

APPENDIX A - PART I

FINAL JUDGMENTS

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.
LINE MATERIAL COMPANY, *et al.*

Civil Acton No.: 1696

Year Judgment Entered: 1948



U. S. vs. LINE MATERIAL COMPANY, ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF WISCONSIN.

Civil Action No. 1696.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

LINE MATERIAL COMPANY, ET AL., DEFENDANTS.

AMENDED FINAL JUDGMENT¹

The above entitled suit came on for trial September 10, 1945 before the Honorable F. Ryan Duffy, United States District Judge, and the complaint was dismissed on its merits May 14, 1946. This judgment was reversed by the Supreme Court of the United States and the case was remanded to this Court for entry of an appropriate judgment in accordance with the opinion of the Supreme Court of the United States.

Now, THEREFORE, upon motion of plaintiff, including its motion, filed October 9, 1948, to amend the judgment entered October 4, 1948, and after argument of counsel for all parties, the court hereby directs that the judgment entered October 4, 1948, be amended, and therefore it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

ARTICLE I

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

ARTICLE II

Pursuant to the mandate of the Supreme Court issued April 9, 1948 and filed in this Court on the 12th day of

¹ This Decree modifies the previous Decree by minor additions to clarify "Minimum Price" definitions. Previous Decree not printed.

April, 1948, the judgment of this Court entered herein on May 14, 1946 whereby the complaint herein was dismissed on its merits, is hereby vacated.

ARTICLE III

As used in this judgment:

A. "Fuse cutouts" refers to protective devices used on transmission, distribution, and power lines to break the electric circuit in which they are installed embodying a pivotally mounted expulsion tube containing a fuse link which ruptures from excessive current caused by a short circuit or other overload;

B. "Dropout fuse cutouts" refers to fuse cutouts constructed so that the expulsion tube automatically drops and swings out of place upon rupture of the fuse link;

C. "Minimum price provisions" as used in parts B and C of Article IV of this judgment, include: (1) any agreement or understanding to fix prices, sales conditions, or terms of sale; (2) any agreement or understanding that a licensee will report to a licensor any of its selling prices, other than amounts of sales upon which royalties are to be calculated; and (3) any agreement or understanding that the books and records of a licensee may be inspected by an employee, agent, or representative of a licensor, unless the agreement or understanding also provides that the inspection may be made only by an independent auditor, or a person acceptable to the licensee, who shall report to the licensor only the amount of royalty due and payable.

ARTICLE IV

A. Defendants have engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce to fix, maintain, and control prices of dropout fuse cutouts and their parts in violation of Section 1 of the Sherman Act, by entering into, and observing the provisions of, the license agreements described in paragraph B of this Article, which contain minimum price restrictions on the sale by the licensees of dropout fuse cutouts and their parts, with knowledge of:

1. The execution of each said license agreement then in existence;
2. That each of said license agreements contained substantially identical minimum price restrictions; and
3. The substance of the agreement of May 23, 1938 between Line Material Company and Southern States Equipment Corporation.

B. The minimum price provisions of the following agreements pertaining to dropout fuse cutouts are hereby declared to be illegal:

DATE	PARTIES
May 23, 1938	Line Material Company Southern States Equipment Corporation
October 3, 1938	Southern States Equipment Corporation James R. Kearney Corporation
January 12, 1940	Southern States Equipment Corporation Line Material Company
March 15, 1940	Line Material Company General Electric Company
March 21, 1940	Southern States Equipment Corporation General Electric Company
June 4, 1940	Line Material Company W. N. Matthews
June 4, 1940	Southern States Equipment Corporation W. N. Matthews
June 12, 1940	Line Material Company James R. Kearney Corporation
June 14, 1940	Southern States Equipment Corporation James R. Kearney Corporation
June 18, 1940	Line Material Company Railway & Industrial Engineering Co.
June 18, 1940	Southern States Equipment Corporation Railway & Industrial Engineering Co.
November 15, 1940	Line Material Company Porcelain Products, Inc.
November 18, 1940	Southern States Equipment Corporation Porcelain Products, Inc.

November 15, 1940	Line Material Company Pacific Electric Mfg. Corporation
November 18, 1940	Southern States Equipment Corporation Pacific Electric Mfg. Corporation
January 20, 1941	Line Material Company Schweitzer & Conrad, Inc.
January 21, 1941	Southern States Equipment Corporation Schweitzer & Conrad, Inc.
January 29, 1941	Line Material Company Westinghouse Electric & Mfg. Co.
January 29, 1941 (January 27, 1941)	Southern States Equipment Corporation Westinghouse Electric & Mfg. Co.
June 15, 1943	Line Material Company T. F. Johnson
June 28, 1943	Southern States Equipment Corporation T. F. Johnson
March 24, 1944	Line Material Company Royal Electric Manufacturing Company
April 25, 1944	Southern States Equipment Corporation Royal Electric Manufacturing Company
July 3, 1947	Line Material Company Hubbard and Company
July 9, 1947	Southern States Equipment Corporation Hubbard and Company

C. Each defendant, its agents, employees, successors and assigns, and each person acting or claiming to act under, through, by, or for it or him, and, except as to the individual defendant T. F. Johnson, each and all of its officers, directors, and subsidiaries are hereby enjoined and restrained from:

1. The further performance or enforcement of any of the minimum price provisions of said agreements;
2. Entering into, or carrying out, any agreement in restraint of interstate trade or commerce in dropout fuse cutouts for the purpose or with the effect of continuing, reviving, or reinstating any of the mini-

mun price provisions of the agreements declared in this judgment to be illegal.

ARTICLE V

A. Defendants Line Material Company and Southern States Equipment Corporation are hereby ordered and directed to file with the Clerk of this Court, within sixty (60) days after the effective date of this judgment, a list of the principal patents under their respective ownership or control, under which either has the power to license or sublicense, and which were, on March 8, 1948, licensed by or pursuant to one or more of the agreements listed in Article IV B of this judgment. The said list is referred to hereinafter in this judgment as "Schedule A" and is hereby made a part of this judgment as though it were fully set forth herein.

B. Within thirty (30) days from the date of this judgment, any licensee designated under Article IV B may cancel its said license agreement by giving written notice thereof to the licensor, said cancellation to be effective ten (10) days after the receipt of such notice of cancellation by the licensor. However, any such licensee so cancelling the license agreement may have the right to apply for a license under the provisions for compulsory licenses hereinafter described.

C. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby ordered and directed with respect to the patents listed in said "Schedule A" and all patents on inventions made prior to March 24, 1944 pertaining to dropout fuse cutouts hereafter acquired by them, or either of them, during the life of Schultz et al. Patent Re. 22,412 and any reissue thereof, to grant to each applicant therefor a non-exclusive license to make, use, and vend dropout fuse cutouts and their parts under any, some, or all of said patents, or under any claim or claims thereof. Said defendants, their successors and assigns, are further ordered and directed with respect to all claims of Schultz et al. Patent Re. 22,412, and with respect to all claims of

Lemmon Patent No. 2,150,102, which read on a structure claimed by said Schultz et al., patent, to grant each applicant therefor a non-exclusive license to make, use, and vend under any claim or claims thereof. Each of said two defendants, its successors and assigns, are hereby enjoined and restrained from making any assignment, sale, or other disposition of any of said patents which would deprive it, or them, of the power or authority to grant such licenses, unless it is required, as a condition of such assignment, sale, or other disposition, that the purchaser, transferee, or assignee, shall observe the requirements of Articles V and VI of this judgment; and the purchaser, transferee, or assignee shall file with this Court, prior to consummation of said transaction a consent to be bound by the provisions of said Articles V and VI of this judgment.

D. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from including any restriction or condition whatsoever in any license granted to others pursuant to the provisions of this Article except that: (1) the license may be non-transferable; (2) a reasonable non-discriminatory royalty may be charged; (3) reasonable provision may be made for 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; (4) 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 the books and records as hereinabove provided; (5) the license shall provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving ninety (90) days' notice in writing to the licensor; (6) the license shall provide that the licensee shall immediately have the benefit of any more favorable terms granted any other licensee; and (7) such other restrictions or conditions as may be approved by the court.

E. Upon receipt of written request for a license under the provisions of this Article, the defendant receiving such request shall advise the license-applicant in writing of the royalty which it deems reasonable and will require to be paid for a license under the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for license was received by the defendant, the license-applicant may apply forthwith to this Court for the determination of a reasonable royalty; and defendant shall, upon receipt of notice of the filing of such court application, promptly give notice thereof to the Attorney General. In any such court proceeding the burden of proof shall be on the defendant 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 license-applicant, and shall also apply to all other licensees, under the same claim or claims of the patent or patents, whose licenses provide for payment of a higher royalty rate than that determined by the Court. For said sixty (60) day period and pending the completion of any such court proceeding, the license-applicant shall have the right to make, use, and vend under the claim or claims of the patent or patents to which his application pertains without payment of royalty or other compensation, but subject to the final judgment and order of the Court in such proceeding, and further subject to the following provisions: The defendant 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, the defendant shall then issue and the license-applicant shall accept a license, or as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such court-application by the license-applicant. If the license-applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such failure shall be ground for dismissal of his application and for the rescission of any and all of the license-applicant's rights

under this paragraph. Where an interim license or sublicense has been issued pursuant to this paragraph, or where the license-applicant has exercised a right to make, use, and vend hereunder, reasonable royalty rates, if any, as finally determined by the Court may be retroactive for the license-applicant, and for all other licensees, under the same claim or claims of the patents, whose licenses provide for payment of a higher royalty rate than that determined by the Court, to a date to be fixed by the Court.

F. Defendants Line Material Company and Southern States Equipment Corporation are hereby ordered and directed to take such steps as may be necessary, within ninety (90) days after the effective date of this judgment, to list the patents in said "Schedule A" with the United States Patent Office for inclusion in the "Register of Patents Available for Licensing or Sale."

G. Nothing herein shall prevent any applicant for a license from attacking at any time the validity or scope of any patent, nor shall this judgment be construed as importing any validity or value to any patent.

ARTICLE VI

A. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement, occurring prior to the effective date of this judgment, of any claim of Schultz et al. Patent Re. 22,412 or of any claim of Lemmon Patent No. 2,150,102 which reads on a structure claimed by said Schultz et al. patent.

B. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement of any United States Letters Patent occurring prior to the effective date of this judgment by reason of the making, using or selling of dropout fuse cutouts or their parts.

C. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement, occurring after the effective date of this judgment, of any United States Letters Patent which is not listed in said "Schedule A" and is on an invention made prior to March 24, 1944, by reason of the making, using, or selling of dropout fuse cutouts or their parts, when the accused structure of the alleged infringer, during the period of alleged infringement, was licensed under either Schultz et al. Patent Re. 22,412 or Lemmon Patent 2,150,102, or any reissue or extension thereof.

ARTICLE VII

Each defendant, its agents, employees, successors and assigns, and each person acting or claiming to act under, through, or for it or him, and, except as to the individual defendant T. F. Johnson, each and all of its officers, directors, and subsidiaries 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 any other manufacturer of electrical current interrupting devices, or any person acting or claiming to act under, through, or for such other manufacturer:

(a) To fix or have fixed, maintain, or control the prices, sales conditions, or terms at which any dropout fuse cutout or part thereof, shall be sold, except that the defendant may agree with an individual customer upon prices to be charged by it on sales to such customer;

(b) To quote or sell, or to refuse to quote or sell, dropout fuse cutouts or their parts under any specified sales price, condition, or term.

ARTICLE VIII

A. Each defendant, its successors and assigns, are hereby ordered and directed, within thirteen (13) months

from the effective date of this judgment, to serve plaintiff with a statement, under oath, of:

(a) Its prices, terms, and conditions of sale that were in effect March 8, 1948 and that were applicable to dropout fuse cutouts;

(b) Each change made by it during the period between March 8, 1948 and one year after the effective date of this judgment with respect to any of said prices, terms, and conditions of sale;

(c) The effective date of each such change, the date it was announced to the trade, and the manner in which the announcement was made.

B. Within ninety (90) days after the service of the last of said statements upon plaintiff, plaintiff may move to amend this judgment in order more effectively to dissipate the effects of the said combination of defendants.

ARTICLE IX

Within sixty (60) days from the effective date of this judgment, each defendant, its successors and assigns, shall send to each of its agents, jobbers, salesmen, and distributors of dropout fuse cutouts in the United States a true and complete copy of this judgment and, within said sixty (60) day period, shall file with the Clerk of this Court its affidavit of mailing.

ARTICLE X

This judgment shall have no effect with respect to defendants' acts and operations without the continental United States or to their acts and operations within the continental United States relating exclusively to acts without the continental United States, or with respect to operations or activities, wherever performed, which are authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or by acts amendatory thereof or supplemental thereto; provided, however, that nothing in this article shall be construed to permit any action

which is or becomes unlawful under any existing or future law of the United States or of any political subdivision thereof.

ARTICLE XI

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 in writing at its principal office to any defendant, its successors or assigns, be permitted, subject to any legally recognized privilege: (a) access during the office hours of such defendants, its successors or assigns, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, its successors or assigns, relating to any of the matters contained in this judgment; (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; provided, however, that information obtained by the means permitted in this Article shall not 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 in which the United States of America is a party, for the purpose of securing compliance with this judgment, or as otherwise required by law.

ARTICLE XII

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, the enforcement of compliance therewith, and for the punishment of violations thereof.

ARTICLE XIII

Judgment is entered against defendants for all costs to be taxed in this proceeding.

ARTICLE XIV

This judgment shall be effective sixty (60) days after the date hereof.

(signed) F. RYAN DUFFY,
United States District Judge.

Dated October 19th, 1948.

UNITED STATES v.
HAMILTON MANUFACTURING CO., *et al.*

Civil Action No.: 60-C-57

Year Judgment Entered: 1960



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hamilton Manufacturing Co., Charles Bruning Co., Inc., Defiance Sales Corp., Dieterich-Post Co., Eugene Dietzgen Co., B. K. Elliott Co., Keuffel & Esser Co., The Frederick Post Co., and L. L. Ridgway Co., Inc., U.S. District Court, E.D. Wisconsin, 1960 Trade Cases ¶69,882, (Dec. 20, 1960)

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United States v. Hamilton Manufacturing Co., Charles Bruning Co., Inc., Defiance Sales Corp., Dieterich-Post Co., Eugene Dietzgen Co., B. K. Elliott Co., Keuffel & Esser Co., The Frederick Post Co., and L. L. Ridgway Co., Inc.

1960 Trade Cases ¶69,882. U.S. District Court, E.D. Wisconsin. Civil No. 60-C-57. Filed December 20, 1960. Case No. 1515 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Conspiracy—Boycott—Refusal to Deal—Price Fixing and Pricing Practices—Consent Decree.—A drafting products manufacturer and its principal distributors were ordered in a consent decree to terminate all contracts which fixed or attempted to fix resale prices for the manufacturer's drafting furniture and were prohibited from entering into similar contracts for a period of three years. The defendants were also prohibited from entering into, adhering to, maintaining, reviving or claiming any rights under any contract, agreement or understanding among themselves or with any other person to, (1) fix prices, terms, or conditions for the sale of drafting furniture to any third person (lawful resale price contracts not restricted), (2) limit or restrict the person to whom, or the terms or conditions on which any person may resell such furniture, (3) boycott, (4) refuse to stock or offer for sale drafting furniture other than that of the manufacturer, (5) refuse to extend discounts to any third person on the manufacturer's furniture. The defendants were also ordered to mail each wholesaler and retailer on their current distribution lists, a true and complete copy of this consent decree.

Conspiracy—Exclusive Dealing—Consent Decree.—A drafting products manufacturer and its principal distributors were prohibited in a consent decree from selling or offering to sell the manufacturer's drafting furniture on the expressed or implied condition that the purchaser buy all or any portion of his other requirements from the defendants or that the purchaser not buy or deal in drafting furniture manufactured or sold by any other person. The manufacturer was individually prohibited from refusing to enter into or cancelling any contract with a wholesaler or any retailer because of his refusal to agree or adhere to any contract contrary to this consent decree and from impeding or restricting, or the attempt to do so, the free choice of any wholesaler in the selection of customers for the manufacturer's products.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Lewis Bernstein, Philip L. Roache, Jr., Charles F. B. McAleer, Joseph J. O'Malley and Allan J. Reniche, Attorneys, Department of Justice.

For the defendants: A. F. Rankin for Hamilton Mfg. Co., Steven E. Keane for Charles Bruning Co., Inc., James P. Brody for B. K. Elliott Co. and Defiance Sales Corp., W. Donald McSweeney and Kenneth K. Luce for Eugene Dietzgen Co., Henry M. Thullen and Ray T. McCann for Frederick Post Co., Kneeland A. Godfry for L. L. Ridgway Co., Inc., and T. L. Tolan, Jr., for Dieterich-Post Co.

Final Judgment

TEHAN, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on April 25, 1960, the defendants having appeared, and the plaintiff and the defendants,¹ 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 an admission by any party hereto in respect of any such issue;

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Now, therefore, before the taking of any testimony and without trial of 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 herein and of the parties hereto. The complaint states a claim upon which relief against the defendants 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.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, corporation, association or other legal entity;
- (B) "Hamilton" shall mean the defendant Hamilton Manufacturing Company;
- (C) "Drafting furniture" shall mean all furniture and equipment suitable for use in drafting, including but not limited to, drafting tables, drawing tables, drawing boards and files;
- (D) "Hamilton drafting furniture" shall mean drafting furniture manufactured or sold by defendant Hamilton;
- (E) "Wholesaler" shall mean any person who purchases drafting furniture for resale to persons other than consumers;
- (F) "Retailer" shall mean any person who purchases drafting furniture for resale to consumers.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall also apply to such defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price-fixing Contracts Termination*]

The defendants are ordered and directed within thirty (30) days from the date of entry of this Final Judgment to terminate and cancel all contracts or agreements which fix or maintain or purport to fix or maintain resale prices of Hamilton drafting furniture and the defendants are each enjoined and restrained from entering into, adhering to or enforcing, directly or indirectly, the same or any other such contracts or agreements having a similar purpose or effect as to Hamilton drafting furniture for a period of three (3) years from the date of entry of this Final Judgment; provided, however, that any defendant may, at any time after termination of eighteen (18) months from the date of entry of this Final Judgment, apply to this Court, with reasonable notice to the Attorney General and opportunity for him to be heard, for modification or elimination of the restrictions of this Section IV for good cause shown.

V

[*Practices Prohibited*]

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The defendants are each enjoined and restrained from entering into, adhering to, maintaining, reviving or claiming any rights under any contract, agreement or understanding among themselves or with any other person to:

- (A) Fix, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of Hamilton drafting furniture to any third person;
- (B) Limit or restrict the person to whom, or the terms or conditions on which any person may resell Hamilton drafting furniture;
- (C) Boycott or otherwise refuse to do business with any person or to maintain a system requiring any mutual approval of third persons to whom either may sell Hamilton drafting furniture;
- (D) Refuse to stock or offer for sale, or prevent or attempt to prevent any other person from stocking or offering for sale, drafting furniture manufactured or sold by persons other than Hamilton;
- (E) Refuse to extend discounts on Hamilton drafting furniture to any third person.

The provisions of subsection (A) of this Section V, however, shall not restrict the right of any defendant to exercise such lawful rights which it may have to enter into resale price maintenance agreements, as to Hamilton drafting furniture, as provided in Section IV above.

VI

The defendants are each enjoined and restrained from:

- (A) Selling or offering to sell any Hamilton drafting furniture on the condition expressed or implied, that the purchaser thereof buy all or any portion of his other requirements from such defendants or any of them; or
- (B) Selling or offering to sell Hamilton drafting furniture on the condition or understanding, expressed or implied, that the purchaser not buy or deal in drafting furniture manufactured or sold by any other person.

VII

Defendant Hamilton is enjoined and restrained from:

- (A) Refusing to enter into or cancelling any contract with a wholesaler or any retailer for the sale or distribution of Hamilton drafting furniture because of his refusal to agree or adhere to any contract, agreement or understanding contrary to any of the provisions of this Final Judgment;
- (B) Impeding or restricting or attempting to impede or restrict, directly or indirectly, the free choice of any wholesaler in the selection of his customers for Hamilton drafting furniture.

VIII

[*Notification of Wholesalers and Retailers*]

Defendants are each ordered and directed to mail, within ninety (90) days from the date of entry of this Final Judgment, a true and complete copy of this Final Judgment to each wholesaler and retailer on such defendant's current distribution lists.

IX

[*Enforcement and Compliance*]

For the purpose of 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 the principal office of such defendant, be permitted (1) access during the office hours of the defendant to books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any subject matter contained in this Judgment and (2) subject to the reasonable

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convenience of the defendant and without restraint or interference from it to interview officers and employees of the defendant, who may have counsel present, regarding any such matters. Upon such written request, said defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information 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 plaintiff 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.

X

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any party hereto 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.

Footnotes

- 1 The provisions of this decree do not apply to Keuffel & Esser Company.

UNITED STATES v.
HAMILTON MANUFACTURING CO., *et al.*

Civil Action No.: 60-C-57

Year Judgment Entered: 1962
(Adding An Additional Defendant)



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAMILTON MANUFACTURING COMPANY,
CHARLES BRUNING COMPANY, INC.,
DEFIANCE SALES CORPORATION,
DIETERICH-POST COMPANY,
EUGENE DIETZGEN CO.,
B. K. ELLIOTT COMPANY,
KEUFFEL & ESSER COMPANY,
THE FREDERICK POST CO., and
L. L. RIDGWAY COMPANY, INC.,

Defendants.

CIVIL NO. 60-C-57.

Filed: 2/9/62
as to Def. Keuffel
& Esser Company

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 25, 1960, the defendants having appeared, and the plaintiff and the defendants, 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 an admission by any party hereto in respect of 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.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief against the defendants 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.

II.

As used in this Final Judgment:

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

(B) "Hamilton" shall mean the defendant Hamilton Manufacturing Company;

(C) "Drafting furniture" shall mean all furniture and equipment suitable for use in drafting, including but not limited to, drafting tables, drawing tables, drawing boards and files;

(D) "Hamilton drafting furniture" shall mean drafting furniture manufactured or sold by defendant Hamilton;

(E) "Wholesaler" shall mean any person who purchases drafting furniture for resale to persons other than consumers;

(F) "Retailer" shall mean any person who purchases drafting furniture for resale to consumers.

III.

The provisions of this Final Judgment applicable to any defendant shall also apply to such defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

The defendant Keuffel & Esser Company is ordered and directed within thirty (30) days from the date of entry of this Final Judgment to terminate and cancel all contracts or agreements which fix or maintain or purport to fix or maintain resale prices of Hamilton drafting furniture and the defendants are each enjoined

and restrained from entering into, adhering to or enforcing, directly or indirectly, the same or any other such contracts or agreements having a similar purpose or effect as to Hamilton drafting furniture for a period of three (3) years from December 20, 1960; provided, however, that any defendant may, at any time after termination of eighteen (18) months from December 20, 1960, apply to this Court, with reasonable notice to the Attorney General and opportunity for him to be heard, for modification or elimination of the restrictions of this Section IV for good cause shown.

V.

The defendants are each enjoined and restrained from entering into, adhering to, maintaining, reviving or claiming any rights under any contract, agreement or understanding among themselves or with any other person to:

(A) Fix, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of Hamilton drafting furniture to any third person;

(B) Limit or restrict the person to whom, or the terms or conditions on which any person may resell Hamilton drafting furniture;

(C) Boycott or otherwise refuse to do business with any person or to maintain a system requiring any mutual approval of third persons to whom either may sell Hamilton drafting furniture;

(D) Refuse to stock or offer for sale, or prevent or attempt to prevent any other person from stocking or offering for sale, drafting furniture manufactured or sold by persons other than Hamilton;

(E) Refuse to extend discounts on Hamilton drafting furniture to any third person.

The provisions of subsection (A) of this Section V, however, shall not restrict the right of any defendant to exercise such lawful rights which it may have to enter into resale price maintenance agreements, as to Hamilton drafting furniture, as provided in Section IV above.

VI.

The defendants are each enjoined and restrained from:

(A) Selling or offering to sell any Hamilton drafting furniture on the condition expressed or implied, that the purchaser thereof buy all or any portion of his other requirements from such defendants or any of them; or

(B) Selling or offering to sell Hamilton drafting furniture on the condition or understanding, expressed or implied, that the purchaser not buy or deal in drafting furniture manufactured or sold by any other person.

VII.

Defendant Hamilton is enjoined and restrained from:

(A) Refusing to enter into or cancelling any contract with a wholesaler or any retailer for the sale or distribution of Hamilton drafting furniture because of his refusal to agree or adhere to any contract, agreement or understanding contrary to any of the provisions of this Final Judgment;

(B) Impeding or restricting or attempting to impede or restrict, directly or indirectly, the free choice of any wholesaler in the selection of his customers for Hamilton drafting furniture.

VIII.

Defendant Keuffel & Esser Company is ordered and directed to mail, within ninety (90) days from the date of entry of this Final Judgment, a true and complete copy of this Final Judgment to each wholesaler and retailer on such defendant's current distribution lists.

IX.

For the purpose of 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 defendant Keuffel & Esser Company made to the principal office of such defendant, be permitted (1) access during the office hours of the defendant to books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any subject matter contained in this Judgment and (2) subject to the reasonable convenience of the defendant and without restraint or interference from it to interview officers and employees of the defendant, who may have counsel present, regarding any such matters. Upon such written request, said defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information 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 plaintiff 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.

X.

Jurisdiction is retained for the purpose of enabling any party hereto 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 violation thereof.

Dated: February 9, 1962

/s/ Robert E. Teahan
United States District Judge

We consent to the entry of the foregoing Final Judgment:

LEE LOEVINGER
Assistant Attorney General

Philip L. Roache, Jr.
PHILIP L. ROACHE, JR.

WILLIAM D. KILGORE, JR.

LEWIS BERNSTEIN

Attorneys, Department of Justice.

For the Defendant Keuffel & Esser Company:

KEUFFEL & ESSER COMPANY

By James J. Tuttle
Vice President

BURKE & BURKE

By Robert E. Taylor
Member of the Firm

QUARLES, HERRIOTT & CLEMONS

By James P. Williams
Member of the Firm

Attorneys for Keuffel & Esser Company

UNITED STATES v.
BRUNSWICK-BALKE-COLLENDER COMPANY , *et al.*

Civil Action No.: 59-C-163

Year Judgment Entered: 1961



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	NO. 59 C 163
BRUNSWICK-BALKE-COLLENDER	)	
COMPANY ET AL.,	)	
	)	
Defendants.	)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on July 30, 1959 and the defendants having appeared herein, and the plaintiff and the defendant Fred H. Corray by their respective attorneys having severally consented to the entry of this Final Judgment:

NOW, THEREFORE, before any testimony or evidence 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 of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants under Sections 1 and 2 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) "Persons" shall mean any individual, partnership, firm, association, corporation, or other legal or business entity;

(B) "Folding gymnasium bleachers" shall mean a series of tiered, bench like seats, capable of being folded or rolled out, used for seating at athletic, theatrical, or other events;

(C) "Bid" shall mean any offer for the sale of folding gymnasium bleachers made pursuant to an invitation therefor extended to more than one manufacturer or distributor of folding gymnasium bleachers.

III

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

IV

Defendant Fred H. Corray is enjoined and restrained from directly or indirectly:

(A) Collecting from, or circulating, reporting, or recommending to any manufacturer or distributor of folding gymnasium bleachers any costs or averaged cost of manufacture or sale of folding gymnasium bleachers or any formula for computing any such costs;

(B) Recommending or urging, or attempting to recommend or urge, prices for the sale of folding gymnasium bleachers;

(C) Contributing to or participating in any program resulting in the dissemination of information concerning or relating to estimates, predictions, or otherwise of the amount of future sales of folding gymnasium bleachers by any individual manufacturer thereof.

V

The defendant is individually and severally enjoined and restrained from:

(A) Urging or suggesting, or attempting to urge or suggest, to any manufacturer of folding gymnasium bleachers any price, bid, quotation, discount, allowance, standards of design, or other terms or conditions to be used by such manufacturer in the sale of folding gymnasium bleachers;

(B) Entering into, adhering to, maintaining, or claiming any rights under any contract, combination, agreement, understanding, plan, or program with any manufacturer of folding gymnasium bleachers or any association or central agency of or for such manufacturer to fix, determine, establish or maintain prices, bids, quotations, pricing methods, discounts, allowances, or other terms or conditions of sale of folding gymnasium bleachers;

(C) Circulating to or exchanging with any manufacturer of folding gymnasium bleachers by means of an association of manufacturers or otherwise any price lists or price quotations applicable to folding gymnasium bleachers in advance of the general publication, circulation or communication of price lists or price quotations to customers and dealers;

(D) Circulating, exchanging, or using in any manner any price list or purported price list, or making any bid containing or purporting to contain any prices or terms for the sale of folding gymnasium bleachers, which have not been arrived at or determined by such defendant;

(E) Disclosing to or exchanging with any manufacturer of folding gymnasium bleachers the amount or other terms or conditions of any folding gymnasium bleacher bid prior to the award of the bid or prior to the disclosure of such information by the prospective customer;

(F) Being a member of or contributing anything of value to, or participating in the activities of any association or central agency of or for manufacturers of folding gymnasium bleachers with knowledge that its activities are inconsistent with any of the provisions of this Final Judgment, or which purports to test or certify compliance with any safety standards for folding gymnasium bleachers.

VI

The defendant is individually and severally enjoined and restrained from combining or conspiring or from entering into, adhering to, maintaining, or furthering directly or indirectly any contract, agreement, understanding, plan, or program with any defendant or any person engaged in the manufacture of folding gymnasium bleachers, or any association or central agency of or for such persons, to:

- (A) Refuse to submit a bid for the sale of folding gymnasium bleachers or to submit a collusive bid therefor;
- (B) Allocate territories, customers or markets, or proportionate shares thereof, for the sale of folding gymnasium bleachers;
- (C) Refrain from competing in the sale of folding gymnasium bleachers in any market, territory, or sale.

VII

Nothing contained in this Final Judgment shall be deemed to prohibit any defendant from participating with other manufacturers of folding gymnasium bleachers to promulgate safety standards for folding gymnasium bleachers, or from urging the support and adoption of legislation or any other governmental regulation for safety features in the construction of folding gymnasium bleachers.

VIII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice given to the defendant at his principal office, shall be permitted, subject to any legally recognized privilege, (a) access during the office hours of such defendant and the right to copy or reproduce all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or 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, to interview officers and employees of such defendant who may have counsel present regarding any such matters. Upon such written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division, the signatory defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court 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 herein, for the enforcement of compliance therewith, and punishment of violations thereof.

s/ Robert E. Tehan

ROBERT E. TEHAN
Chief Judge
United States District Court

Dated: June 19, 1961

We hereby consent to the making and entry of the foregoing
Final Judgment.

LEE LOEVINGER
Assistant Attorney General

WILLIAM D. KILGORE, JR.

BADDIA J. RASHID
Attorneys, Department of Justice

JOHN T. CHADWELL

GLENN W. MCGEE
Snyder, Chadwell, Keck, Kayser
& Ruggles
135 South LaSalle Street
Chicago 3, Illinois
Attorneys for: Fred H. Corray

EARL A. JINKINSON

FRANCIS C. HOYT

JOSEPH E. PAIGE

Attorneys, Department of Justice
Room 404, United States Courthouse
Chicago 4, Illinois
Webster 9-2395

UNITED STATES v.
BRUNSWICK-BALKE-COLLENDER COMPANY *et al.*

Civil Action No.: 59-C-163

Year Judgment Entered: 1962
(Adding Additional Defendants)



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Brunswick-Balke-Collender Co., Wayne Iron Works, Universal Bleacher Co., Fred Medart Manufacturing Co., Consolidated Foundries and Manufacturing Corp., Safway Steel Products, Inc., and Fred H. Corray., U.S. District Court, E.D. Wisconsin, 1962 Trade Cases ¶70,346, (May 14, 1962)

[Click to open document in a browser](#)

United States v. Brunswick-Balke-Collender Co., Wayne Iron Works, Universal Bleacher Co., Fred Medart Manufacturing Co., Consolidated Foundries and Manufacturing Corp., Safway Steel Products, Inc., and Fred H. Corray.

1962 Trade Cases ¶70,346. U.S. District Court, E.D. Wisconsin. Civil Action No. 59-C-163. Filed May 14, 1962. Case No. 1470 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Consent Judgment—Pricing Practices—Withholding of Government Consent—Folding Gymnasium Bleachers.—Defendant corporations, engaged in the sale and distribution of folding gymnasium bleachers, were prohibited by consent from suggesting to manufacturers uniform pricing practices or standards of manufacture (except as to safety features or standards), entering into pricing arrangements with manufacturers, or circulating advance information concerning prices, bids or terms of sale. Noting that injunctive provisions submitted by the government in its proposed consent judgment were like those submitted by the defendants, who consented to entry of the judgment, the court entered judgment without trial notwithstanding the failure of the government to do more than approve the judgment in form.

For the plaintiff: Earl A. Jinkinson and Francis C. Hoyt, Attorneys, Department of Justice.

For the defendants: Erwin C. Heininger for Brunswick-Balke-Collender Co., Earl E. Pollock for Wayne Iron Works, Walker Smith for Universal Bleacher Co., Lewis A. Stocking for Safway Steel Products, Inc., and Floyd G. Kops for Consolidated Foundries and Manufacturing Corp.

Final Judgment

TEHAN, Chief Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on July 30, 1959, and the defendants having appeared herein, and defendant Consolidated Foundries and Manufacturing Corporation having filed an answer denying the allegations of the complaint, and judgment having been entered as to defendant Fred H. Corray on June 19, 1961, and defendants Brunswick Corporation (formerly Brunswick-Balke-Collender Company), Wayne Iron Works, Universal Bleacher Company, and Safway Steel Products, Inc., having filed .1 proposed final judgment materially identical to this Final Judgment, and the plaintiff having filed with the Court a proposed final judgment, the injunctive provisions of which are materially identical to those of the final judgment proposed by said defendants, and now said defendants and defendant Consolidated Foundries and Manufacturing Corporation having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission in respect to any such issue, and the plaintiff having objected to entry of this Final Judgment, and this Court having determined in its opinion of March 27, 1962 [[1962 TRADE CASES ¶ 70,282](#)], that this Final Judgment contains all provisions necessary and proper to prevent and restrain such alleged violations and all injunctive relief prayed for in the complaint:

Now, therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and pursuant to the Court's opinion dated March 27, 1962, it is hereby ordered, adjudged and decreed as follows:

I

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1

This Court has jurisdiction of 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 Sections 1 and 2 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) "Persons" shall mean any individual, partnership, firm, association, corporation, or other legal or business entity;
- (B) "Folding gymnasium bleachers" shall mean series of tiered, bench like seats, capable of being folded or rolled out, used for seating at athletic, theatrical or other events;
- (C) "Bid" shall mean any offer for the sale of folding gymnasium bleachers made pursuant to an invitation therefor extended to more than one manufacturer or distributor of folding gymnasium bleachers.

III

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

IV

These defendants are jointly and severally enjoined and restrained from:

- (A) Urging or suggesting, or attempting to urge or suggest, to any manufacturer of folding gymnasium bleachers any price, bid, quotation, discount, allowance, standards of design, or other terms or conditions to be used by such manufacturer in the sale of folding gymnasium bleachers;
- (B) Entering into, adhering to, maintaining or claiming any rights under any contract, combination, agreement, understanding, plan or program with any manufacturer of folding gymnasium bleachers or any association or central agency of or for such manufacturer to fix, determine, establish or maintain prices, bids, quotations, pricing methods, discounts, allowances, or other terms or conditions of sale of folding gymnasium bleachers;
- (C) Circulating to or exchanging with any manufacturer of folding gymnasium bleachers by means of an association of manufacturers or otherwise any price lists or price quotations applicable to folding gymnasium bleachers in advance of the general publication, circulation or communication of price lists or price quotations to customers and dealers;
- (D) Circulating, exchanging or using in any manner any price list or purported price list, or making any bid containing or purporting to contain any prices or terms for the sale of folding gymnasium bleachers, which have not been arrived at or determined by such defendant;
- (E) Disclosing to or exchanging with any manufacturer of folding gymnasium bleachers the amount or other terms or conditions of any folding gymnasium bleacher bid prior to the award of the bid or prior to the disclosure of such information by the prospective customer;
- (F) Being a member of or contributing anything of value to, or participating in the activities of any association or central agency of or for manufacturers of folding gymnasium bleachers with knowledge that its activities are inconsistent with any of the provisions of this Final Judgment, or which purports to test or certify compliance with any safety standards for folding gymnasium bleachers.

V

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These defendants are jointly and severally enjoined and restrained from combining or conspiring or from entering into, adhering to, maintaining or furthering directly or indirectly any contract, agreement, understanding, plan or program with any defendant or any person engaged in the manufacture of folding gymnasium bleachers, or any association or central agency of or for such persons, to:

- (A) Refuse to submit a bid for the sale of folding gymnasium bleachers or to submit a collusive bid therefor;
- (B) Allocate territories, customers or markets, or proportionate shares thereof, for the sale of folding gymnasium bleachers;
- (C) Refrain from competing in the sale of folding gymnasium bleachers in any market, territory or sale.

VI

Nothing contained in this Final Judgment shall be deemed to prohibit any defendant from participating with other manufacturers of folding gymnasium bleachers to promulgate safety standards for folding gymnasium bleachers, or from urging the support and adoption of legislation or any other governmental regulation for safety features in the construction of folding gymnasium bleachers.

VII

Each of the defendants, other than defendant Fred H. Corray, is ordered and directed not later than sixty (60) days following the date of entry of this Final Judgment individually and independently (1) to review its then prevailing prices for folding gymnasium bleachers, (2) to determine prices for folding gymnasium bleachers based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices to establish the prices determined under (2) above, which prices shall become effective not later than one hundred and fifty (150) days following the date of entry of this Final Judgment. Nothing contained herein shall prevent such defendants from deviating from, modifying, or otherwise thereafter changing the price list as established herein if such changes are otherwise consistent with the other terms of this Final Judgment. This Section VII shall not apply to any defendant which since July 30, 1959, has individually or independently established its own prices in a manner consistent with the procedure set forth in this Section.

VIII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice given to any defendant at its principal office, shall be permitted, subject to any legally recognized privilege, (a) access during the office hours of such defendants and the right to copy or reproduce all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of such defendants relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendants and without restraint or interference, to interview officers and employees of such defendants who may have counsel present regarding any such matters. Upon such written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division, the signatory defendants shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court 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 herein, for the enforcement of compliance therewith, and punishment of violations thereof.

UNITED STATES v.
BRUNSWICK-BALKE-COLLENDER COMPANY , *et al.*

Civil Action No.: 59-C-163

Year Judgment Entered: 1962
(Dismissing One Defendant)



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 59-C-163
	)	
BRUNSWICK-BALKE-COLLENDER	)	
COMPANY; WAYNE IRON WORKS;	)	
UNIVERSAL BLEACHER COMPANY;	)	
FRED MEDART MANUFACTURING	)	
CO.; CONSOLIDATED FOUNDRIES	)	
AND MANUFACTURING CORPORATION;	)	
SAFWAY STEEL PRODUCTS, INC.;	)	
and FRED H. CORRAY,	)	
	)	
Defendants.	)	

FINAL JUDGMENT AS TO DEFENDANT
FRED MEDART MANUFACTURING CO.

The plaintiff, United States of America, having filed its complaint herein on July 30, 1959, and the defendant, Fred Medart Manufacturing Co., having appeared herein and having filed on May 19, 1961 a motion for summary judgment, supported by the affidavit of its President, to dismiss the complaint on the ground that this action is now moot as to it, and the Court having heard the contentions of counsel and having read the briefs of the aforesaid defendant and the plaintiff and being fully advised in the premises, and the Court having rendered its opinion on May 14, 1962 holding that defendant, Fred Medart Manufacturing Co., is entitled to have its motion for summary judgment granted,

NOW THEREFORE, It Is Hereby Ordered, Adjudged and Decreed that:

1. The opinion of this Court dated March 27, 1962, granting the motion of various defendants for entry of judgment be, and it is hereby, amended to exclude therefrom the defendant Fred Medart Manufacturing Co.; and
2. The motion of defendant, Fred Medart Manufacturing Co., for summary judgment of dismissal of the complaint as to it on the ground of mootness be, and it is hereby granted;

3. Plaintiff's complaint against defendant, Fred Medart Manufacturing Co., be, and it is hereby, dismissed with prejudice.

ENTER:

Robert E. Tehan

Chief Judge, United States District
Court

Dated: May 28, 1962.

Approved as to form this 24th day of May, 1962.

Attorneys, Department of Justice.

UNITED STATES v.
HUBBARD AND COMPANY, *et al.*

Civil Action No.: 62-C-49

Year Judgment Entered: 1963



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hubbard and Company; McGraw-Edison Company; Joslyn Mfg. and Supply Co.; Utilities Service Company; Oliver Electrical Manufacturing Company; and A. B. Chance Company., U.S. District Court, E.D. Wisconsin, 1963 Trade Cases ¶70,801, (Jul. 1, 1963)

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United States v. Hubbard and Company; McGraw-Edison Company; Joslyn Mfg. and Supply Co.; Utilities Service Company; Oliver Electrical Manufacturing Company; and A. B. Chance Company.

1963 Trade Cases ¶70,801. U.S. District Court, E.D. Wisconsin. Civil Action No. 62 C 49. Entered July 1, 1963. Case No. 1650 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Collusive Bidding—Transmission Line Hardware—Consent Judgment.—Six manufacturers of hardware used in the construction and maintenance of electrical and communication transmission lines were prohibited under the terms of a consent judgment from eliminating or suppressing competition in the sale of pole line hardware, fixing or maintaining prices, terms or conditions of sale of such hardware, communicating or exchanging price information, or submitting collusive or rigged bids for supplying such hardware.

For the plaintiff: Earl A. Jinkinson and Joseph Prindaville, Attorneys, Department of Justice, Lee Loevinger, Assistant Attorney General, and Harry N. Burgess, Attorney, Department of Justice.

For the defendants: Robert P. Harland for Hubbard and Company; Edward R. Johnston and Joseph Dean for McGraw-Edison Company; Hyman B. Raskin and Robert J. Downing for Joslyn Mfg. and Supply Co.; M. Harvey Smedley and Walter S. Davis for Utilities Service Company; Neil McKay for Oliver Electrical Manufacturing Company; and H. Templeton Brown and Patrick W. O'Brien for A. B. Chance Co.

Final Judgment

GRUBB, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on February 20, 1962, defendants having filed their answers thereto and the plaintiff and each of the defendants having consented to the: entry of this Final Judgment, it is hereby.

Ordered, adjudged, and decreed as follows :

I

[Sherman Act]

This Final Judgment is entered before the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without any estoppel of, except as to the specific relief herein contained, or admission by any party as to any such issue. The Court has jurisdiction of 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 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

[Definitions]

As used in this Final Judgment:

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

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(B) "Pole line hardware" shall mean and include specifically any, some or all of those products listed below and any other products used in the construction and maintenance of electrical transmission, distribution and communication lines which perform the same functions and are known generally in the trade as overhead and underground pole line hardware;

Cable extension arms	Guy attachments
Bands	Hangers
Bayonets	Hooks
Bolts	Irons
Braces	Links
Brackets	Nuts
Clamps	Pins
Clevises	Plates
Eyelets	Racks
Gains	Ridge Irons
Guards	Rods
Screws	Saddles
Shackles	Struts
Shims	Supports
Steps	Thimbles
Straps	Dead End tongues
	Washers

III

[*Applicability*]

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

IV

[*Practices Prohibited*]

Each of the defendants is enjoined and restrained from directly or indirectly entering into or adhering to any agreement, arrangement, understanding, plan or program with any other manufacturer or distributor of pole line hardware to:

- (A) Eliminate or suppress unreasonably competition in the sale of pole line hardware;
- (B) Fix or maintain prices, discounts or other terms or conditions for the sale of pole line hardware to any third person;
- (C) Communicate to or exchange any information concerning prices, discounts or other terms or conditions for the sale of pole line hardware prior to general publication to customers, except in connection with bona fide purchase or sale negotiations;
- (D) Submit collusive or rigged bids or quotations for supplying pole line hardware to any buyer.

V

[*Non-collusion Affidavit*]

Each of the defendants is ordered and directed annually for a period of five years from the date of entry of this Final Judgment to notify each Federal, State and local governmental agency to which the defendant submits a sealed bid for any pole line hardware, that such defendant has been ordered, and each such defendant is hereby

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so ordered, to submit upon request of such public agency a statement in the form set forth in the Appendix hereto with each sealed bid for pole line hardware submitted to such agency.

VI

[Compliance]

Defendants are each ordered and directed within sixty (60) days following the entry of this Final Judgment to file with this Court, with a copy served on plaintiff, an affidavit stating that the defendant has withdrawn its price lists (or, where no price lists had been issued, its then prevailing prices) for pole line hardware which were in effect on or prior to June 6, 1961, and has issued new price lists or prices for pole line hardware, which price lists or prices were independently arrived at by such defendant on the basis of its individual cost figures and individual judgments as to profits and other lawful considerations.

VII

[Membership in Trade Associations]

Defendants are each enjoined and restrained from belonging to, or participating in, any of the activities of any trade association or other organization with knowledge that the activities or objectives of such trade association or other organization are being carried on in a manner which, if the association or other organization were a consenting defendant herein, would violate any provision of this Final Judgment.

VIII

[Inspection]

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

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

Upon such written request, such defendant shall submit such reports in writing with respect to any of 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,)1 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 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 of any of the provisions thereof, and for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance therewith and for the punishment of violations thereof.

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APPENDIX

Affidavit

The undersigned hereby certify to their best knowledge and belief that:

(1) The bid to(name of recipient of bid) dated
has not been prepared by(name of defendant) in collusion with any other seller of pole line
hardware, and

(2) The prices, terms or conditions of said bid have not been communicated by the undersigned nor
by any employee or agent of(name of defendant), to any other seller of pole line hardware and
will not be communicated to any such seller prior to the official opening of said bid,

in violation of the Final Judgment in Civil No. 62 C 49 entered by the United States District Court for the
Eastern District of Wisconsin on 1963.

Dated:

.....
Signature of person responsible
for the preparation of the bid

.....
Signature of person supervising
the above person, where feasible

UNITED STATES v.
AMERICAN OPTICAL COPANY,
AN ASSOCIATION, *et al.*

Civil Action No.: 62-C-206

Year Judgment Entered: 1966



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Optical Company, an Association; American Optical Company, a Corporation; and Bausch & Lomb Incorporated., U.S. District Court, E.D. Wisconsin, 1966 Trade Cases ¶71,781, (Jun. 28, 1966)

[Click to open document in a browser](#)

United States v. American Optical Company, an Association; American Optical Company, a Corporation; and Bausch & Lomb Incorporated.

1966 Trade Cases ¶71,781. U.S. District Court, E.D. Wisconsin. Civil No. 62 C 206. Entered June 28, 1966. Case No. 1640 in the Antitrust Division of the Department of Justice.

Sherman Act

Acquisitions—Manufacturer—Wholesaler of Eyeglass Lenses—Consent Judgment.—A manufacturer-wholesaler of eyeglass lenses was prohibited by a consent judgment from acquiring any wholesale laboratory for a period of 20 years and from opening any new wholesale laboratory, with certain exceptions, for the same period of time.

Acquisitions—Manufacturer—Dispenser of Eyeglasses—Consent Judgment.—A manufacture-wholesaler of eyeglass lenses was prohibited by a consent judgment from engaging in business as a dispenser of eyeglasses for a period of five years and, for a further period of 15 years thereafter, from acquiring any dispenser without the consent of the government or the approval of the court.

Divestiture—Price Fixing Contingency—Right to Seek Relief—Consent Judgment.—The government, under the terms of a consent judgment, could seek a court order requiring two manufacturers-wholesalers of eyeglass lenses to divest themselves of certain wholesale branches, in the event that the manufacturers-wholesalers, within 20 years, wilfully entered into any agreement between themselves or with any other major manufacturer-wholesaler to fix the wholesale prices of lenses, for the purpose or with the effect of eliminating any independent wholesaler.

Practices—Operating Branches at a Loss—Filing of Financial Statements—Consent Judgment.—A manufacturer-wholesaler of eyeglass lenses was required by a consent judgment to submit, for a period of 20 years, annual financial statements for each of its wholesale laboratory branches for the purpose of preventing the operation of laboratories at a loss in unfair competition. The sale or closing of a branch operating at a loss could be required.

Refusal to Sell—Threats—Consent Judgment.—A manufacturer-wholesaler of eyeglass lenses was prohibited by a consent judgment, for a period of 20 years, from refusing to sell or threatening to refuse to sell lenses to any wholesale laboratory because of the price or prices at which such laboratory had sold lenses.

For the plaintiff: Donald F. Turner, Assistant Attorney General, and Gordon B. Spivack, William D. Kilgore, Jr., and John E. Sarbaugh, Attorneys, Department of Justice.

For the defendants: Kent V. Lukingbeal, Steven E. Keane, Rogers M. Doering, and Robert V. Abendroth.

Final Judgment

E. T. GIGNOUX, D. J.: The plaintiff, United States of America, having filed its complaint on December 29, 1961, the cause thereafter having been transferred to this Court, the defendants having filed answers, and the parties hereto 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 an 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 the consent of the parties hereto, it is hereby

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Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of 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 Sections 1 and 2 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;
- (B) "American Optical" shall mean the defendant American Optical Company, an association, and such defendants shall be deemed to be one defendant for the purposes of this Final Judgment;
- (C) "Bausch & Lomb" shall mean the defendant Bausch & Lomb Incorporated;
- (D) "Dispenser" shall mean any person engaged in the United States in selling spectacles, which incorporate ophthalmic lenses ground to prescription, to the ultimate user;
- (E) "Wholesale laboratory" shall mean any person engaged in the United States in servicing dispensers by maintaining and selling stocks of ophthalmic lenses, frames, mountings, and other materials to make complete or repair spectacles or by performing the precision operations involved in grinding, polishing, edging, and mounting lenses to prescriptions sent to them by dispensers.

III

[*Applicability*]

The provisions of this Final Judgment applicable to a defendant shall also apply to each of its officers, directors, agents, 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.

IV

[*Acquisition of Wholesalers*]

Each defendant is enjoined from acquiring any wholesale laboratory for a period of 20 years from the date of entry of this Final Judgment.

Each defendant is enjoined from opening any new wholesale laboratory for a period of 20 years from the date hereof, where the effect of such opening would be that such defendant at the end of any calendar year was operating more than five more such wholesale laboratories than it was operating at the beginning of such calendar year.

Nothing contained in the preceding paragraphs shall prevent the defendant Bausch & Lomb from establishing a wholesale laboratory distribution system of not more than 38 branches in the territory set forth in Appendix 1 hereto. In the event it is proposed to establish such a system in whole or in part by the acquisition of existing wholesale laboratories Bausch & Lomb shall either (a) obtain the consent of the Department of Justice to any such acquisition or (b) apply to this Court for permission to acquire any such wholesaler. Such permission will be granted if Bausch & Lomb shall establish to the satisfaction of the Court that the acquisition will not substantially lessen competition or tend to create a monopoly in the manufacture or distribution of ophthalmic goods in any section of the country. In the event such a system is established in the territory set forth in Appendix 1 by

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acquisitions approved by the Department of Justice or the Court or by the opening of new Bausch & Lomb branches, the new branches so opened or acquired shall not be taken into account in determining whether the limitations of the immediately preceding paragraph have been exceeded.

V

[*Acquisition of Dispensers*]

Each defendant is enjoined from engaging in business as a dispenser for a period of 5 years from the date of entry of this Final Judgment.

For a further period of 15 years thereafter, each defendant is enjoined from directly or indirectly acquiring any dispenser without the consent of the Department of Justice or the approval of the Court. If after 60 days notice in writing with respect to any such proposed acquisition is not forthcoming, application for permission to make such acquisition may be made to this Court and such permission will be granted if the defendant establishes to the satisfaction of the Court that the acquisition will not substantially lessen competition or tend to create a monopoly in the manufacture or distribution of ophthalmic goods in any section of the country.

VI

[*Contingent Divestiture*]

A. If the defendants within 20 years from the date of entry of this Final Judgment should wilfully enter into any agreement between themselves to fix the factory or the wholesale prices of ophthalmic goods sold by them, for the purpose or with the effect of eliminating any independent wholesale laboratory, the plaintiff may apply to this Court for an order divesting defendants of all or any part of their wholesale laboratory branches and the Court shall order divestiture of any such branch or branches as to which the Court finds either (1) that such branch or branches were thus directly employed or intended to be employed as a means of eliminating or attempting to eliminate any independent wholesale laboratory or (2) that divestiture of such branch or branches is necessary to eliminate the effects or to preclude the intended effects of such agreement.

B. If either of the defendants within 20 years from the date of entry of this Final Judgment should wilfully enter into any agreement with any other manufacturer having any wholesale laboratory and having a substantial share of the market for ophthalmic goods at the factory to wholesale level, to fix the factory or the wholesale prices of ophthalmic goods sold by them, for the purpose or with the effect of eliminating any independent wholesale laboratory, the plaintiff may apply to this Court for an order divesting said defendant of all or any part of its wholesale laboratory branches and, if divestiture of any wholesale laboratory of such other manufacturer shall have been ordered to a comparable extent in the same or in any other proceeding based on such agreement, the Court shall order divestiture of such branch or branches of such defendant as to which the Court finds either (1); that such branch or branches were thus directly employed or intended to be employed as a means of eliminating or attempting to eliminate any independent wholesale laboratory or (2) that divestiture of such branch or branches is necessary to eliminate the effects or to preclude the intended effects of such agreement.

G If an order of divestiture is entered it shall require the submission of a plan for divestiture within not more than 6 months from the date of such order and shall require that such divestiture be accomplished within a reasonable time after such plan is approved by the Court.

VII

[*Laboratories—Profit or Loss*]

With respect to each of the 20 calendar years commencing January 1, 1967, each of the defendants shall prepare for each of its wholesale laboratories a statement of the profit or loss resulting from such laboratory's operations during such year. Such statements shall be prepared in accordance with generally accepted accounting principles and shall treat such laboratory, as nearly as may be, as a separate economic unit. This shall mean among other things that

A. The prices charged such laboratory for goods manufactured or sold by such defendant shall be the same as would have been received by such defendant from an independent wholesale laboratory ordering on the same basis.

B. In respect of activities of such defendant at its head office, regional, or any other non-laboratory levels, such laboratory shall be charged the cost of all services received by it of a character which an independent wholesale laboratory would have to do for itself or pay another to do.

C. Account shall be taken of the income from and expenses incurred in connection with all operations relating to the sale of ophthalmic goods and associated supplies and equipment in which such laboratory participates (including, without limitation, prescription business generated in such laboratory's territory and processed at another location), and of such laboratory's role in selling to distributors in its territory.

Each year's statements shall be submitted to the Department of Justice by April 30 of the following calendar year.

Any laboratory which shall be shown to have operated at a loss for 3 years out of any 5-year period, 2 of which 3 years shall have been consecutive, shall be closed or sold and the defendant involved shall not open another wholesale laboratory within the same local trading area for a period of 2 years after such closing or sale, provided, however, that since the object of this provision is to protect against using such laboratories to compete unfairly with others engaged in the wholesale laboratory business, any year in which any such loss resulted from economic, casualty, or other forces or conditions beyond the control of such defendant shall not be counted for this purpose. Examples of such forces or conditions shall include, but shall not be limited to, the following:

- (i) Losses caused by the charging in good faith of prices to meet the prices charged by a competitor.
- (ii) Losses resulting from increased operating costs incurred in good faith to meet competitive forces or conditions.
- (iii) Losses of a start-up character of a newly-opened laboratory.
- (iv) Losses caused by economic conditions having an adverse effect on such defendant's operations, or by labor disputes, wartime, or other emergency conditions.

VIII

[*Refusal to Deal*]

For a period of 20 years after entry of this Final Judgment each defendant is enjoined and restrained from refusing to sell or threatening to refuse to sell ophthalmic goods to any wholesale laboratory because of the price or prices at which such wholesale laboratory has sold ophthalmic goods.

IX

[*Notice of Judgment*]

Each defendant is ordered and directed to furnish a copy of this Final Judgment to each of its present and future officials, including regional and branch officials, having duties or responsibilities relating to sales of ophthalmic goods and to retain in its files for a period of 20 years from the date of this Final Judgment a written statement signed by each such person setting forth the date he received and read a copy of this Final Judgment, his title, his place of employment, and the name of his immediate supervisor.

X

[*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 upon reasonable notice to a defendant made to its principal office be permitted, subject to any legally recognized privilege:

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A. Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of said defendant relating to any of the 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 the officers and employees of said defendant, who may have counsel present, regarding any such matters.

Upon such a request a defendant shall submit written reports regarding any of the matters contained in this Final Judgment. 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

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

Appendix 1

All of the Lower Peninsula of the State of Michigan; all of the State of Ohio; all of the State of West Virginia; all of the State of Kentucky except the Counties of Ballard, Carlisle, Hickman, Fulton, Graves, Calloway, Marshall, McCracken; all of the State of Indiana except the Counties of Davies, DuBois, Givson, Knox, Lake, La-porte, Martin, Perry, Pike, Porter, Posey, Spencer, Vanderburg, and Warrick; the Counties of Garrett and Alleghany in the State of Maryland; the following counties of the State of Illinois: Peoria, Woodford, Livingston, Tazewell, McLean, Ford, Mason, Logan, DeWitt, Piatt, Champaign, Vermilion, Cass, Menard, Scott, Morgan, Sangamon, Macon, Douglas, Greene, Macoupin, Montgomery, Christian, Shelby, Moultrie, Coles and Edgar; and the following counties in the Commonwealth of Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Butler, Cambria, Fayette, Greene, Indiana, Lawrence, Mercer, Somerset, Washington and Westmoreland.

UNITED STATES v.
BAY WEST PAPER CO.

Civil Action No.: 64-C-86

Year Judgment Entered: 1967



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bay West Paper Co., U.S. District Court, E.D. Wisconsin, 1967 Trade Cases ¶72,205, (Oct. 9, 1967)

[Click to open document in a browser](#)

United States v. Bay West Paper Co.

1967 Trade Cases ¶72,205. U.S. District Court, E.D. Wisconsin. Civil Action 64-C-86. Entered October 9, 1967. Case No. 1793 in the Antitrust Division of the Department of Justice.

Sherman Act

Customers and Territories—Allocation—Consent Judgment.—A manufacturer of industrial paper towels was prohibited by a consent judgment from agreeing with or requiring distributors to limit, allocate or restrict territories and customers in the sale of the manufacturer's product.

For the plaintiff: Edwin M. Zimmerman, Acting Assistant Attorney General. William D. Kilgore, Jr., Baddia J. Rashid, Lewis Bernstein, and L. David Cole, Attorneys, Dept. of Justice.

For the defendant: Theodore A. Groenke.

Final Judgment

TEHAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on April 1, 1964, and defendant, Bay West Paper Company, having appeared and filed its answer denying the substantive allegations thereof and the parties hereto, 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 any admission by any party hereto with respect to such issue and the Court having considered the matter and being duly advised,

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim against the defendant under Sections 1 and 3 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Defendant" means Bay West Paper Company, a Wisconsin corporation, having its principal office and place of business at Green Bay, Wisconsin;
- (B) "Person" means any individual, partnership, firm, association or other business or legal entity;
- (C) "Industrial paper towels" means towels made of paper in folded or continuous roll form for use in the washrooms of institutional or commercial establishments such as schools, hospitals, factories, offices, restaurants and other public places;

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(D) "Distributor" means any person, engaged in whole or in part in the purchase from defendant of industrial paper towels for resale to institutional or commercial establishments.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall also apply to each of its successors, assigns, directors, officers, agents and employees, 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.

IV

[*Territories and Customers*]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding with any distributor to limit, allocate or restrict the territory in which, or the person or classes of persons to whom, any distributor may sell industrial paper towels purchased from defendant.

V

[*Notification*]

Defendant is ordered and directed to mail a copy of this Final Judgment to each of its distributors within sixty days after the date of entry of this Final Judgment and to file with this Court an affidavit showing that such mailing was made.

VI.

[*Inspection and Compliance*]

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 to its principal office, be permitted (1) access during reasonable office hours to all books, ledger, 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 conveniences 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.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the 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 in this Section VI 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.

VII.

[*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 or for the enforcement of compliance therewith and punishment of violations thereof

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UNITED STATES v.
NATIONAL FUNERAL DIRECTORS
ASSOCIATION OF THE UNITED STATES, INC.

Civil Action No.: 67-C-395

Year Judgment Entered: 1968



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Funeral Directors Association of the United States, Inc., U.S. District Court, E.D. Wisconsin, 1968 Trade Cases ¶72,529, (Aug. 19, 1968)

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United States v. National Funeral Directors Association of the United States, Inc.

1968 Trade Cases ¶72,529. U.S. District Court, E.D. Wisconsin. Civil Action No. 67 C 395. Entered August 19, 1968. Case No. 1977 in the Antitrust Division of the Department of Justice.

Sherman Act

Trade Associations—Price Advertising—Consent Decree.—A national funeral association was prohibited by a consent decree from agreeing on or maintaining any plan to limit or restrict the advertising by any person of prices for funeral services, except as state or local law permits. The decree's provisions require the group to eliminate restrictive provisions from its constitution and by-laws, exclude from membership any group that limits advertising or has members limiting advertising, and to request its member groups to offer to readmit to membership any funeral director who had been expelled or suspended or who had withdrawn because of any prohibition involving restrictions on advertising.

For the plaintiff: Edwin M. Zimmerman, Assistant Attorney General, Antitrust Div., Robert B. Hummel, William D. Kilgore, Jr., Robert J. Ludwig, John E. Sarbaugh, Ralph M. McCareins, and Theodore T. Peck, Attys., Department of Justice, Chicago, Ill.

For the defendant: Thomas H. Clark, of Clark, Robinson & Hellebush, Cincinnati, Ohio.

Final Judgment

GORDON, D. J.: Plaintiff, United States of America, having filed its complaint herein on November 24, 1967, and defendant having filed its answer thereto denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, 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 of this action and of the parties hereto. The complaint states claims for relief 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

[Definitions]

As used in this Final Judgment, "funeral services" shall mean any and all personal services, merchandise, and facilities customarily used in the trade by funeral directors in the preparation and conduct of funerals.

III

[Applicability]

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The provisions of this Final Judgment applicable to the defendant shall also apply to its Board of Governors, and to each of its officers, agents, employees and members, 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

[Notification]

Defendant is ordered and directed, within sixty (60) days after entry of this Final Judgment, to mail a copy thereof to each of its member associations and thereafter, within sixty (60) days after granting membership to any new member association, to mail a copy thereof to such member, and to maintain for a period of ten years a written certification by an official of defendant that defendant has complied herewith. Further, defendant is ordered and directed to publish within sixty (60) days after the date of entry hereof a full and complete copy of this Final Judgment in its monthly trade magazine currently known as "The Director." The copy of the judgment in said magazine shall be published as prominently as featured articles are regularly published in it, and the monthly issue containing the said copy shall be sent to each of the addressees on the regular mailing list of said magazine including, but not limited to, all funeral directors who are affiliated with the defendant, all officers, agents, and employees of the defendant, and all others whose connection in any way with "The Director" normally entitles them to receive a copy thereof.

V

[Price Advertising]

Defendant is enjoined and restrained from directly or indirectly entering into, maintaining, or engaging in any conspiracy, combination, practice, plan, or program to limit or restrict the advertising by any person of prices for funeral services, except as the defendant may lawfully petition appropriate State and local governmental agencies or regulatory authorities for laws or regulations which may so limit or restrict such advertising.

VI

[Constitution and By-laws]

Defendant is directed to eliminate all provisions in its constitution, by laws, code of ethics or other rules or regulations which limit or restrict the advertising of prices for funeral services, and is enjoined from adopting or renewing any such provisions, or following any practice, plan or program having a similar purpose or effect.

VII

[Membership]

Defendant is directed to exclude from membership and to refuse to admit to membership:

(A) Any association of funeral directors which limits or restricts the advertising by funeral directors of prices for funeral services; and

(B) Any State, local, or other association which has among its members any association of funeral directors which limits or restricts the advertising by funeral directors of prices for funeral services.

For the purpose of carrying out the provisions of this Section VII, defendant shall require, as a prerequisite for membership or continued membership, that each association which is a member of defendant or applies for membership, submit to defendant within sixty (60) days after the date of entry hereof a written certification by an official of such association that neither it nor any of its member associations limits or restricts the advertising by funeral directors of prices for funeral services. The defendant shall retain each such certification during the membership of the association submitting it.

VIII

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[Readmission of Members]

Defendant is ordered and directed to request its member associations to offer to readmit to membership any funeral director who has either been expelled or suspended, or who has resigned, or who has withdrawn from membership in whole or in part because of any prohibition of defendant or any of its affiliated associations limiting or restricting the advertising by funeral directors of prices for any funeral services.

Defendant is further enjoined and restrained from having as a member any association which does not comply with defendant's request set forth in the preceding paragraph or refuses to readmit to membership any such funeral director, or any association which has among its members any association which, because of the advertising of prices of any funeral services, refuses to readmit such funeral director to membership.

For the purpose of carrying out this Section VIII, defendant shall require as a prerequisite for membership or continued membership that each association which applies for membership submit at the time of its application, and each association which is a member of defendant on the date of entry hereof submit within 60 days after such date of entry a written certification by an official of such association that it and, to the best of his knowledge, all of its member associations have offered in writing to readmit to membership all such funeral directors who have been expelled or have resigned or withdrawn from membership because of any prohibition of defendant or any of its affiliated associations against funeral price advertising, and, if such funeral directors or any of them have not been readmitted, the reasons therefor. All such written certifications will be submitted to the defendant which shall retain them for a period of ten years.

IX

[State and Local Requirements]

This Final Judgment shall not be deemed to prohibit defendant or any of its member associations from complying with requirements imposed upon it by State or local law or by any governmental body or instrumentality acting pursuant to State or local law.

X

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, 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, which may have counsel present, made through its principal office, be permitted, subject to any legally recognized privilege, (1) access during reasonable office hours 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 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 X 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.

XI

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling either 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.