Michael Sawochka and each of them;

(E) "Labor dispute" shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. The term "labor dispute" shall not include any controversy concerning price, premiums, or other terms or conditions of sale of gasoline;

(F) "Calumet Region" shall mean Lake County, Porter County, Indiana, and Calumet City, Illinois.

III

The material issues in this case are res judicata with respect to the period from 1954 to and including June 22, 1959 and in so far as they relate to defendant Michael Sawochka, the defendant Association, and the defendant Local 142. They are made so by the findings of this Court in United States v. Gasoline Retailers Association, Inc. et al., Criminal Action No. 3010, on January 5, 1960, affirmed (C.A. 7, 1961), 285 F. 2d _____, rehearing denied, which criminal action was

based upon the identical */ facts, allegations and conclusions of law as are at issue in this civil suit.

IV

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its directors, officers, agents, employees, successors, and assigns, and to all persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise -- providing however that if and when any such person owns or operates a retail gasoline station, then and to the extent of the operation of such station the provisions of Paragraph VI(1), (2), and (3) are not applicable as to him.

V

The defendants are ordered and directed to terminate and cancel forthwith paragraphs numbered 19 and 20 of all "1957-1960 Articles of Agreement" between Local 142 and "the Gasoline Retailers Association, Incorporated of the Calumet Region and/or . . . Employer(s) and/or Operator(s) of Automotive Service Stations, Parking Lots or Garages" and paragraphs numbered 19 and 20 of all "1957-1960 Articles of Agreement" between Local 142 and "Employer(s) and/or Operator(s) of Gasoline Service Stations" and the defendants are enjoined and restrained from entering into, maintaining, enforcing, or claiming any rights under any contract, agreement, understanding, plan or program having a similar purpose or effect.

VI

The defendants are enjoined and restrained from entering into, enforcing, maintaining, adhering to or claiming any rights under any combination, conspiracy, contract, agreement, understanding, plan or

*/ Except that the indictment in the criminal case charges that the conspiracy therein alleged continued from about 1954 up to and including the June 22, 1959 return date of the indictment, whereas the complaint in this civil action charges that the conspiracy therein alleged continued from about 1954 up to and including the June 30, 1959 filing date of the complaint.

program among themselves or with any other person to

(1) Fix, establish, suggest, stabilize or tamper with the price or other terms or conditions for the sale of gasoline;

(2) Coerce, urge, or require any person to refrain from advertising or displaying the price or other terms or conditions for the sale of gasoline;

(3) Prohibit, restrict, or interfere with the granting of premiums by any person in connection with the sale of gasoline;

(4) Boycott or otherwise refuse to do business with or threaten to boycott or otherwise refuse to do business with any person;

(5) Terminate or threaten to terminate delivery of gasoline to any person;

(6) Picket or damage or threaten to picket or damage the property of any person.

The provisions of subsections (4), (5), and (6) above shall not prohibit the defendants from engaging in activities related solely to a bona fide labor dispute or collective bargaining, otherwise legal under labor laws applicable to such defendants.

VII

Defendant Local 142 is ordered and directed to, within thirty (30) days after the entry of this Final Judgment, serve by mail upon each of its members who is shown on Local 142's records as of the date of the entry of this Final Judgment to be an operator of or an employee of a retail gasoline station in the Calumet Region, a conformed copy of this Final Judgment. And said defendant is further ordered and directed to thereupon file an affidavit with the Clerk of this Court that it has done so.

VIII

For the purpose of securing compliance with this Final Judgment, and for no other purpose, 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 any defendant mailed to its principal office, be permitted:

(a) Access during regular office hours to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate to any 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 its officers or employees, who may have counsel present, regarding any such matters.

Upon such written request, 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 permitted in this section VIII 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.

IX

Defendant James G. Terry, now deceased, is hereby dismissed. Defendants Harry Gold and Russell Bassett are hereby dismissed with prejudice to further suit on the subject matter here involved.

X

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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

s/ Luther M. Swygert
United States District Judge

ENTER:
Hammond, Indiana
May 17, 1961

United States v. National Homes Corp.

Case No. 114

Year Judgment Entered: 1962

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Homes Corporation., U.S. District Court, N.D. Indiana, 1962 Trade Cases ¶70,533, (Dec. 1, 1962)

United States v. National Homes Corporation.

1962 Trade Cases ¶70,533. U.S. District Court, N.D. Indiana, Hammond Division at Lafayette. Civil No. 114. Entered December 1, 1962. Case No. 1485 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Competitors—Divestiture—Prefabricated Homes-Consent Judgment.—A producer of prefabricated homes was required by a consent judgment to divest itself of four manufacturers of such homes which it had acquired. The producer was required to make a bona fide effort to sell such manufacturers as going businesses, but if this could not be done by a specified date, the producer could dispose of the assets of the manufacturers on a piecemeal basis within a three-year period.

Acquiring Competitors—Future Acquisitions—Court Approval—Consent Judgment.— A producer of prefabricated homes was prohibited by a consent judgment, for a five-year period, from acquiring any concern engaged in the manufacture and sale of such homes; however, the producer could be granted permission to acquire a concern within the five-year period on proving that the acquisition would not substantially lessen competition or tend to create a monopoly.

Consent Judgment—Scope—Effect on Purchasers of Divested Property.—A consent judgment did not apply to any person who acquired from the defendant any property or assets required to be divested, if the acquisition was by a person approved by the court.

For the plaintiff: Lee Loevinger, W. D. Kilgore, Jr., Larry L. Williams, John W. Neville, Clement A. Parker and Robert J. Staal.

For the defendant: Stuart; Branigin, Ricks & Schilling, by George T. Schilling, and Bergson & Borkland, by Howard J. Adler, Jr.

Final Judgment

ESCHBACH, District Judge [*In full text*]:

Plaintiff, United States of America, having filed its complaint herein on November 20, 1959, and defendant having appeared and filed its answer to such complaint denying the substantive allegations thereof; and

Plaintiff and defendant 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 either party with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, therefore, 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

[*Clayton Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraint and monopolies and for other purposes," commonly known as the Clayton Act. The complaint states a claim for relief under Section 7 of said Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "National Homes" shall mean defendant National Homes Corporation, a corporation organized and existing under the laws of the State of Indiana, with its principal offices at Lafayette, Indiana;

(B) "Fairhill" shall mean the Fairhill Homes Division of National Homes, and shall consist of the plant, assets and facilities acquired by National Homes from Fairhill, Inc.;

(C) "American Houses" shall mean the American Houses Division of National Homes, and shall consist of the plants, assets and facilities acquired by National Homes from American Houses, Inc.;

(D) "Thyer" shall mean the plants, assets and facilities owned by The Thyer Manufacturing Corporation, a subsidiary of National Homes;

(E) "California" shall mean the plant, assets and facilities of National Homes Corporation of California (formerly Western Pacific Homes, Inc.), a wholly owned subsidiary of National Homes;

(F) "Prefabricated house" shall mean a package of structural sections and components embodying the maximum amount of in-plant fabrication at a permanently located factory which, together with other materials and associated services, is sold to a builder-dealer for erection with a minimum of on-site labor of a single-family house of specified design;

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

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant and to its subsidiaries, officers, directors, agents, servants and employees, and to those persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons who acquire from defendant any of the property or assets required to be divested hereby in whole or in part if the acquisition is by a person or persons approved by this Court.

IV

[*Future Acquisitions*]

Defendant is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock of any corporation, or any asset of (except for goods, machinery or equipment purchased or sold in the normal course of business) or interest in any person engaged in the United States in the manufacture and sale of prefabricated houses. If at any time defendant desires to make any acquisition prior to five (5) years from the date of entry of this Final Judgment which would otherwise be prohibited by this Final Judgment, it may apply to this Court, with notice to the plaintiff, for permission to make such acquisition, which shall be granted upon a showing by the defendant to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly.

V

[*Divestiture*]

(A) Defendant shall, in any event within three years from March 1, 1963, and in the manner set forth below, divest itself of Fair-hill, American Houses, Thyer and California, including all assets and improvements which may have been added by the defendant.

(B)(l) Defendant is ordered and directed to make a bona fide effort to sell by March 1, 1963, Fairhill; American Houses, or each plant of American Houses; Thyer, or each plant of Thyer; and California; as going concerns and operating factors, or as intact manufacturing units (consisting of land, buildings and other assets used in the manufacturing process, exclusive of inventories, other current assets, and over-the-road rolling stock) capable of being reactivated as operating factors, in competition in the manufacture and sale of prefabricated houses;

(2) If, by March 1, 1963, the defendant has been unable to comply fully with (1) above, then the defendant is directed to accomplish the required divestiture within three years from March 1, 1963, by selling or otherwise disposing of the remaining assets on a piecemeal or other basis.

(C) Defendant shall make known the availability of the companies, plants, and assets ordered to be divested by ordinary and usual means for the sale of a business or plant. Defendant shall furnish to bona fide prospective purchasers such information regarding the companies and properties to be divested, and shall permit them to have such access to, and to make such inspection of, the properties as are reasonably necessary. No sale of any of the said companies or plants as going concerns or as intact manufacturing units shall be made unless approved by this Court after hearing plaintiff and defendant in regard thereto if requested by either party. Any such sale proposed by defendant shall be approved by this Court unless the Court shall find that the effect of such sale may be substantially to lessen competition or to tend to create a monopoly. Defendant is authorized, but shall not be required, to obtain the approval of this Court with respect to a sale of assets other than as a going concern or as an intact manufacturing unit. Defendant is not required to sell all or any part of the business, assets and property of the companies ordered to be divested except at a price that is reasonable under all the circumstances.

VI

[*Conditions of Sale*]

The divestiture ordered and directed by Section V of this Final Judgment shall be made in good faith and shall be absolute and unqualified. None of the properties so ordered to be disposed of shall be directly or indirectly sold or disposed of to any person who, at the time of disposition, is an officer, director, agent or employee of defendant, or is acting for or under the control of defendant, or in which defendant owns any stock or financial interest; provided, however, that if any property is not sold or disposed of entirely for cash, nothing herein contained shall be deemed to prohibit defendant from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security on said property for the purpose of securing to defendant full payment of the price at which said property is disposed of or sold; and provided further that if, after bona fide disposal pursuant to Section V, defendant by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security regains ownership or control of any of the property disposed of, defendant shall, subject to the provisions of this Final Judgment, dispose of any such property thus regained within eighteen (18) months from the time of reacquisition.

VII

[*Prior Orders*]

This Final Judgment, and the terms and conditions contained herein, shall supersede the Orders on Plaintiff's Motions for Preliminary Injunction, entered December 9, 1960, and August 25, 1961; the Stipulation filed by the parties to this action on April 8, 1960, and entered upon the record as of April 14, 1960; and the Order of this Court entered September 26, 1962.

VIII

[*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 the 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 the 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 said 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.

IX

[*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.

United States v. Essex Wire

Case No. 1927

Year Judgment Entered: 1967

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Essex Wire Corp., U.S. District Court, N.D. Indiana, 1967 Trade Cases ¶72,263, (Dec. 1, 1967)

United States v. Essex Wire Corp.

1967 Trade Cases ¶72,263. U.S. District Court, N.D. Indiana, Fort Wayne Division. Civil Action No. 1927. Entered December 1, 1967. Case No. 1967 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Tying Arrangements—Magnet Wire—Consent Judgment.—A wire distributor was prohibited by a final consent judgment from tying the sale of magnet wire to any other product, from allocating magnet wire on the basis of other purchases, from refusing to sell because purchasers will buy no other products, from selling magnet wire in combination with other products at prices less than the sum of each product purchased separately, and from inducing sales representatives to require the purchase of other products as a condition for the sale of magnet wire.

For the plaintiff: Donald F. Turner, Asst. Atty. General; Baddia J. Rashid, William D. Kilgore, Jr., William E. Sarbaugh, John Edward Burke, William T Huyck and David J. Berman, Attorneys, Dept. of Justice.

For the defendant: Hammond E. Chaffetz and Fred H. Bartlit, Jr., Chicago, Ill.; Otto E. Grant, Jr., Fort Wayne, Indiana.

Final Judgment

ESCHBACH, D. J.: Plaintiff, United States of America, having filed its complaint herein on October 31, 1967 and defendant, Essex Wire Corporation, having filed its answer thereto denying the substantive allegations thereof and the parties hereto, by their respective attorneys, having consented to the making and 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 to any such issue;

Now, Therefore, before the taking of any testimony and upon said 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 the parties hereto. The complaint states claims against defendant 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, as amended, and under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used herein:

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

(B) "Magnet wire" means any continuous strand of metal conductor to be used in creating a magnetic field;

(C) "Any other product" means any product other than magnet wire sold by defendant, including, but not limited to, insulation materials.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, agents, and employees and to each of its subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Customer Notification*]

Defendant is ordered and directed, within 30 days after the date of this Final Judgment, to advise in writing all of the customers of its Insulation and Wires Incorporated division as listed in the IWI Customer Sales Analysis for June 1966 that this Final Judgment prohibits defendant from selling or offering to sell magnet wire on the condition or understanding that purchasers buy any other product from defendant, and that this Final Judgment prohibits defendant from allocating magnet wire among its customers on the basis of their purchases of any other product.

V

[*Tying Prohibited*]

Defendant is enjoined and restrained from, directly or indirectly, in any manner:

(A) Selling or offering to sell magnet wire on the condition or understanding that any purchaser buy any other product from defendant; or conditioning or tying, or attempting to condition or tie, the sale of magnet wire upon the sale of any other product;

(B) Allocating the amount of magnet wire available to any customer on the basis of its purchases of any other product;

(C) Refusing to sell, or discriminating in the availability, prices, terms, or conditions of sale of magnet wire, based in whole or in part on the fact the purchaser has or has not bought, is or is not buying, or will or will not agree to buy any other product from defendant;

(D) Selling or offering to sell magnet wire in combination with any other product at a price which is less than the sum of the prices of said products when purchased separately;

(E) Requiring, urging, or inducing any distributor or sales representative to require as a condition for the sale of magnet wire that the purchaser thereof purchase any other product.

VI

[*Prohibited Agreements*]

Defendant is enjoined and restrained from, selling, offering to sell, or conditioning the sale of, magnet wire upon, accompanied by, or pursuant to any term, condition, agreement, understanding, plan or program, the purpose or effect of which is contrary to, or inconsistent with, any of the provisions of this Final Judgment.

VII

[*Compliance & Inspection*]

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, 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 defendant, made through its principal office, be permitted (1) access during reasonable office hours to 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 subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of 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; and upon such request, defendant shall submit such reports in writing, under oath if so requested, 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 VII 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.