

APPENDIX A

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Crane Co.; Industries Supply Co. of San Diego; San Diego Pipe & Supply Co.; Southern Equipment & Supply Co.; and The Republic Supply Company of California., U.S. District Court, S.D. California, 1959 Trade Cases ¶69,320, (Mar. 19, 1959)

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United States v. Crane Co.; Industries Supply Co. of San Diego; San Diego Pipe & Supply Co.; Southern Equipment & Supply Co.; and The Republic Supply Company of California.

1959 Trade Cases ¶69,320. U.S. District Court, S.D. California, Southern Division. Civil No. 2150-SD-W. Filed March 19, 1959. Case No. 1393 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing—Exchanging Price Lists.—Five firms connected with the wholesale distribution of plumbing supplies in the San Diego, California, area were prohibited by a consent decree from entering into any agreement with any wholesaler to fix the price or other terms or conditions for the sale of plumbing supplies to any third person in the plumbing industry in California. In addition, the firms were prohibited from agreeing with any wholesaler, or any trade association or central agency for wholesalers, to fix or use any arbitrary, average or purported average cost of doing business, mark-up, or margin of profit in determining or fixing the price of plumbing supplies. The decree also enjoined the firms from exchanging with, or disclosing to, any wholesaler information as to the price for the sale of any plumbing supplies to third persons prior to the time when such information is generally available to the trade.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and W. D. Kilgore, Jr., Homer W. Hanscom, James M. McGrath, and Stanley E. Disney.

For the defendants: Jack D. Most for San Diego Pipe & Supply Co.; Walker, Wright, Tyler & Ward, by W. D. Caldecott, for The Republic Supply Co. of Cal.; Sheppard, Mullin, Richter, Balthis & Hampton, by Gordon F. Hampton, and Fox & White, for Industries Supply Co. of San Diego; O'Melveny & Myers, by Philip F. Westbrook, Jr., for Crane Co.; Luce, Forward, Kunzel & Scripps, by Arvin H. Brown, Jr., for Southern Equipment & Supply Co.

Final Judgment

[Consent Decree]

JAMES M. CARTER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on the 11th day of June, 1958, and all of the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any of the parties hereto in respect to any such issues;

Now, Therefore, before any testimony has been taken, and without trial or adjudication of any issue of fact or law herein, and upon consent of all of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim upon which relief may be granted 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) "Plumbing supplies" shall mean those materials and fixtures customarily used in the plumbing industry in the installation or repairing of water, gas, or waste disposal systems in homes, dwellings, commercial buildings and industrial buildings, and includes, among other items, Steel, soil galvanized, black and cast iron pipe, fittings, valves and trim, vitreous china lavatories, sinks, bathtubs, water closets, copper tubing and water heaters;
- (B) "Wholesaler" shall mean a person engaged in the business of selling plumbing supplies in large lots and quantities to "third persons" in the plumbing industry. A manufacturer who sells plumbing supplies to third persons in the plumbing industry in the State of California shall be deemed a "wholesaler" as herein defined, but only with respect to such sales;
- (C) "Person" shall mean an individual, partnership, firm, association, corporation or other business or legal entity;
- (D) "Defendants" shall mean those defendants who consent to the entry of this Final Judgment, except that the defendant Republic Supply Company of California shall be subject to the provisions of this Final Judgment only as to activities' carried on by or through its Division now known as Mission Supply Company;
- (E) "Third Person" in the plumbing industry shall mean plumbing contractors, retailers of plumbing supplies, and purchasers in large quantities of plumbing: supplies for use in water, gas or waste disposal systems.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents and employees, and all persons in active concert or participation with any defendant who shall receive actual notice of this Final Judgment by personal Service or otherwise.

IV

[Price Fixing]

Each of the defendants is enjoined and restrained from:

- (A) Entering into, adhering to, maintaining or furthering any Contract, agreement, understanding, plan or program with any wholesaler to fix, stabilize or maintain the price, mark-up, or other terms or Conditions, for the sale of plumbing supplies to any third person in the plumbing industry in the State of California;
- (B) Exchanging with or disclosing to any wholesaler information as to the price for the sale of any plumbing supplies to third persons in the plumbing industry in the State of California prior to the time when such information is available generally to the trade; provided, however, that such information may be disclosed or exchanged to or with non-Competing wholesalers in advance of such release where the ownership and majority control of said non-competitor is substantially the same as that of the defendant disclosing or exchanging said information so long as said ownership and majority control continues;
- (C) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or agreement with any wholesaler, or any trade association or central agency for wholesalers, to fix or use any arbitrary, average or purported average cost of doing business, mark-up or margin of profit, in determining, fixing, or maintaining the price of plumbing supplies to third persons in the plumbing industry in the State of California.

V

[Enforcement and Compliance]

For the purposes 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 its principal office, and subject to an legally recognized privilege, be permitted:

(A) Reasonable access during the office hours of such defendant to all 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 and employees of such defendant (who may have counsel present) regarding such matters.

Upon written request, any defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VI

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders 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 enforcement of compliance therewith and the punishment of violations thereof.