

APPENDIX A

FINAL JUDGMENTS
(Ordered by Year Judgment Entered)

United States v. Chesapeake & Ohio Fuel Co.

In Equity No. 5298

Year Judgment Entered: 1900

UNITED STATES v. CHESAPEAKE & OHIO FUEL CO.
THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT
OF OHIO, WESTERN DIVISION, SS.

Equity No. 5298.

At a stated term of the Circuit Court of the United States, within and for the Western Division of the Southern District of Ohio, begun and held at the City of Cincinnati, in said District, on the first Tuesday in October being the second day of said month, in the year of our Lord one thousand and nine hundred and of the Independence of the United States of America the one hundred and twenty-fifth, to-wit: On Thursday the 22nd day of November A. D. 1900.

Present: the Honorable Albert C. Thompson, District Judge, Sitting and holding Circuit Court of the United States. Among the proceedings then and there had were the following, to-wit:

THE UNITED STATES OF AMERICA, by John W. Griggs, Its Attorney General, and William E. Bundy, United States Attorney for the Southern District of Ohio, Plaintiff,

vs.

THE C. & O. FUEL COMPANY, a corporation organized

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under the laws of West Virginia, and having its place of business in the City of Cincinnati, Ohio; THE ST. CLAIR COMPANY, a corporation organized under the laws of West Virginia; JOHN CARVER and ENOCH CARVER, partners doing business under the firm name and style of CARVER BROTHERS; W. R. JOHNSON, and M. T. DAVIS, partners doing business under the firm name and style of M. T. DAVIS & COMPANY; JOHN CARVER and ENOCH CARVER, partners doing business under the firm name and style of THE MECCA COAL COMPANY; S. H. MONTGOMERY, doing business under the name and style of the MONTGOMERY COAL COMPANY; THE CHESAPEAKE MINING COMPANY a corporation organized under the laws of West Virginia; THE BELMONT COAL COMPANY, a corporation organized under the laws of West Virginia; THE KANAWHA SPLINT COAL COMPANY, a corporation organized under the laws of West Virginia; THE ROBINSON COAL COMPANY, a corporation organized under the laws of West Virginia; HARRIS B. SMITH, SPECIAL RECEIVER of the LENS CREEK COAL & COKE COMPANY, a corporation organized under the laws of West Virginia; THE LENS CREEK COAL & COKE COMPANY, a corporation organized under the laws of West Virginia; JOSEPH RENSHAW, SPECIAL RECEIVER of THE BIG BLACK BAND COAL COMPANY, and the BIG BLACK BAND COAL COMPANY, a corporation organized under the laws of West Virginia; THE CHARLMORE COAL COMPANY, a corporation organized under the laws of West Virginia; ROBERT BRABBIN, JR., and N. L. PERRY, partners doing business under the firm name and style of THE BRABBIN COAL COMPANY, JASPER MCCALLISTER, SAMUEL MOORE and JAMES KELSOE, partners doing business under the firm name and style of MCCALLISTER & COMPANY, Defendants.

FINAL DECREE.

This day this cause came on for hearing upon the issues joined in the pleadings, and with the evidence and arguments of Counsel the same was submitted to the Court. Upon due consideration thereof the Court find

the equities to be with the plaintiff and that the contract described in the bill and the combination of the defendants thereunder are in restraint of trade and commerce among the several states. Said contract is therefore declared to be illegal, and it is ordered that the combination of the defendants thereunder shall be dissolved forthwith; and the defendants and each of them are hereby perpetually enjoined from further operations under said contract or from entering into or continuing in any like combination or agreement and from selling or shipping under the terms thereof any coal or coke to be transported from one state into another. And it is further adjudged that the defendants pay the costs of this action taxed at \$.....

To all of which the defendants above named and each of them except.

United States v. Lake Shore & Mich. S. Ry. Co.

In Equity No. 1584

Year Judgment Entered: 1914

UNITED STATES v. LAKE SHORE & MICHIGAN
SOUTHERN RY. CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION.

In Equity No. 1584.

THE UNITED STATES OF AMERICA, PLAINTIFF,
VS.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY,
THE HOCKING VALLEY RAILWAY COMPANY, THE TOLEDO
& OHIO CENTRAL RAILWAY COMPANY, THE KANAWHA
& MICHIGAN RAILWAY COMPANY, THE ZANESVILLE &

WESTERN RAILWAY COMPANY, SUNDAY CREEK COMPANY, CONTINENTAL COAL COMPANY, KANAWHA & HOCKING COAL & COKE COMPANY, DEFENDANTS.

FACTS CONCERNING PROGRESS OF THE CASE BETWEEN THE FIRST HEARING AND THE ULTIMATE SUBMISSION FOR DECREE.

This cause was heard before the circuit judges of the Sixth Judicial Circuit (pursuant to certificate of the Attorney General of the United States, filed herein according to act of Congress of February 11, 1903). The court held that the plaintiff was entitled to relief, but reserved certain questions touching the nature and extent thereof. After hearing upon these questions, plaintiff was permitted to file an amendment to its bill and to bring in additional defendants, named below. Forms of decree were presented, but they indicated that both sides were in some respects claiming relief which could not be granted. With a view of eliminating these difficulties, a memorandum opinion was filed. Thereafter, counsel for the plaintiff, and counsel for three of the defendants: the Lake Shore, the Toledo & Ohio Central, and the Zanesville & Western, each submitted a form of decree; and counsel for two of the defendants, the Hocking Valley and the Chesapeake & Ohio, presented suggestions as to certain provisions the decree should contain. Since then the attorney general of Ohio upon leave appeared, as a friend of the court, for the purpose only of calling attention: (1) to the pendency in the Court of Appeals of Franklin County, Ohio, of three actions in *quo warranto*: State, *Ex rel.* against the defendant railways herein (some of such railway companies being defendants in the first of those actions, one in the second, and all in the third); (2) to the issues presented, which in the main concern the power of certain of the railway companies to hold stock in certain of the other railway companies and in the coal companies, and to the relief sought, under a statute of the State, called the "Valentine Anti-Trust Act"; and (3) to objections of the State to certain provisions of the last form of decree

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submitted, as stated, in the instant case on behalf of certain of the defendants, and also to the suggestions offered for others of the defendants touching the form of decree to be entered herein.

I

FINDINGS OF FACT.

Plaintiff's counsel request the court to file separate findings of fact, and counsel for defendants object thereto; notwithstanding Equity Rule 71, it is deemed permissible and proper in this case to accompany the decree by the following findings of fact:

(1) ORIGINAL DEFENDANTS — WHERE ORGANIZED.

The railroad companies named in the above-recited title of the case are all Ohio corporations, except the Chesapeake & Ohio, which was organized under the laws of Virginia. The coal companies there named were organized; the Sunday Creek under the laws of New Jersey, and the other two under the laws of West Virginia.

(2) DEFENDANTS BROUGHT IN UNDER AMENDMENT TO BILL.

The Central Trust Company of New York, as trustee under the first consolidated mortgage of the Hocking Valley Railway Company; the said Central Trust Company, as trustee of stock in the Sunday Creek Company under the agreement of April 30, 1908; John H. Doyle, as trustee of stock in the Sunday Creek Company under the agreement of April 30, 1908; J. P. Morgan & Company, as trustee of the stock of the Kanawha & Hocking Coal & Coke Company and of the Continental Coal Company, to secure agreement for division of coal traffic, such trustee, however, having resigned and the Bankers' Trust Company of New York having been duly substituted in the place and stead of J. P. Morgan & Company as such trustee; these additional defendants have appeared and filed separate answers, setting up their respective claims as trustee, and, with the original defendants, have stipu-

lated that the cause should be submitted upon the proofs previously offered.

(3) THE RAILROADS.

The Lake Shore extends from Buffalo to Chicago, passing through the northerly portion of Ohio by way of Toledo, and has a number of intermediate branches. Connection is maintained in Toledo, though not described, between the Lake Shore and the Toledo & Ohio Central, and also the Hocking Valley. A large majority of the capital stock of the Lake Shore is owned by the New York Central. The Chesapeake & Ohio extends from Old Point Comfort to Cincinnati, running (in West Virginia) along the southerly side of the Kanawha River from Gauley (connecting with Gauley Bridge and Charleston) to Scary, thence (leaving the Kanawha River) westwardly to the Ohio River at Guyandotte, and thence along the south side of the Ohio River to Covington, Ky., where it crosses the river to Cincinnati; it owns a great majority of the stock of the Chesapeake & Ohio Railway of Indiana, and so reaches Chicago. Two of the remaining railroads are entirely within Ohio, running generally in a north and south direction, viz, the Hocking Valley, from Toledo by way of Fostoria, Columbus, Logan, Gallipolis, Kanauga, and Hobson to Pomeroy (Kanauga being on the Ohio River opposite Point Pleasant, W. Va.), with a branch line from Logan to Athens; and the Toledo & Ohio Central with two divisions running from Toledo, the easterly one by way of Fostoria and Thurston to Corning, and the other by way of Columbus to Thurston. The Kanawha & Michigan extends south from Corning by way of Athens and Hobson to Kanauga, where it crosses the Ohio River to Point Pleasant, and continues thence along the northerly side of the Kanawha River by way of Charleston to Gauley Bridge, using the tracks, however, of the Hocking Valley between Hobson and Gallipolis. The Zanesville & Western is also entirely within Ohio and extends east from Thurston to Zanesville. This sufficiently shows the geographical relations and the common termini and common points of connection as respects these railroads.

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(4) THE COAL FIELDS DIRECTLY AFFECTED.

The coal lands tributary to the three exclusively Ohio railroads, are situated in that State and well known as the Hocking coal fields, and a portion of those fields, but principally coal lands situated in West Virginia, are tributary to the Kanawha & Michigan Railroad, and those latter coal lands are in the well-known Kanawha coal district.

(5) COAL TRAFFIC, AND OTHER COAL FIELDS INVOLVED.

The principal freight traffic of all the railroads mentioned, except the Lake Shore, is bituminous coal. The principal coal mines along the Chesapeake & Ohio are in the Kanawha, New River, and Big Sandy coal districts of West Virginia and Kentucky. A substantial part of the freight traffic of the Lake Shore is bituminous coal, originating not only in the Hocking Valley coal fields and the Kanawha coal district, but also on two or more of its branch roads connecting with coal fields situated in other portions of Ohio and in Pennsylvania. Coal derived from these various fields is carried over the defendant railroads and their connections to destinations, some of them common destinations, situated in States (including lake ports therein) other than the States in which the coal originated.

(6) COMPETITIVE CONDITIONS.

(a) Between 1890 and 1899, through ownership of stock and guaranty of bonds of the Kanawha & Michigan, the Toledo & Ohio Central controlled and operated that line in connection with its own. During that period the Hocking Valley and the Toledo & Ohio Central were naturally competing lines, and, as far south as the Ohio River, were parallel lines. Aside from the Kanawha & Michigan, the Hocking Valley, as far south as Athens, and the Toledo & Ohio Central are parallel and naturally competing roads. Prior to and in 1899, free competition was maintained between the Toledo & Ohio Central and the Kanawha & Michigan, on the one hand, and the Hocking Valley, on the other, as respects the coal traffic derived from the Hocking Valley coal fields and the Kanawha coal district,

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(7) RAILROAD REORGANIZATION OF 1899.

as well as of the other traffic carried over their lines; this traffic included both interstate and intrastate shipments.

(b) The Kanawha & Michigan is dependant for the movement of its traffic north of Corning upon either the Toledo & Ohio Central or the Hocking Valley, or both. The Kanawha & Michigan, if used as a carrier exclusively in connection with either the Toledo & Ohio Central or the Hocking Valley, would be a natural competitor of the one or the other of such roads according as the connection and use might be maintained; and the capacity of the Toledo & Ohio Central to increase its competing traffic is enhanced by its connection at Thurston with the Zanesville & Western. The competitive conditions naturally existing between the Hocking Valley and the Toledo & Ohio Central would manifestly be preserved by traffic derived from the Kanawha & Michigan, if that line were owned and operated independently of either of the others.

(c) What is known as the southern division of the Hocking Valley, to wit, the portion between Logan and Pomeroy, has not since 1899, while the Kanawha & Michigan has, been improved in grades, roadbed, and bridges, so as practically to accomodate the heavier railroad equipment and freight traffic which have been introduced since that year; and, further, it is shown that the configuration of the territory adjacent to the Kanawha River is such as reasonably to prevent construction of a track additional to that of the Kanawha & Michigan on the one side, or the branches of the Chesapeake & Ohio on the other as far westwardly as Scary. It is not shown, however, that construction of an independent connection is impracticable by a line uniting with the Chesapeake & Ohio at Scary or at some point in its existing tracks between Scary and Guyandotte, and running thence northwardly either to Gallipolis or Kanauga; nor that the southern division of the Hocking Valley can not reasonably be improved and utilized for heavy equipment and traffic; that division was an essential part of the Hocking Valley during the period of free competition mentioned.

The immediate predecessor of the Hocking Valley Railway Company was the Columbus, Hocking Valley & Toledo Railway Company. A plan or reorganization of the latter was entered into under date of January 4, 1899. After judicial sale of its property, the purchasing trustees conveyed the railroad property to the Hocking Valley, and the title thereto is still in that company. It was part of this plan to have the Hocking Valley acquire interests in the Toledo & Ohio Central Railway Company and the Columbus, Sandusky & Hocking Railroad Company (predecessor of the Zanesville & Western), and in February, 1899, the Hocking Valley reserved 50,000 shares of its preferred and 50,000 shares of its common stock for the purpose of acquiring such interests. The purchases of stock in the Toledo & Ohio Central were made in the name of a New Jersey corporation, called the Middle States Construction Company. In 1899 and 1900 the Hocking Valley purchased the bonded indebtedness of this construction company; and this indebtedness was secured by and convertible into stock in the Toledo & Ohio Central, under a deed of trust of the Construction Company to the Central Trust Company of New York. In 1899 and 1900, the Construction Company acquired the controlling interest in the capital stock of the Toledo & Ohio Central. The Hocking Valley, in 1902, purchased all the stock in and all the bonds of the Zanesville & Western, which, through judicial sale, had acquired the portion of the Columbus, Sandusky & Hocking Railroad extending from Thurston to Zanesville with certain branch lines. From 1902 to 1909 the president and general manager of the Hocking Valley, as well as other officers of the company selected later, occupied corresponding positions in the Toledo & Ohio Central and the Zanesville & Western. The control thus acquired by the Hocking Valley carried with it also the control of the Kanawha & Michigan, through the control of the latter by the Toledo & Ohio Central, before mentioned. In 1903 the Hocking Valley exchanged its holdings of stocks and bonds in the Zanesville & Western for the

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shares held by the Toledo & Ohio Central in the Kanawha & Michigan; and, apart from influence exercised by certain trunk lines, the Hocking Valley remained in control of this system of exclusively Ohio railroads and the Kanawha & Michigan until March, 1910.

(8) CERTAIN TRUNK LINES PURCHASE MAJORITY OF HOCKING VALLEY STOCK.

In June, 1903, five trunk-line railroads, viz: Lake Shore & Michigan Southern Railway Company, Erie Railroad Company, Baltimore & Ohio Railroad Company, Chesapeake & Ohio Railway Company, and the Pittsburgh, Chicago, Cincinnati & St. Louis Railway Company, purchased a majority, to wit, 69,242 shares, of the common capital stock of the Hocking Valley, and each of the purchasing companies obtained a one-sixth interest in such shares, except the Pittsburgh, Chicago, Cincinnati & St. Louis Railway Company, which acquired two-sixths. An advisory committee composed of representatives of the trunk lines, with the president of the Hocking Valley, controlled the financial affairs of the Hocking Valley and of certain coal companies (mentioned below), in which it was interested. Among the results thus reached were the incorporation of the Sunday Creek Company for the purpose of handling the coal interests of the Hocking Valley, and the maintaining of a general operating system that was satisfactory to the trunk lines. One of the features of this operating system was to restrict rail connections with coal mines to such as were already in operation, and to refuse and by litigation to contest applications for rail connections with new mines. These conditions were in practical effect continued until March, 1910.

(9) RAILROAD ACQUISITION AND CONTROL OF COAL PROPERTIES.

Pursuant to the plan of reorganization of 1899, the Buckeye Coal & Railway Company was incorporated under the laws of Ohio, and the Hocking Valley and this coal company joined in the execution of a mortgage under date of March 1, 1899, providing for the issue of first-

mortgage bonds in the sum of \$20,000,000, and secured by the properties acquired by such companies. This coal company was organized for the purpose of obtaining the coal properties of the Hocking Coal & Railroad Company, and these properties were bid in and conveyed to the Buckeye Coal & Railway Company by the purchasing trustees at the judicial sale before mentioned; and such trustees received from the new coal company 2,495 shares of its total capital stock of 2,500 shares, and thereupon entered into a traffic agreement with the Hocking Valley to secure rail connections between coal mines and the main railroad line, and also coal transportation, and the trustees at the time turned over the stock in the coal company to the Hocking Valley. Out of the sales proceeds of the first-mortgage bonds mentioned, the Hocking Valley acquired the stock and properties of four other coal companies, and also a large majority of both the preferred and common shares of stock in the Sunday Creek Coal Company.

A different method was adopted for securing control of the properties of the Kanawha & Hocking Coal & Coke Company and the Continental Coal Company, as also of a number of other coal properties. The Toledo & Ohio Central Railway Company and the Hocking Valley Railway Company entered into a contract to guarantee the first mortgage bonds of the coal companies last named; and the last-named railway companies and coal companies, including the Kanawha & Michigan Railway Company, agreed that the traffic derived from the property or mines of the coal companies should be equally divided between the Toledo & Ohio Central Railway Company and the Hocking Valley Railway Company; and, for the purpose of securing the performance of such agreement and also of the terms and conditions of a certain mortgage made by the Kanawha & Hocking Coal & Coke Company to the Morton Trust Company, trustee, of New York, dated July 1, 1901, and of another mortgage made by the Continental Coal Company to the Standard Trust Company, trustee, of New York, dated February 1, 1902, all the

capital stock of each of these two coal companies (except certain qualifying shares) was placed in the name of and deposited with J. P. Morgan & Company, of New York, as trustee. This stock was to be held by such trustee (but is now held by the successor trustee, the Bankers Trust Company, a defendant herein as before stated) until such time as all the conditions of the agreement and mortgages aforesaid, respectively, should be complied with; and the beneficial interests in the capital stock of the said coal companies are now owned and held by the Sunday Creek Company. Further, the Toledo & Ohio Central owned the entire capital stock of the Imperial Coal Company and also the National Coal Company.

(10) MERGER OF COAL INTERESTS INTO SUNDAY
CREEK COMPANY.

(a) The holdings in these coal properties were subsequently merged and placed in the Sunday Creek Company (not Sunday Creek Coal Company). The Sunday Creek Company was organized under the laws of New Jersey with a capital stock of \$4,000,000; and it now controls more than 100,000 acres of land situated in the Hocking coal fields and the Kanawha coal district, together with about 50 coal mines and about 350 coke ovens, which are tributary to the exclusively Ohio railroads before named and the Kanawha & Michigan. When the Sunday Creek Company was incorporated, the Hocking Valley owned \$3,236,300 par value of stock in the Sunday Creek Coal Company and exchanged said stock for a like amount in the Sunday Creek Company, and the Toledo & Ohio Central owned \$513,700 par value of preferred and common stock in the Sunday Creek Coal Company and exchanged such stock for a like amount of stock in the Sunday Creek Company—a total of \$3,750,000; and on April 23, 1906, 2,488 shares of the Sunday Creek Company were issued in a single certificate in the name of the Central Trust Company of New York to prevent their issue except upon its approval, the remaining 12 shares having been issued to qualify directors.

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(b) SPECIAL TRUSTS CREATED RESPECTING SHARES
IN SUNDAY CREEK COMPANY.

The Toledo & Ohio Central caused its shares in the Sunday Creek Company to be issued in the name of John H. Doyle, trustee; and in April, 1908, just before the commodities clause of the Hepburn Act was to take effect and in view of the doubts as to its constitutional validity, the company entered into an agreement with him, by which the stock was in terms sold to him as trustee for the stockholders of the company, in whose names its stock might from time to time be registered and to whom dividends should be paid, and the certificate of stock and the contract have ever since been in his possession. On April 30, 1908, another contract similar to the one just mentioned was entered into between the Hocking Valley and the Central Trust Company of New York, respecting the shares of the former in the Sunday Creek Company. After reciting, among other things, that all of these shares with others were pledged to the trustee as collateral security for the bonds issued under the first consolidated mortgage of the Hocking Valley and the Buckeye Coal & Railway Company, it was in terms agreed that the Hocking Valley had sold and assigned to the trustee all its interest in such shares of stock, subject to the lien of the mortgage and the rights of the bondholders thereunder, in trust, for the proportionate benefit of the holders of the stock of the Hocking Valley and for any distribution of its assets; that the trustee should have the right to vote the shares, to collect dividends, and (if the company was not in default under its mortgage) to distribute them among the holders of the stock. Further provision was made, common to both of such trust agreements, that in the event the Supreme Court should hold the commodities clause of the Hepburn Act constitutional, the trustees should sell such shares of stock and distribute the proceeds (subject to the lien of the mortgage before mentioned respecting the Hocking Valley shares) among the registered stockholders in the Toledo & Ohio Central and the Hocking Valley, respectively. However, this provision has never been executed; the trustees still hold the legal title to the stock.

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(11) THE MARCH AGREEMENT.

(a) For the avowed purpose of complying with a judgment in *quo warranto* of a circuit court of Ohio (in effect ousting the Hocking Valley from its control of and relations with the Toledo & Ohio Central, Zanesville & Western, Kanawha & Michigan, and certain coal companies before named), the Lake Shore and the Chesapeake & Ohio entered into an agreement in March, 1910, pursuant to which the Lake Shore acquired all the stock in the Toledo & Ohio Central, 45,100 shares (a majority) of stock in the Kanawha & Michigan, 5,137 shares of stock in the Sunday Creek Company, and the entire capital stock in and all the bonds of the Zanesville & Western, at an aggregate purchase price of \$10,197,874.67, and obligated itself to make provision for loaning to the Sunday Creek Company as needed, and on its notes, \$1,143,110.50; and thereupon it sold to the Chesapeake & Ohio 22,550 shares of the Kanawha & Michigan for \$1,623,600, and 11,540 shares of the Hocking Valley for \$1,384,800 (the latter stock, being the one-sixth interest that the Lake Shore had acquired through the purchase made by the trunk lines). The Chesapeake & Ohio then acquired the holdings of the other trunk lines in Hocking Valley stock, which (with the one-sixth it had previously obtained through the trunk lines purchase and the one-sixth derived under the March agreement) gave to the Chesapeake & Ohio 69,240 shares of such stock. The preferred stock of the Hocking Valley was retired in April, 1910, leaving 110,000 shares of common, of which the Chesapeake & Ohio now owns (through increase of its holdings) 88,258 shares; and that company and the Lake Shore through additional purchases now each own 40,271 shares of the stock of the Kanawha & Michigan (being 80,542 of a total capital of 90,000 shares). The interests of the Lake Shore and the Chesapeake & Ohio in the Sunday Creek Company (through their respective holdings in the Toledo & Ohio Central and the Hocking Valley) now cover its entire outstanding capital stock, subject to the trusts and pledge before stated.

(b) Certain other portions of the March agreement are in substance as follows: A further contract for 25 years was to be made, providing that the line of the Hocking Valley and the western division of the Toledo & Ohio Central, between their terminals at Toledo and their connections with the Kanawha & Michigan at Chauncey, might (for cost of maintenance and operating expenses according to joint use) be used at the option of either for the movement of its through freight trains; that an additional contract should be made to protect the Toledo & Ohio Central and the Hocking Valley under their previous guaranty of bonds of coal companies, given under an agreement for an equal division of the coal traffic derived from the properties of such coal companies; and that an arrangement for distribution of the business, so far as could legally be made, should be effected to protect the interests of the Toledo & Ohio Central and the Hocking Valley respecting their guaranty of such coal bonds; that still another contract should be made "for trusteeing or otherwise jointly handling" the 45,100 shares in the Kanawha & Michigan. In case this stock was so placed in trust, provision was to be made for such trackage agreement with the Kanawha & Michigan as would protect the purchasing companies against loss of control of the property. Privilege was to be given, on request of either of the purchasing companies, to make certain connections between the Kanawha & Michigan Railway and the Virginian Railway or the Lake Shore or Chesapeake & Ohio, the intent being that the lines of the Kanawha & Michigan could be used to the fullest extent by either of the purchasing companies in building up its interests either in local territory on the Kanawha & Michigan or in making through routes with connections beyond it, protecting, however, all the stockholders of that company. Provision was also made for acquiring all or part of the outstanding stock of the Kanawha & Michigan; for having that company purchase the securities of the Pomeroy Belt Railway Company, and indemnifying the Hocking Valley against liability assumed by it in the purchase thereof, and grant-

ing to it a trackage right over such belt road, etc., and for securing to the Hocking Valley trackage over the Kanawha & Michigan between Athens and Hobson, to accommodate Hocking Valley through business from or to its line between Gallipolis and Pomeroy. The whole agreement was made subject to a condition that the other roads embraced in the trunk lines purchase should sell their holdings in the stock of the Hocking Valley to the Chesapeake & Ohio.

(12) CONDITIONS INAUGURATED AND MAINTAINED UNDER THE MARCH AGREEMENT.

Since the March agreement separate and distinct officers and offices of the railroads, respectively, have been selected and maintained; and this is true also of the Sunday Creek Company. The managerial officers of the three exclusively Ohio railroads, and also of the Kanawha & Michigan and Sunday Creek Company, were, after the execution of the March agreement, instructed to exercise their own judgments respecting the interests they severally represented. Some of the provisions of that agreement have not been formally observed. Thus, the additional contract which was intended to provide for an equal division between the Toledo & Ohio Central and the Hocking Valley, of the coal traffic and business derived from the Kanawha & Michigan, has not been prepared and signed. And the independent coal operators in the coal fields in question have received greater concern and accommodations at the hands of the railroads since the agreement than they were given before. Nevertheless, since then there has not been effective competition among these exclusively Ohio railroads, including the Kanawha & Michigan, as respects the coal traffic derived either from the Sunday Creek Company or from other shippers of coal mined in the coal fields tributary to such railroads; nor has the Sunday Creek Company done anything to induce or promote competition among such railroads. The coal traffic of the Chesapeake & Ohio, destined northwardly by way of Gauley and Gauley Bridge, and also that of the Hocking Valley originating on its line between Gallipolis and

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Pomeroy, have been carried over the Kanawha & Michigan from the respective connections at Gauley Bridge and Hobson; and all such traffic, including that originating on the Kanawha & Michigan and the exclusively Ohio railroads, destined to Toledo, has been carried northwardly from Chauncey to the terminals in Toledo over the tracks embraced in the reciprocal trackage arrangement called for by the March agreement; and a substantially equal division of the coal traffic derived from the Kanawha & Michigan Railway Company has been maintained between the Hocking Valley and the Toledo & Ohio Central. In short, the practical operation and uses of the three exclusively Ohio railroads and the Kanawha & Michigan, as well as the Sunday Creek Company, have closely corresponded with the terms of the March agreement and (apart from the added Chesapeake & Ohio traffic) with such operation and uses prior to that agreement.

(13) INTENT AND EFFECT OF THE REORGANIZATION OF 1899 AND ITS SUBSEQUENT DEVELOPMENT, AND ALSO OF THE MARCH AGREEMENT.

The union of interests designed by and brought about under and pursuant to the reorganization agreement of 1899, was intended to and did combine and monopolize the railroad and coal stocks and properties there involved in restraint of trade among the States; and the transactions that have since been carried out in accordance with the March agreement, and the union of interests there rearranged, with the concert of action occurring since then among the companies in control and those engaged in the operation of the roads and coal interests involved, have in effect, though in different form, operated to continue the substantial evils of the old combination and monopoly, and so have resulted in unreasonably restraining trade among the States.

II
DECREE.

This cause came on to be heard before Circuit Judges Warrington, Knappen, and Denison, upon the bill, the amendment thereto, the several answers and replications,

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the exhibits and evidence offered by the respective parties (defendants producing certain witnesses who testified in court), and the arguments of counsel; upon consideration whereof, and being fully advised in the premises, the court, on the issues joined, adjudges and decrees that the acts and transactions committed and carried into execution in pursuance of the reorganization agreement and otherwise, until the date of the agreement of March, 1910, were, and, further, that the acts and transactions committed and carried out in accordance with that agreement, in connection with the course of business pursued since its date, by and among the defendants and those in their control, respectively, were and are, as the same are in substance stated with respect to both periods, in the foregoing findings of fact, in violation of the act of Congress of July 2, 1890; and, in order effectively to dissolve the combination now existing, it is further ordered, adjudged and decreed, as follows:

SALE OF RAILWAY COMPANIES' INTERESTS IN STOCK
OF SUNDAY CREEK COMPANY.

(1) That the equity and interest of the Lake Shore & Michigan Southern Railway Company, the Toledo & Ohio Central Railway Company, the Chesapeake & Ohio Railway Company, and the Hocking Valley Railway Company, and each of them, in the capital stock of the Sunday Creek Company, shall be disposed of by absolute sale. That the legal title to said stock held by the trustees, viz, John H. Doyle and the Central Trust Company, under the certain agreements of April 30, 1908, in substance described in the finding of fact aforesaid, be included in said sale, and that said sale be made free from every interest or claim of said trustees or either of them, and of any and all the railway companies last named, and of the stockholders of each and all of them.

The said the Hocking Valley Railway Company, the Toledo & Ohio Central Railway Company, the Lake Shore & Michigan Southern Railway Company, and the Chesapeake & Ohio Railway Company, each and all of them, be, and they hereby are, perpetually enjoined from directly,

or indirectly, owning, holding, or acquiring any stock in said Sunday Creek Company, or in any of the companies hereinbefore named, the property of which is owned, leased, or controlled by said Sunday Creek Company, intending hereby to impose an absolute prohibition against said railway companies, or any of them, owning or controlling any shares of stock in said Sunday Creek Company, or otherwise owning or controlling, directly or indirectly, any interest in any of the coal properties in which that company is interested; and that the Sunday Creek Company be, and it hereby is, perpetually enjoined from directly or indirectly permitting any share or shares of its capital stock to be voted by or on behalf of any of the said railway companies for any purpose whatever, at any meeting or otherwise of the stockholders of said Sunday Creek Company, or permitting any of such railway companies to exercise any control over or to have anything to do with the management of said Sunday Creek Company, and likewise from paying any dividends to or for any of such railway companies.

That for the purpose of enabling said railway companies and said trustees to comply with this decree respecting the sale of stock in the Sunday Creek Company, they and each of them shall have two months from the entry hereof so to comply herewith; and if said railway companies and said trustees are able to sell said stock, they shall be and are hereby authorized and empowered to sell the same, free of any claim, lien, or equity of any of the parties to this suit, including the lien of the Central Trust Company of New York, as trustee under the consolidated mortgage made by the Hocking Valley Railway Company to it, referred to in the finding of fact aforesaid, and freed from any equity in the stockholders, or any of them, of said The Hocking Valley Railway Company or said The Toledo & Ohio Central Railway Company.

That if within said period of two months from the entry hereof, said defendants are able to comply with this decree by the absolute sale of said stock, they and each of them

shall, before concluding such sale, report to this court the manner of such compliance, the name of the proposed purchaser, and tendering such purchaser before the court for examination, and the said sale and all proceedings toward the compliance with this order, shall be subject to approval, rejection or modification by the court.

That if within said period defendants do not comply with the decree in this respect, and report the same to the court for its action thereon, as above provided, then the court will otherwise provide for the sale of such stock, unless for good cause the court further extends said time, by such action as it may deem necessary and adequate to such purpose, either through appointment of a master to make such sale or of a receiver to take possession of said stock, with the power to sell and dispose of the same, or in such other manner as will enforce compliance with this decree in this respect.

(2) That the Bankers' Trust Company, as successor trustee of J. P. Morgan & Company, be, and it hereby is, perpetually enjoined from in any manner undertaking to enforce or claim any rights or benefits under the provisions of the contracts referred to in the findings of fact and relating to the equal division of the freight traffic derived from the mines or property of, or formerly held by, either the Kanawha & Hocking Coal & Coke Company or the Continental Coal Company or both; and the defendant railway Companies herein, and each of them, are also perpetually enjoined from in any manner undertaking to carry out the provisions of such contracts.

MARCH AGREEMENT ANNULLED.

(3) That the agreement entered into on or about March 10, 1910, between the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company, in substance set out in the findings of fact aforesaid, be, and the same is hereby, wholly annulled; and said railway companies, and each of them, are hereby perpetually enjoined from executing or further carrying out any of the provisions or covenants of said agreement:

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Provided, That nothing in this paragraph shall be construed as intending to determine any question of corporate power of either of such companies, at the date of the March agreement, or since then, to purchase or hold any of the stocks or bonds acquired in pursuance of said agreement, or as intending to disturb such titles thereto as were in fact acquired, except only as respects the stock purchased and now held in the Kanawha & Michigan Railway Company.

DISPOSITION OF STOCK IN THE KANAWHA & MICHIGAN RAILWAY.

(4) That the ownership of the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company (although not in form joint, but separate) in the stock of the Kanawha & Michigan Railway Company, and the resulting control of the latter company inhering in such holdings, were acquired in violation of the laws of the United States and are unlawful; and in order to avoid further infraction of the Federal law in this respect either the stock so held by the Chesapeake & Ohio Railway Company shall be sold and transferred to the Lake Shore & Michigan Southern Railway Company, or such holdings of both of said companies shall be disposed of by absolute sale, in manner following:

(a) If the Lake Shore & Michigan Southern Railway Company shall elect so to do, upon its own responsibility as to its corporate authority to acquire and hold the same, it may, within forty days from the date hereof, propose in writing to pay for the stock in the Kanawha & Michigan Railway Company so held by the Chesapeake & Ohio Railway Company a sum equal to one-half the total price paid therefor by both companies, without interest, or such other sum as the two companies shall agree upon, either in cash or upon time and terms of security satisfactory to the Chesapeake & Ohio Railway Company; and such proposal, whether it be the specific sum above stated or an agreed sum, including all terms and conditions of the proposal, shall be submitted to the court for approval,

U. S. v. LAKE SHORE & MICHIGAN SOUTH'N RY.

modification, or rejection; but no proposal involving a trackage privilege in favor of the Chesapeake & Ohio Railway Company in or over any portion of the tracks of the Kanawha & Michigan Railway Company will be considered save only on cause shown to meet temporary exigency; but if the Lake Shore & Michigan Railway Company shall within twenty days from the date hereof file with the court a written refusal to make such proposal, or failing so to do and also failing, within the period of forty days before fixed, to present any proposal for the purchase of such stock, then and in either such event;

(b) Said the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company shall thereupon comply with the requirement of this decree respecting the absolute sale of their stock in the Kanawha & Michigan Railway Company; and they shall have sixty days from the date of the filing of such written refusal, or, in case written refusal is not filed, then from the expiration of the time so given, to effect the purchase as aforesaid, to dispose of their said stock; and if the companies are able to sell the same, they shall be and are hereby authorized to sell it to any responsible railroad company not a party to this suit and entitled to purchase and hold the stock; such sale to be free from any claim, lien, or equity, of any of the parties to this suit; but said selling company shall, before concluding the sale, report to this court all its terms and conditions, the name of the proposed purchaser, and bring such purchaser (through an authorized representative) before the court for examination; and the said sale and all proceedings looking to the compliance with this decree, shall be subject to the courts approval, modification or rejection.

That if within said period said companies do not comply with the decree in this respect and report the same to the court for its action thereon, as above provided, then, unless for good cause the time shall be further extended, the court will otherwise provide for the sale of such stock by such action as it may deem necessary and adequate to such purpose, either through appointment of a master

to make such sale, or of a receiver to take possession of said stock with the power to sell and dispose of the same, or in such other manner as will enforce compliance with this decree.

(c) That in case a sale of the shares of stock of the Chesapeake & Ohio Railway Company in the Kanawha & Michigan Railway Company shall be made to the Lake Shore & Michigan Southern Railway Company and such sale shall be approved by the court, then the Chesapeake & Ohio Railway Company shall be and it is hereby perpetually enjoined—and in case such sale shall not be so effected and approved, then both of said companies, to wit, the Lake Shore & Michigan Southern Railway Company and the Chesapeake & Ohio Railway Company, and each of them, shall be and they are hereby perpetually enjoined—as respects the owning, holding, acquiring or controlling of any stock or interest in said Kanawha & Michigan Railway Company (and said last-named company is in either such event also perpetually enjoined in respect of its capital stock and property) in the same manner and to the same extent in each and every particular as is above provided in relation to the capital stock and the management and control of the Sunday Creek Company and its property; and each and all of the provisions in paragraph one (1) of this decree (concerning Sunday Creek Company), in the respects mentioned, are hereby referred to, and so far as they can in effect be made applicable hereto, they shall be treated the same as if each were at large repeated and incorporated herein with respect to the several railway companies named in this paragraph.

(5) Nothing in this decree is intended or shall be construed to prevent any of the defendant railway companies from entering into agreements for the joint carrying of through traffic according as the same is or shall be permitted by the laws regulating common carriers of interstate commerce.

QUESTIONS RESERVED AS TO CERTAIN RECIPROCAL
TRackage USE.

(6) All questions touching the continuance of the recip-

rocal trackage arrangement between Toledo and Chauncey or Armitage, as the case may be, are reserved until completion of terms of sale of stock in the Kanawha & Michigan Railway Company according to the requirements of this decree.

FURTHER COMBINATION ENJOINED.

(7) That the parties defendant in this cause, each and all of them, are perpetually enjoined from carrying into further effect the combination adjudged unlawful in this cause, and from entering into or forming any similar combination, the effect of which will be to restrain commerce among the States, or to prolong the unlawful monopoly of such commerce, as adjudged herein, in violation of the act of Congress approved July 2, 1890.

(8) That jurisdiction of this cause be retained by this court for the purpose of making such other and further orders and decrees as may be necessary to the due execution of this decree and the complete dissolution of the combination and monopoly herein condemned.

Dated March 14, 1914.

United States v. Am. Cone and Wafer Co.

In Equity No. 155

Year Judgment Entered: 1918

U. S. v. AMERICAN CONE AND WAFER CO.

FINAL DECREE.

This cause coming on to be heard at this term, the petitioner moved for the entry of a decree, whereupon, with the consent of the defendant, declared in open court, it is ordered, adjudged, and decreed as follows:

Defendant, The American Cone and Wafer Company, is a corporation organized and existing under the laws of the State of Ohio, engaged in the business of manufacturing in the city of Dayton in that State and of selling and shipping hollow cones of pastry for containing ice cream, commonly called ice cream cones, to jobbers throughout the United States, who resell and reship the cones to retailers both within and without the respective States into which they are shipped by the defendant. The above described sales and resales, shipments, and re-shipments, constitute trade and commerce among the several States of the United States.

The defendant is engaged in a combination with the said jobbers to procure their adherence to uniform prices fixed by defendant for resales of the aforesaid cones, in restraint of the above-described trade and commerce in such cones among the several States, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

For the purpose of bringing about and carrying out the said unlawful combination the defendant employs the following means:

(a) Communicating to the jobbers, in contracts, lists, schedules, and notices, resale prices fixed by defendant. (A copy of one of such lists is hereto annexed, marked Exhibit A.)

(b) Securing written agreements from the jobbers to adhere strictly to such resale prices. (A copy of such an agreement is annexed hereto, marked Exhibit B.)

(c) Investigating the jobbers for the purpose of discovering failure on the part of any of them to adhere to such resale prices.

UNITED STATES v. THE AMERICAN CONE AND
WAFER COMPANY.

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF OHIO.

Equity No. 155.

THE UNITED STATES OF AMERICA, PETITIONER,
VS.

THE AMERICAN CONE AND WAFER COMPANY,
DEFENDANT.

U. S. v. AMERICAN CONE AND WAFER CO.

(d) Notifying jobbers discovered in such failure of such discovery. (A copy of such a notice is hereto annexed, marked Exhibit C.)

(e) Securing statements and agreements, from jobbers so discovered and notified, to in future adhere to the resale prices fixed by defendant. (A copy of such statement and agreement is hereto annexed, marked Exhibit D.)

(f) Refusing to sell the cones to jobbers failing to adhere to the resale prices fixed by defendant while selling them freely to jobbers adhering to such prices.

Wherefore the defendant, its officers, directors, agents, and employees, and all persons acting in their behalf, are hereby perpetually enjoined and prohibited from further directly or indirectly adhering to, engaging in, or carrying out the above-described combination in restraint of trade and commerce among the several States or any combination of like character and effect with any persons whatsoever, and in particular from employing any of the means described above, or any simliar means, for the purpose of bringing about or carrying out any such combination.

It is further ordered that defendant pay the costs of this proceeding.

HOLLISTER,

United States District Judge.

AUGUST 3, 1918.

EXHIBIT A.

RE-SALE PRICES
FOR MCLAREN'S "REAL CAKE" CONES.

Season 1918—(Prices Subject to Change).

\$6.50 per thousand In lots of 1,000 or more.

.70 per hundred In lots less than 1,000.

(2% discount may be allowed for cash.)

The above are the *minimum* prices at which jobbers may sell McLaren's "Real Cake" cones for delivery from January 1, '18 to October 1, '18, inclusive.

Our standardization of re-sale prices is *your protection* against price cutting on one of your most profitable lines. Please do not hesitate to report to us in detail any violation of the above prices that may come to your notice. All such information will have our careful attention, and will be treated in the strictest confidence.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

August 25, 1917.

(This re-sale price list cancels all similar lists previously issued.)

EXHIBIT B.

BOOKING FOR MCLAREN'S "REAL CAKE" CONES.

Season 1918.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

GENTLEMEN:

Please enter ^{my} order for approximately ^M McLaren's "Real Cake" cones for the 1918 season, price to be \$5.00 per M, f. o. b. your factory or shipping stations ^{our} less freight. Terms 2% 10 days, net 30 days—subject to approval.

As an opening order ship ^{me} M McLaren's ^{us} "Real Cake" Cones on _____, 1918. Balance to be ordered out on or before October 1, 1918.

NOTE.—Opening shipping order is required without exception.

It is understood that ^I we will be protected from an increase in price up to and including the number of cones specified above, and that ^I we will get the benefit of

any reduction in the price quoted herein that may be made during the period of this contract.

It is further understood that the number of cones ordered is merely an estimate of ^{my} _{our} requirements of McLaren's "Real Cake" cones for a normal season and that there is no obligation to buy the exact amount specified.

RE-SALE PRICES: I ^{we} agree to adhere strictly, without exception, to the minimum re-sale prices which you may prescribe for these cones during the period of this contract.

(Signed) _____
Street Address _____
City _____

Date _____

(Original.)—To be sent to THE AMERICAN CONE AND WAFER COMPANY, Dayton, Ohio.

August 25, 1917.

EXHIBIT C.
IMPORTANT NOTICE.

Dayton, Ohio, _____, 191____.

To _____

GENTLEMEN:

We have been advised that McLaren's _____ Ice Cream Cones are being sold in your territory for less than the minimum selling prices shown on price list herewith.

A copy of this list accompanies each invoice that leaves this office. However, it is possible that for some reason or

U. S. v. AMERICAN CONE AND WAFER CO.

other these lists have not reached your desk, or that your salesmen are selling for less than our minimum prices without your knowledge or instructions to do so.

Please fill in and return to us immediately the perforated section below for our record.

THE AMERICAN CONE AND WAFER COMPANY,
Per _____

Remarks _____

EXHIBIT D.

City and date _____, 191____.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

GENTLEMEN:

The lowest prices at which we have been selling McLaren's _____ Ice Cream Cones are _____ per hundred in lots less than 1,000 and _____ per hundred in lots of 1,000 or more, _____ per cent discount for cash. We have carefully noted that the lowest prices at which we may sell these goods are _____ per hundred in lots less than 1,000 and _____ per hundred in lots of 1,000 or more, 2 per cent discount for cash.

Our salesmen have been instructed accordingly, and we will see that in the future your cones are not sold for less than these prices.

Remarks _____

(Signed), _____
Per _____

United States v. Tile Mfrs. Credit Ass'n

In Equity No. 201

Year Judgment Entered: 1923

U. S. v. TILE MANUFACTURERS CREDIT ASSO.
IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF OHIO.

In Equity No. 201.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

TILE MANUFACTURERS CREDIT ASSOCIATION, ET AL.,
DEFENDANTS.

FINAL DECREE.

The United States of America having filed its petition herein on the 11th day of January, 1922, and all of the defendants having duly appeared by A. R. Johnson and Agnew Hice, their solicitors of record, and having answered, and the cause being now at issue on the petition and answers;

Now comes the United States of America by Benson W. Hough, its attorney for the Southern District of Ohio, and by James A. Fowler and C. Stanley Thompson, Special Assistants to the Attorney General of the United States, and come also all of the defendants herein by their solicitors as aforesaid; and it appearing to the court that it has jurisdiction of the subject matter alleged in the petition and that the petition states a cause of action; and the petitioner having moved the court for an injunction against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said solicitors now and here consenting to the rendition and entry of the following decree;

Now, therefore, it is ordered, adjudged and decreed as follows:

1. That the combination and conspiracy in restraint of interstate trade and commerce, the acts, regulations, rules, resolutions, agreements, contracts and understandings in restraint of interstate trade and commerce as described in the petition herein, and the restraint of such trade and

U. S. v. TILE MANUFACTURERS CREDIT ASSO.

commerce obtained thereby, are violative of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

2. That the contract of association dated April 24, 1917, between the defendant tile manufacturers, under which the defendant Tile Manufacturers Credit Association is organized, is a contract in restraint of interstate trade and commerce in violation of the aforesaid act of Congress, and the Tile Manufacturers Credit Association is in and of itself a combination in restraint of such trade and commerce and an unlawful instrumentality organized, operated and maintained for the purpose of carrying into effect the combination and conspiracy described in the petition herein, and constitutes a violation of said act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

3. That the defendants and their officers, agents, servants and employees, and all persons acting under, by or in behalf of them or any of them, be and they are hereby perpetually enjoined, restrained and prohibited from combining, conspiring, or agreeing, expressly or impliedly, directly or indirectly, through any collective agency or agencies, or directly between themselves or any of them, to make or receive any or all of the reports described in the petition herein or to collect and distribute the information or any part thereof specified in said reports, or either or any of them, or to make or receive any reports having the same general character or the same purpose and effect as said reports, or to collect and distribute information similar to that specified in said reports, or any part thereof.

Provided, however, that the defendants may, through the association, or corporation, hereinafter provided for, receive and compile for transmission to any governmental agency such information and statistics as it may request as to production, shipments, the stocks on hand and the prices of tiles, but are restrained from distributing said

information among themselves, except that information respecting sales may be collected annually and used to enable the assessment of the several members for their proportionate parts of the several expenses of the association, and for no other purpose.

4. That the defendants and their officers, agents, servants and employees, and all persons acting under, by or in behalf of them or any of them, or claiming so to act, be and they are hereby ordered and directed to dissolve and to forever discontinue defendant Tile Manufacturers Credit Association, and that they be and they are hereby perpetually enjoined, restrained and prohibited from directly or indirectly engaging in or forming any like association, from making any express or implied agreement of association or arrangement similar to or like said agreement or arrangement, from carrying out or continuing in effect the contracts and agreements described in the petition herein, from making any express or implied contracts, agreements or arrangements similar thereto and from using any other means or methods having the purpose or effect of restricting or restraining interstate trade and commerce in tiles.

Provided, however, that the defendants are not restrained or enjoined from maintaining an association, either voluntary or incorporated, for the following objects and purposes and none other:

(a) To advance or promote the use of tiles by research, publicity, advertisement and similar activities;

(b) To deal with engineering and trade problems for the purpose of advancing the manufacture and use of tiles and to secure the arbitration of trade disputes;

(c) To carry on educational work pertinent to the industry through fellowships in schools and colleges and experimental and research work, and the instruction of mechanics and training of apprentices and workmen, and to provide for scientific research, lectures and the writing, reading and publication of papers on subjects pertaining to the industry;

(d) To maintain a traffic bureau to assist the industry

U. S. v. TILE MANUFACTURERS CREDIT ASSO.

in transportation matters before federal and state commissions and other bodies concerned in questions of transportation and tariff and also with common carriers, and, upon request of any member of the association, to furnish such member any information relating to rates upon its products or rules of transportation that may be contained in any public schedule or tariff, but all rates furnished shall be the actual rates between points of shipment and delivery, and shall not be based on any fixed or basing point;

(e) To improve sanitation, safety appliances, working conditions, accident prevention, employment, housing conditions, insurance, and matters of like character;

(f) To handle the insurance of its members, including fire, industrial, indemnity or group insurance;

(g) To maintain a credit bureau for the sole purpose of furnishing upon specific requests information as to the financial standing and the credit rating of persons and corporations purchasing or attempting to purchase tiles, but not to create directly or by inference a list or class of so-called legitimate or preferred dealers or purchasers. The gathering of information, solely for the purpose of providing credit information on special request, shall not be considered a violation of any part of this decree;

(h) To secure and maintain the standardization of quality and of technical and scientific terms, and the elimination of nonessential types, sizes, styles or grades of products.

5. That the defendants, their officers, agents, servants and employees, and all persons acting under, through, or in behalf of them or any of them, be and they are hereby perpetually enjoined, restrained and prohibited from combining, conspiring or agreeing, expressly or impliedly, directly or indirectly, to do any of the following acts:

(a) To adopt or use a uniform basic price list, or to fix and adopt list prices for their products;

(b) To establish or maintain uniform prices for their products;

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(c) To establish and maintain individual prices that are uniform for all classes of purchasers or dealers and for all sales;

(d) To establish or maintain rules or regulations as to the acceptance of orders at prices in effect prior to changes therein;

(e) To establish or maintain uniform extra charges for built-up letters, for numbers or for beveled edges;

(f) To establish or maintain uniform limitations on the proportionate amounts of the lower grades of tile sold;

(g) To sell tiles f. o. b. factory with freight equalized with other factories in the United States manufacturing the same class of tiles;

(h) To compile and distribute freight rate books for use in making freight equalizations;

(i) To establish or maintain uniform terms of sale;

(j) To establish or maintain uniform conditions on or for the acceptance of orders;

(k) To establish or maintain uniform charges for barrels, half barrels or boxes used for shipping tiles; to refuse to allow credit for old packages returned; to quote prices with package charges included, and to charge for packages whether used in shipment or not;

(l) To establish or maintain uniform conditions for the furnishing of tiles for sample purposes;

(m) To refuse to combine less than carload shipments into carload shipments invoiced to one of the purchasers;

(n) To refuse to sell to any persons or corporations because of any unpaid account or accounts;

(o) To formulate and establish or to retain in effect any requirements, circumstances, or conditions, nonconformity or noncompliance with which shall exclude any customer or customers from securing credit or shall impose any limitations or conditions whatsoever upon the credit granted;

(p) To restrict sales to dealers or contractors in tile or to establish uniform requirements for classification as dealers or contractors;

(q) To establish any system of cooperative purchasing of raw materials or supplies or of cooperative owning of the sources of raw materials, which shall eliminate or tend to eliminate competition in the purchasing of said materials or supplies;

(r) To adopt or to use a common trademark;

(s) To pool orders or to enter joint bids;

(t) To prepare and publish any list or lists of dealers or of certified dealers;

(u) To advise or communicate with one another as to proposed advances or decreases in prices or to circulate among themselves in any way information concerning or relating to proposed advances or decreases in prices, or to prices charged or to be charged;

(v) To effect in any manner whatsoever any discrimination of any character in favor of or against any individual or corporation purchasing or attempting to purchase tiles, by reason of the fact that such person or corporation is a mail-order house, or a dealer in other supplies or commodities, or a cooperative purchasing association, or a building contractor, or for any other reason, or to do any act or acts to effectuate any discrimination in favor of or against any person or corporation for any reason whatsoever.

Provided, however, that nothing contained in this decree shall be construed as prohibiting any defendant from doing or performing any of the foregoing acts or from selecting his or its own trade and from disposing of his or its own products to such persons and on such terms as he or it may choose, if done individually and without combining, conspiring or agreeing with any other defendant or with any other manufacturer of tiles or other person.

6. Jurisdiction of this case is hereby retained for the purpose of enforcing this decree and of enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate, and the defendants or either of them to apply

for its modification on the ground that its provisions have become inappropriate or unnecessary.

JOHN E. SATER,
District Judge.

NOVEMBER 26, 1923.

U. S. v. TILE MANUFACTURERS CREDIT ASSO.

John P. Sheegy
William S. Berger
Samuel O. Laughlin
James S. Youngson
B. K. Eskesen
August Staudt
Ario Pardee
Charles F. Eilert
F. W. Thresher

IN THE DISTRICT COURT OF THE UNITED STATES IN
AND FOR THE SOUTHERN DISTRICT OF OHIO.

In Equity No. 201.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

TILE MANUFACTURERS CREDIT ASSOCIATION, ET AL.,
DEFENDANTS.

SUPPLEMENTAL DECREE.

Heretofore, on November 26, 1923, a final decree was
entered in this cause.

Now come
American Encaustic Tiling Co. (Ltd.)
Mosaic Tile Co.
United States Encaustic Tile Works
National Tile Co.
Alhambra Tile Co.
Cambridge Tile Manufacturing Co.
Wheeling Tile Co.
Beaver Falls Art Tile Co.
Grueby Tile and Faience Co.
Matawan Tile Co.
Old Bridge Enameled Brick & Tile Co.
Perth Amboy Tile Works
C. Pardee Works

corporate defendants, and

F. W. Walker
F. W. Walker, Jr.
R. E. Jordan
Charles M. Cooper
William F. Landers
Louis F. Jones

individual defendants, by their solicitor of record, John Hemphill, Esquire, and pray for a modification of the aforesaid decree, (1) because, according to decisions of the Supreme Court of the United States, made subsequent to the consent and entry of the aforesaid decree, namely, on June 1, 1925, in the cases of *Maple Flooring Manufacturers Association v. United States* 268 U. S. 563, and *Cement Manufacturers Protective Association v. United States*, 268 U. S. 588, the gathering and distribution of facts relative to sales, freight rates, credit, etc., do not cause and do not constitute a restraint of trade in violation of the Act of July 2, 1890; and (2) because insofar as the aforesaid decree may be understood to prohibit the gathering and distribution of such facts, such prohibitions have become inappropriate and unnecessary; and the court having considered the statements of counsel for the parties; and the United States of America, by its attorney, now and here consenting to the rendition and entry of the following decree because it deems the aforesaid decree not to enjoin the doing of the acts and things hereinafter described:

Now, therefore, it is ordered, adjudged and decreed as follows:

That nothing contained in the aforesaid decree prohibits the defendants from associating themselves, by means of a corporation, unincorporated association or otherwise, for the purpose of making, receiving or compiling, disseminating and publishing facts, statistics and like information as to the production, shipments and freight rates, existing stocks, and the past prices of tiles, including

credit information as to purchasers thereof; provided that each of the defendants shall act with regard to production, shipments and freight rates, prices of tiles and credit information with entire independence, that is to say, free from any agreement with or criticism from his associates; provided also that the prohibition with regard to so-called freight equalization contained in subdivision (h) of paragraph 5 of the aforesaid decree shall remain effective.

That nothing contained in the aforesaid decree shall be construed to prohibit the defendants from adopting and using a common trademark, or from doing any acts to accomplish any objects or purposes not described and prohibited in specific terms in said decree; and the words "and none other" in paragraph 4 of the said decree be and they are hereby rescinded and stricken from said decree.

That the words "upon specific requests" contained in subdivision (g) of paragraph 4 of said decree be and they are hereby rescinded and stricken from said decree.

(s) BENSON W. HOUGH
U. S. District Judge.

Entered April 23, 1928.

U. S. v. NAT'L ENAMELING & STAMPING CO.

of November 26, 1923 as to clause (t) of paragraph 5 shall be and the same is hereby amended to read as follows:

"To prepare and publish any list or list of dealers or of certified dealers; PROVIDED, that nothing in this clause shall prevent the defendants from preparing and publishing a trade directory, containing names, addresses, and facilities of all known dealers, to be made available to the public generally and to all known dealers in and producers of tile in the United States, but such lists shall contain no other matter which would discriminate or tend to discriminate in favor of or against any dealer or class of dealers, and shall not be used for the purpose of discriminating in favor of or against any dealer or class of dealers, or in such a manner as to effect such a discrimination by the allowance of uniform discount based upon showroom or display facilities, or otherwise."

MELL G. UNDERWOOD

Judge.

Entered March 20, 1939.

IN THE DISTRICT COURT OF THE UNITED STATES IN
AND FOR THE SOUTHERN DISTRICT OF OHIO.

In Equity No. 201.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

TILE MANUFACTURERS CREDIT ASSOCIATION, ET AL.,
DEFENDANTS.

JOURNAL ENTRY.

This day this cause came on for hearing on defendants' Petition for a Modification of the Final Decree and by the agreement of the Attorney General, counsel for plaintiff, and E. B. Graham, counsel for defendants, it is hereby ordered and decreed by the Court that the Final Decree

United States v. Columbus Confectioners' Ass'n

In Equity No. 546

Year Judgment Entered: 1927

**UNITED STATES OF AMERICA vs. COLUMBUS
CONFECTIONERS' ASSOCIATION, ET AL.**

**IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO.**

In Equity No. 546.

U. S. v. COLUMBUS CONFECTIONERS' ASSN.

UNITED STATES OF AMERICA, PETITIONER

VS.

COLUMBUS CONFECTIONERS' ASSOCIATION ET AL.,
DEFENDANTS.

DECREE.

The United States of America having filed its petition herein on the 4th day of November, 1927, and the defendants, Columbus Confectioners' Association, The Balfour-Snyder Company, C. J. Brower, Charles W. Bush, Columbus Confection Company, Crane Cigar Company, Inc., Russell H. Fisher, John Gunderman, Ruddy Hofstetter, Maple Dell Candy Company, Orth and Williams Company, The Purity Candy Company, Inc., Charles Slater, P. S. Truesdell Company, Alfred Byron Ashman, C. Kinsell Crane, and W. C. Diven, having duly appeared by Stuart R. Bolin, their counsel:

Comes now the United States of America by Haveth E. Mau, its attorney for the Southern District of Ohio, and by John G. Sargent, Attorney General, William Donovan, Assistant to the Attorney General, and Mary G. Connor, Special Assistant to the Attorney General, and come also the defendants named herein by their counsel as aforesaid;

And it appearing to the court by admission of the parties consenting to this decree that the petition herein states a cause of action; that the court has jurisdiction of the subject matters alleged in the petition; and that the petitioner has moved the court for an injunction and for relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said counsel now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

1. That the combination and conspiracy in restraint of interstate trade and commerce, and the acts, agree-

ments, and understandings among the defendants in restraint of interstate trade and commerce, as described in the petition herein, are in violation of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto.

2. That the defendants, their officers, agents, servants, or employees are perpetually enjoined and prohibited—

(a) From combining, conspiring, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to withhold their patronage from any manufacturer or producer of the candy products dealt in by the defendants, for or on account of such manufacturer or producer having sold such products in the City of Columbus, Ohio, in the Southern District of Ohio, wherein members of the Columbus Confectioners' Association are engaged in the candy jobbing business, to persons, firms, or corporations other than the members of said association;

(b) From combining, conspiring, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to prevent manufacturers or producers, or their agents, engaged in shipping and selling such commodities among the several States, from shipping and selling such commodities freely in the open market

(c) From sending to manufacturers or producers, or their agents, engaged in selling or shipping said commodities among the several States, communications, oral or written, suggesting directly or indirectly that such manufacturers or producers, or their agents, shall refrain from selling such commodities directly to the consuming or retail trade, or to jobbers not members of said association.

(d) From combining, conspiring or agreeing together, or with one another, or with others, to fix, es-

tablish, or maintain among themselves the prices to be charged for said candy products.

3. That jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree; and for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the execution of the provisions of this decree, and for the enforcement of strict compliance therewith and the punishment of evasions thereof.

4. That the United States shall recover its costs.

BENSON W. HOUGH,
United States District Judge.

NOVEMBER 4, 1927.

United States v. White-Haines Optical Co.

Civil Action No. 2167

Year Judgment Entered: 1951

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The White-Haines Optical Company, et al., U.S. District Court, S.D. Ohio, 1950-1951 Trade Cases ¶62,882, (Jun. 22, 1951)

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

United States v. The White-Haines Optical Company, et al.

1950-1951 Trade Cases ¶62,882. U.S. District Court, S.D. Ohio. Eastern Division. No. 2167, Dated June 22, 1951.

Sherman Antitrust Act

Consent Decree—Ophthalmic Goods—Dispensing—Rebates and Price Fixing.—A consent decree, naming optical companies and individual oculists as defendants, enjoins the optical companies from making any form or rebate to any refractionist or oculists connected with the dispensing of optical goods or services and enjoins the oculists from accepting from any dispenser of optical goods and services any payment arising out of the dispensing of such goods and services to any patient of such oculists Any agreement by the defendant to fix the price of optical goods or services to be charged to consumers is prohibited.

For the plaintiff: H. G. Morison, Assistant Attorney General; Sigmund Timberg and Willis L. Hotchkiss, Special Assistants to the Attorney General; and Harry R. Talan, Special Attorney.

For the defendants: Henry S. Ballard and Howard Dresbach, for the White-Haines Optical companies.

Final judgment

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

Plaintiff, United States of America, filed its complaint herein on May 4, 1948. Thereafter, the corporate defendants and the defendant individual doctors appeared and filed their answers to the amended complaint, denying the substantive allegations thereof and any violations of law.

Subsequent to the filing of the complaint, the corporate defendants secured the incorporation under the laws of the State of Delaware of The White-Haines Company, which has succeeded to a portion of the dispensing business which had been done by the original corporate defendants. On March 21, 1950, leave of Court having first been obtained, plaintiff filed a supplemental complaint relating to The White-Haines Company and naming it as a defendant by reason of its having succeeded to a portion of the dispensing business of the original corporate defendants.

On February 14, 1950, the Court entered an order directing the defendant class doctors, whose names were set forth in an exhibit attached to said order, to appear and show cause why such doctors should not be bound by any judgment entered in this case (a copy of such order omitting the list of names is attached hereto as Exhibit 1) [not reproduced]. Exhibit 2, also attached hereto [not reproduced], sets forth the names of each defendant class doctor who either received mailing and service of the aforesaid orders and failed to show cause why he should not be bound by any judgment entered in this cause or who submitted himself to the jurisdiction of this Court and agreed to be bound by such judgment whether after trial or by consent of the parties.

Each of the corporate defendants, defendant individual doctors and the defendant successor hereby consents to the entry of this final judgment. The consent of each defendant individual doctor is made both as an individual and as a representative of the defendant class doctors as hereinafter defined.

Now, therefore, upon such consents, no testimony having been taken, and without any finding or adjudication of fact or as to past specific transactions, or any admission by reason of such consents or this judgment, excepting only the statements hereinabove set forth, which are made solely for the purpose of this proceeding; it is hereby:

Ordered, adjudged and decreed as follows:

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[*Sherman Antitrust Act*]

I. This Court has jurisdiction of the subject matter and of all defendants named in the complaint, including the defendant class doctors named in Exhibit 2 [not reproduced] and the defendant successor named in the supplemental complaint; any agreement, understanding and concert of action, whether written or oral, express or implied, of the type charged in the complaint, involving payment by any corporate defendant directly or indirectly, to any of the defendant individual doctors or to defendant class doctors, or to any agent, representative, employee or designee of any such doctor, of the whole or any part of the purchase price of ophthalmic goods collected by any such corporate defendant (whether or not as agent or purported agent of such doctor) from any one or more patients of any such doctor, and whether in the form of, or described or regarded as a rebate, credit, credit balance, gift, dividend, or participation or share in profits, or otherwise, is hereby adjudged to be in violation of [Section 1 of the Sherman Act](#); and the complaint and the supplemental complaint state a cause of action under [Section 1 of the Sherman Act](#) (15 U. S. C, Sec. 1), upon which relief may be granted.

[*Definitions*]

II. Wherever used in this judgment:

(a) "Corporate defendants" means The White-Haines Optical Company, an Ohio corporation; The White-Haines Optical Company, a delaware corporation; and the white-haines optical company, a michigan corporation, and their respective successors, assigns, officers, directors, agents, employees and representatives, and each and every other person acting or claiming to act under, through, or for such defendant, excluding, however, the defendant individual doctors, the defendant class doctors and the defendant successor, as hereinafter respectively defined.

(b) "Defendant individual doctors" means those oculists named in the complaint as individual defendants and as representatives of the defendant class doctors and each person acting or claiming to act under, through, or for any such defendant individual doctor.

(c) "Defendant class doctors" means those oculists whose names are listed in exhibit 2 attached hereto [not reproduced], and each person acting, or claiming to act, under, through, or for any such doctor.

(d) "Defendant successor" means the white-haines company, a delaware corporation, and each person acting or claiming to act under, through, or for such defendant.

(e) "Person" means an individual, proprietorship, partnership, association, joint stock company, business trust, corporation, or any other business organization or enterprise.

(f) "Ophthalmic goods" means ophthalmic lenses, lens blanks, spectacle frames, mountings, eyeglasses, spectacles, and component parts or combinations of any of these articles sold or offered for sale within the united states, its territories and possessions, and as so defined does not include sunglasses or industrial safety equipment not containing lenses ground to prescription.

(g) "Dispensing" means the sale within the united states, its territories and possessions, to consumers of ophthalmic goods, particularly of spectacles and parts thereof, and of repair parts and services in connection therewith, and/or the measurement of facial characteristics for spectacles and the fitting and adjustment of such spectacles to the face.

(h) "Dispenser" means one who engages in dispensing. The term shall not be deemed to apply to a refractionist who engages in dispensing in his own professional offices (either himself or through a bona fide employee) to his own patients only.

(i) "Consumer" means any person who wears spectacles, or any patient for whom spectacles have been prescribed by a refractionist.

[*Rebates Prohibited*]

III. Each defendant individual doctor and defendant class doctor is hereby perpetually enjoined:

(a) From accepting, directly or indirectly, or designating any other person to thus accept, from any dispenser (whether such dispenser acts or purports to act as an agent of the doctor, or otherwise), any payment arising out of or connected with dispensing to any patient of such defendant doctor, whether such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise;

(b) Entering into or participating in any plan, arrangement, or scheme whereby said defendant doctor receives from any dispenser (whether such dispenser acts or purports to act as agent of the doctor or otherwise) directly or indirectly in any form (including any of the forms and methods referred to above) any payment arising out of or connected with dispensing to any patient of such defendant doctor.

IV. Each of the corporate defendants and the defendant successor is hereby perpetually enjoined from making, directly or indirectly, any payment to any refractionist (including any oculist), or any agent, representative, employee or designee of any refractionist, arising out of or connected with dispensing, whether or not such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise; and whether such payment constitutes an individual transaction, or is part of any plan or program.

[Price Fixing Prohibited]

V. The corporate defendants, each of the defendant individual and class doctors, and the defendant successor are hereby perpetually enjoined from entering into any agreement, understanding or concert of action with any other person or persons, fixing or attempting to fix the consumer price to be charged for ophthalmic goods or services, and from dictating, prescribing, controlling or interfering with, or attempting to dictate, prescribe, control, or interfere with the consumer prices charged or to be charged by any other person or persons for such ophthalmic goods or services, provided, however, that nothing contained in this judgment shall be deemed to prevent or restrain any of the defendants, after the expiration of ten years from the date of this judgment, from making such suggestions or making and enforcing such agreements as to prices as may then be lawful.

[Notice of Judgment]

VI. The plaintiff shall mail a copy of this judgment to each member of the defendant class doctors whose name is set forth in exhibit 2 [not reproduced], attached hereto and made a part hereof. Such mailing shall be by franked envelope to the last known address of each of such defendant class doctors, and the plaintiff, after making such mailing, shall file an affidavit of mailing with the Clerk of this Court. The plaintiff may transmit with such mailing a letter, in a form to be approved by the Court, covering the transmission of such judgment and explaining the application of the judgment to the doctor.

[Inspection and Compliance]

VII. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any defendant made to its principal office be permitted, subject to any legally recognized privilege: (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview such defendant, or officers or employees thereof, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[Jurisdiction Retained]

VIII. Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this decree 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 put of this decree, for the modification thereof, or the enforcement of compliance therein and for the punishment of violations thereof.

United States v. New Wrinkle, Inc.

Civil Action No. 1006

Year Judgment Entered: 1955

Nov 25 - 1952

Presented to Court for its signature - The Court refused to sign or approve it for the reasons this day stated in the Record -
s/Robert R. Nevin
Chief Judge, S. Dist. of Ohio
(notation made by Judge Nevin in his own handwriting)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
vs.)	Civil No. 1006
)	
NEW WRINKLE, INC.,)	FILED
THE KAY AND ESS COMPANY,)	NOV 25 1952
)	HOWARD E. PARKER, Clerk
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 21, 1948; the defendants having separately moved to dismiss the complaint and this Court having sustained such motions; the United States Supreme Court, upon appeal, having reversed the judgment of this Court; plaintiff and defendant The Kay and Ess Company (the name of which has, since the filing of the complaint herein, been changed to Pirm, Inc.), by their attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or further adjudication of any issue of law herein and without admission by either of them in respect of any such issue; defendant New Wrinkle, Inc., not being a party to this Final Judgment and the proceeding against defendant New Wrinkle, Inc., being in no way affected by this Final Judgment;

NOW, THEREFORE, before any testimony has been taken and without trial or further adjudication of any issue of fact or law herein, and upon consent of plaintiff and defendant The Kay and Ess Company hereto, it is hereby

Approved for record Sept. 27, 1955
FILED SEP 27 1955 WM. ROBINETT JR., Clerk

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ORDERED, ADJUDGED AND DECREED as follows:

I.

The Court has jurisdiction of the subject matter herein and of the parties signatory to this Final Judgment, and the complaint states a cause of action against defendant The Kay and Ess Company 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) "K & S" shall mean defendant The Kay and Ess Company, a corporation organized and existing under the laws of the State of Ohio, and shall be deemed to include said company under its present name, Firm, Inc.;

(B) "Wrinkle finishes" shall mean each and every enamel, varnish or paint which has been compounded from such materials and by such methods as to produce, when applied and dried, a hard wrinkled surface on metal or other material;

(C) "Wrinkle patents" shall mean each and all patents related to wrinkle finishes and their manufacture and use, all applications therefor and all patents issued upon such applications, including all re-issues, divisions, continuations or extensions thereof;

(D) "Person" shall mean an individual, firm, partnership, corporation, association, or any other legal or business entity.

III.

The provisions of this Final Judgment applicable to defendant K & S shall apply to said defendant, its officers, directors, agents, employees, subsidiaries, successors and

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assigns, and all other persons acting or claiming to act under, through or for such defendant.

IV.

Defendant K & S is enjoined and restrained from entering into, adhering to, maintaining or furthering any combination, conspiracy, contract, agreement, understanding, plan or program, directly or indirectly, with any person engaged in the manufacture, sale or distribution of wrinkle finishes, or in the holding, licensing or otherwise exploiting of wrinkle patents, providing for, or which has the purpose or effect of, fixing, determining, maintaining or adhering to prices, discounts or other terms or conditions for the sale of wrinkle finishes.

V.

Defendant K & S is enjoined and restrained, in connection with the manufacture, distribution or sale of wrinkle finishes, from (a) using, or suggesting or requiring the use of, any price, term or condition of sale, price schedule or classification list compiled or disseminated by any other person, or (b) suggesting or requiring the use by any other person of any price, term or condition of sale, price schedule or classification list compiled or disseminated by defendant K & S.

VI.

A. Defendant K & S is ordered and directed to cancel and terminate the agreement between defendant The Kay and Ess Company and defendant New Wrinkle, Inc., dated March 11, 1948, and any agreements or understandings amending or modifying said agreement.

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B. Defendant K & S is enjoined and restrained from asserting any rights whatsoever under the agreement between defendant The Kay and Ess Company and Chadeloid Chemical Co., dated November 2, 1937, and any agreements or understandings amending or modifying said agreement.

C. Defendant K & S is enjoined and restrained from entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose or with the effect of maintaining, reviving or reinstating any of said agreements or understandings.

D. Defendant K & S is enjoined and restrained from:

- (1) Entering into, adhering to, maintaining, furthering or claiming any rights under any contract, agreement or understanding whatsoever relating, directly or indirectly, to wrinkle finishes or wrinkle patents, with defendant New Wrinkle, Inc.
- (2) Acquiring or holding, directly or indirectly, or claiming any rights under, any wrinkle patents or any other assets in conjunction with any other person engaged in the manufacture, sale or distribution of wrinkle finishes or in the holding, licensing or otherwise exploiting of wrinkle patents.

VII.

Defendant K & S is enjoined and restrained from causing, authorizing or knowingly permitting any of its officers, directors, agents or employees to serve as an officer, director,

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agent or employee of new Wrinkle, Inc., or to serve at the same time as an officer, director, agent or employee of any two persons engaged in the manufacture, sale or distribution of wrinkle finishes, or in the holding, licensing or otherwise exploiting of wrinkle patents.

VIII.

A. Defendant K & S is hereby ordered and directed to grant to any applicant making written request therefor a non-exclusive license to make, use and vend under any, some or all wrinkle patents which are issued to or applied for by such defendant within five years from the date of the entry of this Final Judgment, or which are issued or applied for within the aforesaid five year period and under which such defendant has the right to issue a license. (The defendant K & S has represented to this Court that it does not now own any wrinkle patents.)

B. Defendant K & S is enjoined and restrained from making any sale or other disposition of any of said wrinkle patents which deprives the defendant of the power or authority to grant such licenses unless it sells, transfers or assigns such patents and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking so to be bound.

C. Defendant K & S is enjoined and restrained from including any restriction or condition whatsoever in any license granted by it pursuant to the provisions of this

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Section except that:

- (1) The license may be non-transferable;
- (2) A reasonable non-discriminatory royalty may be charged;
- (3) Reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;
- (4) Reasonable provision may be made for the cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided, and
- (5) The license must provide that the licensee may cancel the license at any time upon 30 days' written notice to the licensor.

D. Within 30 days after the date of application for, issuance or acquisition of any wrinkle patents within the aforesaid five year period, defendant K & S shall advise this Court and the Attorney General, in writing, of the number and date of such application, issuance or acquisition.

E. Upon receipt of a written request for a license under the provisions of this Section, defendant K & S shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within 60 days from the date such request for a

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license is received by the defendant, the applicant therefor or the defendant K & S may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall upon receipt of notice of the filing of such application promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be on the defendant K & S to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the applicant files his application with this Court. Pending the completion of any such negotiations or proceeding, the applicant shall have the right to make, use and vend under the patents to which the application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (F) of this Section.

F. Where the applicant has the right to make, use and vend under subsection (E) of this Section, said applicant or the defendant K & S may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable rate. If this Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty rate in accordance therewith, such action shall be ground for the dismissal of his application and

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his rights under subsection (E) above shall terminate. Where an interim license has been issued pursuant to this subsection (F), reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the application was filed with this Court.

G. Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the wrinkle patents, nor shall this Final Judgment be construed as imposing any validity or value to any of the said wrinkle patents.

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 in writing to the defendant K & S, to its principal office, be permitted, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and upon request said defendant

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shall submit such written reports as might from time to time be reasonably necessary to the 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 such Department, 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 of this cause is retained for the purpose of enabling any of the parties to this Final Judgment, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

s/ Sept. 27, '55 Lester L. Cecil
United States District Judge

We hereby consent to the entry of the foregoing
Final Judgment:

For the Plaintiff:

s/ Newell A. Clapp
NEWELL A. CLAPP
Acting Assistant Attorney General

s/ Edwin H. Pewett
EDWIN H. PEWETT

s/ Ephraim Jacobs
EPHRAIM JACOBS
Special Assistant to the
Attorney General

s/ Robert B. Hummel
ROBERT B. HUMMEL

s/ Ray J. O'Donnell
RAY J. O'DONNELL
United States Attorney

s/ Max Freeman
MAX FREEMAN

s/ Norman J. Futor 9-27-55

s/ Robert M. Dixon 9-27-55

Attorneys for Plaintiff

For Defendant The Key and Ess Company:

s/ Hubert A. Estabrook
Hubert A. Estabrook
Attorney for Defendant
The Key and Ess Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	Civil No. 1006
	:	
Plaintiff,	:	(At Dayton)
	:	
vs.	:	
	:	<u>ORDER</u>
NEW WRINKLE, INC.,	:	
	:	October 16, 1956.
Defendant.	:	

This matter having been brought on before the Court on motion of defendant New Wrinkle, Inc., for an order under subsection VI(C) of the Final Judgment entered herein on October 27, 1955, and on supplementary motion by the said defendant for an alternative order, and the Court, pursuant to stipulation of the parties, having entered an order on April 25, 1956 disposing of points 1 through 4 inclusive in defendant's notice of motion, filed March 6, 1956, and having heard oral argument, and having considered the memoranda submitted by counsel for both parties, and the Court considering defendant New Wrinkle's motion in respect of its Point 5 to be a request for construction of said Final Judgment pursuant to Section X thereof and good cause appearing, it is

ORDERED that

(A) Defendant New Wrinkle may additionally include in any license granted by it pursuant to the provisions of Section VI of the aforesaid Final Judgment a royalty provision according to which

- (1) where a person requests a license under all or substantially all wrinkle patents owned or controlled by defendant New Wrinkle,
 - (a) the royalty shall be computed on the basis of all wrinkle finishes sold or used by such person and covered by the wrinkle patents which are the subject of the license requested,

or

(b) at the option of the person voluntarily requesting such license, the royalty shall be computed on the basis of all wrinkle finishes sold or used by such person, irrespective of whether any particular wrinkle finish is specifically covered by any of the wrinkle patents which are the subject of the license requested;

(2) where a person requested a license under one or more wrinkle patents not constituting substantially all of the wrinkle patents owned or controlled by defendant New Wrinkle, the royalty shall be computed on the basis of all wrinkle finishes sold or used by such person and covered by the wrinkle patents which are the subject of the license covered.

(B) Upon further consideration;

The Court finds the changes in the license agreements herein authorized do not increase the royalty provided for in Final Judgment of October 27, 1955 and, therefore, it is not necessary to proceed under Provision VII-D of the Final Judgment.

The Court having decided the questions presented by the motion of March 6, 1956, withdrawn by memorandum of April 3, 1956, and reinstated by supplemental motion April 25, 1956, the Court finds that the question presented by the alternative provision of the supplemental motion of April 26, 1956 is moot and not pertinent to any issue for permission to change the provisions of the licensing agreements as requested by motion of March 6, 1956.

The alternative provision of the supplemental motion of April 26, 1956, presenting no pertinent question for determination, is hereby dismissed as a matter of record.

(Signed) Lester L. Cecil
JUDGE, UNITED STATES DISTRICT COURT, SDO.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil No. 1006
	:	
New Wrinkle, Inc.,	:	(At Dayton)
	:	
Defendants.	:	October 27, 1955
	:	
	:	FINAL JUDGMENT

This cause having come on regularly for hearing and the Court having heard the testimony of witnesses and considered all of the testimony, depositions, stipulations, exhibits and other evidence, has heretofore entered its Opinion, Findings of Fact and Conclusions of Law, adjudging the defendant, New Wrinkle, Inc., to have violated Section 1 of the Sherman Act; and the Court having further considered two proposed forms of final judgment for each of the parties, United States of America and the defendant, New Wrinkle, Inc., briefs of counsel in support of said proposed final judgments, together with oral presentation of counsel upon each of the first of said proposals, does now

ORDER, ADJUDGE AND DECREE AS FOLLOWS:

I

As used in this Final Judgment:

- (A) "New Wrinkle" means defendant New Wrinkle, Inc., a corporation organized and existing under the laws of the State of Delaware;
- (B) "Wrinkle finishes" means each and every

enamel, varnish or paint which has been compounded from such materials and by such methods as to produce, when applied and dried, a hard wrinkled surface on metal or other material;

(C) "Wrinkle patents" means each and all patents related to wrinkle finishes and their manufacture and use, all applications therefor and all patents issued upon such applications, including all reissues, divisions, continuations or extensions thereof;

(D) "Person" means an individual, firm, partnership, corporation, association or business entity.

II

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

III

Defendant New Wrinkle has violated Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act. Said violations have consisted of an unlawful combination and conspiracy in restraint of trade and commerce in Wrinkle finishes among the several states

of the United States and with the Dominion of Canada and in the unlawful use of wrinkle patents for the purpose of effectuating said combination and conspiracy. Defendant New Wrinkle has been and now is a party to contracts, agreements, understandings in unreasonable restraint of said trade and commerce.

IV

(A) The agreement of November 2, 1937 between the Kay & Ess Company, the Kay and Ess Chemical Corporation and Chadeloid Chemical Company to which New Wrinkle became a party on December 28, 1937 and the agreement of March 11, 1938 between New Wrinkle and the Kay and Ess Company, and all existing amendments and supplements to both of said agreements are, insofar as these agreements remain executory and provide for means or procedures for the fixing of prices of wrinkle finishes are hereby adjudged and decreed to be unlawful and such executory provisions are hereby terminated.

(B) Paragraph 7 of all existing license agreements and amendments and supplements thereto, to which New Wrinkle is a party as licensor of any wrinkle patents, including but not limited to licenses with the licensees listed on Exhibit A hereto, is hereby adjudged and decreed to be unlawful under Section 1 of the Sherman Act and said paragraph 7 in each of said license agreements is hereby terminated.

(C) Defendant, New Wrinkle is enjoined and restrained from further performing, attempting to perform or enforcing said paragraph 7 of said license agreements and from renewing any of said license agreements with

(3)

paragraph 7, or any other provision purporting or intended to enable New Wrinkle to accomplish directly or indirectly any control over the prices of wrinkle finishes.

V

Defendant New Wrinkle is enjoined and restrained from:

- (A) Entering into, adhering to, maintaining, or furthering directly or indirectly, any combination, conspiracy, plan or program with any person which has the purpose or effect of, or entering into any contract, agreement, or understanding with any person which has the purpose or effect of, fixing, determining, or maintaining prices or discounts in the sale of wrinkle finishes; or enforcing or attempting to enforce by any means, or claiming any rights under any price fixing, price determining or price maintaining provisions of any existing contracts or agreements.
- (B) Distributing, disseminating, communicating, disclosing or suggesting, to any person, prices or other price information relating to wrinkle finishes;
- (C) Instituting or threatening to institute, or maintaining or continuing any action or proceeding to collect damages, royalties or other compensation based upon acts of infringement of any wrinkle patents alleged to have occurred prior to January 5, 1951;
- (D) Causing, authorizing or knowingly permitting any of its officers, directors, agents or

employees to serve as an officer, director, agent or employee of any other person engaged in the manufacture, sale or distribution of wrinkle finishes, or engaged in the holding, licensing or otherwise exploiting of wrinkle patents, without consent of Court upon showing of good cause.

VI

(A) Defendant New Wrinkle is ordered and directed to grant to any applicant making written request therefor, a non-exclusive license to make, use and vend, for the full unexpired terms thereof, under any, some or all wrinkle patents owned or controlled by defendant New Wrinkle which--

- (1) Are issued and existing at the date of entry of this Final Judgment;
- (2) Are issued after the date of entry of this Final Judgment on applications on file on said date or filed within five (5) years thereafter.

(B) Defendant New Wrinkle is enjoined and restrained from making any sale or other disposition of any of said wrinkle patents which deprives said defendant of the power or authority to grant such licenses unless it sells, transfers or assigns such patents and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking so to be bound.

(C) Defendant New Wrinkle is enjoined and restrained from including any restriction or condition whatsoever, except by further order of the Court, in any license granted by it pursuant to the provisions of this Section except that:

- (1) The license may be non-transferable;
- (2) A reasonable non-discriminatory royalty may be charged;
- (3) Reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or nay (sic) 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 the cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided, and
- (5) The license must provide that the licensee may cancel the license at any time upon 30 days' written notice to the licensor.

VII

(A) It appearing to the Court from the evidence that all of the license agreements issued by the defendant New Wrinkle, provided for the payment by the licensee of a royalty of five cents per gallon to the licensor; and it further appearing to the Court that no claim was made

(6)

that the royalty fixed by the license agreements was unreasonable, improper or in violation of law and there being no evidence to show that said royalty was unreasonable, improper or in violation of law, it is presumed that a royalty of five cents per gallon is reasonable.

(B) IT IS, THEREFORE, ADJUDGED that a royalty of five cents per gallon is a reasonable royalty, unless within thirty days from the date of service of copies of this decree upon licensees, there is filed in this Court by one or more of said licensees, an objection supported by affidavits showing that said royalty is unreasonable.

Upon the filing of such an objection, notice of which shall be served on the plaintiff and the defendant New Wrinkle, the Court will, if it considers there is probable cause to believe that a royalty of five cents per gallon is unreasonable, order a hearing in open court, to be held on such objection. Notice of such hearing shall be given to the plaintiff, the defendant New Wrinkle, and the objecting licensees or their counsel.

The royalty determined by the Court at such hearing to be a reasonable royalty, shall become effective as the reasonable royalty allowed to the defendant New Wrinkle, and shall be retroactive to the date of the filing of the objection.

(C) Existing license agreements providing for a royalty of five cents per gallon shall not be invalidated by reason thereof, but shall be subject to any change of royalty ordered by the Court under paragraph (B) hereof. New License agreements may be issued to applicants with a provision for royalties at the prevailing rate and not in excess of five cents per gallon, unless increased by the provisions of paragraph (D) hereof, and said new license agree-

ments shall be subject to all conditions and restrictions otherwise fixed by this Final Judgment Order.

(D) If the defendant New Wrinkle, desires to set a royalty rate greater than five cents per gallon in license agreements now existing or to be issued in the future, said defendant shall make application therefor to this Court. If, upon hearing after notice to all interested parties, the Court grants the application of the defendant, New Wrinkle, or makes any change in the royalty rate in excess of five cents per gallon, said new rate shall be retroactive to the date of the application.

VIII

Defendant New Wrinkle is ordered and directed, within 70 days from the date of entry of this Final Judgment, to provide a copy thereof to each existing licensee under any of the wrinkle patents.

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 Anti-trust Division, and on reasonable notice in writing to the defendant New Wrinkle, to its principal office, be permitted, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. 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 such Department, 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 of this cause is retained for the purpose of enabling any of the parties to this Final Judgment, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

(Signed) Lester L. Cecil
UNITED STATES DISTRICT JUDGE,
Southern District of Ohio.

United States v. E. F. MacDonald Co.

Civil Action No. 2429

Year Judgment Entered: 1959

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. The E. F. MacDonald Company., U.S. District Court, S.D. Ohio, 1959 Trade Cases ¶69,584, (Dec. 30, 1959)

United States of America v. The E. F. MacDonald Company.

1959 Trade Cases ¶69,584. U.S. District Court, S.D. Ohio, Western Division. Civil No. 2429. Dated December 30, 1959. Case No. 1489 in the Antitrust Division of the Department of Justice.

Combinations and Conspiracies—Sherman Antitrust Act—Consent Decree—Boycotts—Contracts to Refrain from Selling.—A corporation engaged in incentive planning was ordered by a consent decree to cancel all existing contracts that require its suppliers to refrain from selling to any incentive planner other than the corporation. The corporation was also prohibited from entering into any such contracts.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, Hugh K. Martin, United States Attorney, and George D. Reycraft, William D. Kilgore, Jr., Robert B. Hummel, Norman H. Seidler, Robert M. Dixon, and Stewart J. Miller, Attorneys, Dept. of Justice.

For the defendant: Shaman, Winer, Shulman & Ziegler; Dow, Lohnes & Albertson; and Hollabaugh & Jacobs.

Final Judgment

LESTER L. CECIL, Circuit Judge, sitting by designation [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 30, 1959, and defendant, The E. F. MacDonald Company, by its attorneys, having appeared and denied the substantive allegations thereof, and plaintiff and defendant having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein without admission in respect to any issue:

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 the parties hereto, it is hereby

Ordered, Adjudged and Decreed as Follows:

I.

[Jurisdiction]

The Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendant, The E. F. MacDonald Company, 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) "MacDonald" means the defendant, The E. F. MacDonald Company, an Ohio corporation;
- (b) "Incentive planner" means a person, corporation or other concern engaged in devising, installing and administering incentive programs for business concerns, which programs, utilizing merchandise prizes as rewards, are generally designed and conducted for the purpose of increasing sales, production or achieving other desirable business objectives for the benefit of the subscribing company by stimulating and encouraging employees and/or distributors of the subscribing company to greater effort;
- (c) "Supplier of merchandise for prizes" means a manufacturer, distributor, or any other person or concern which sells merchandise to incentive planners for use as rewards in incentive programs.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to MacDonald, its domestic subsidiaries, successors and assigns, and to each of its officers, directors, agents and employees, and to all other persons in active concert or participation with MacDonald who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Boycotts*]

(A) MacDonald is ordered and directed to cancel and terminate, within sixty (60) days after entry of this Final Judgment, any provisions of all existing contracts, agreements or understandings between it and any suppliers of merchandise for prizes, whereby any of such suppliers has agreed to refrain from selling merchandise for prizes to any incentive planner other than MacDonald.

(B) MacDonald is enjoined and restrained from entering into, enforcing or claiming any rights under any contract, agreement: or understanding with any supplier of merchandise for prizes, which has the purpose or effect of requiring said supplier to refrain from selling any merchandise for prizes to any other incentive planners.

(C) MacDonald is ordered and directed to give, within sixty (60) days after the entry of this Final Judgment, written notice of the terms of subsection (B) above to all suppliers from whom it has regularly purchased merchandise for prizes within the past year.

V.

[*Enforcement and Compliance*]

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 MacDonald at its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access, during office hours, to all books, ledgers, correspondence, memoranda and other records and documents in the possession or under the control of MacDonald, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of MacDonald, and without restraint or interference from it, to interview regarding any such matters officers and employees of MacDonald, who may have counsel present.

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

VI.

[*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.

United States v. Allen-Bradley Co.

Civil Action No. 2565

Year Judgment Entered: 1961

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ALLEN-BRADLEY COMPANY;)
 STACKPOLE CARBON COMPANY;)
 SPEER CARBON COMPANY; and)
 INTERNATIONAL RESISTANCE CO.,)
)
 Defendants.)

CIVIL NO. 2565

FILED June 7, 1961

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 19, 1961, the defendants signatory hereto having appeared herein, and the plaintiff and the defendants signatory hereto by their respective attorneys having severally consented to the entry of this Final Judgment without admission by any 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

This Court has jurisdiction of the subject matter hereof and the parties signatory hereto, and the complaint states a claim against the defendants signatory hereto under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

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

(B) "Composition resistors" means insulated, fixed resistors with a rated resistance element consisting of a composition of carbon in an organic binder;

(C) "Military packaging" means those levels of packing and packaging composition resistors provided for in military specifications of standards for the Armed Forces of the United States of America, except insofar as such specifications call for customary commercial packaging.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to its successors, assignees, subsidiaries, officers, directors, agents 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. This Final Judgment shall not apply to sales of composition resistors for use outside the United States of America, except for sales of such resistors in military packaging.

IV

Defendants signatory hereto are each enjoined and restrained from entering into, adhering to, maintaining, furthering or claiming any rights under any contract, agreement or understanding with any other manufacturer of composition resistors or a seller of such resistors who purchases from a manufacturer thereof, to:

(A) Eliminate or suppress unreasonably competition in the sale of composition resistors;

(B) Fix or maintain prices, terms or conditions for the sale of composition resistors to third persons;

(C) Submit non-competitive, collusive or rigged bids for supplying composition resistors to any customer; or

(D) Exchange any information concerning bids, prices or other terms or conditions for the sale of composition resistors prior to general publication to customers, except in connection with bona fide purchase or sales transactions.

V

Defendants signatory hereto are each ordered and directed within thirty (30) days following the entry of this Final Judgment to file with this Court, with a copy served upon plaintiff, an affidavit stating that the defendant prior to the entry of this Final Judgment and subsequent to September 1, 1960, has issued new price lists for one-half, one and two watt composition resistors in commercial packaging, which prices were independently determined.

VI

Each defendant signatory hereto is enjoined and restrained from:

(A) Publishing to or otherwise generally circulating among any other persons any lists containing prices, terms or conditions for the sale of composition resistors in military packaging; provided, however, that upon request by any actual or prospective purchaser, such defendant may state its prices for composition resistors in military packaging;

(B) Refusing to accord, to any purchaser from it who is engaged in military packaging of composition resistors, prices and terms for the sale of such resistors for military packaging

at least as favorable to such purchaser as those provided for by such defendant's then-current price list for sales of such resistors to original equipment manufacturers; provided, however, that this subsection shall not prevent differentials which (1) make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered, or (2) are made to meet an equally low price of a competitor.

VII

Each of the defendants signatory hereto is ordered and directed annually for a period of five years from the date of entry of this Final Judgment to notify each Agency and Department of the plaintiff to which the defendant has, within the preceding year, submitted a sealed bid for any composition resistors, that such defendant has been ordered, and each such defendant is hereby so ordered, to submit upon request of such Agency or Department a statement in the form set forth in the Appendix hereto with each sealed bid for composition resistors submitted to such Agency or Department.

VIII

Defendants signatory hereto are each enjoined and restrained from communicating to any other manufacturer or seller of composition resistors prior to the official opening of a bid submitted to an Agency or Department of the plaintiff (a) the intention to submit or not to submit such a bid to such Agency or Department, (b) the fact that a bid has or has not been submitted, or (c) the contents of any bid submitted.

IX

Nothing in this Final Judgment shall be construed to prevent any defendant signatory hereto from exercising any right it may have pursuant to the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act.

X

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant signatory hereto, made to its principal office, be permitted, subject to any legally recognized privilege and with the right of said defendant to have counsel present:

(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 subject matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such subject matters.

Upon such written request, such defendant shall submit such reports in writing with respect to the subject 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 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 the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment. If any such information is divulged to a duly authorized representative of the Executive Branch, outside the Department of Justice, such information shall be given after notice to the defendant and on the condition that it will not be revealed to any person outside of such representative's Department or Agency except where required by regulation or statute or pursuant to court process.

XI

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 any purpose and for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, 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.

Dated: June 7, 1961

/s/ Carl A. Weinman
United States District Judge

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

For the Plaintiff:

/s/ Lee Loevinger
Assistant Attorney General

/s/ Robert B. Hummel

/s/ William D. Kilgore, Jr.

/s/ Norman H. Seidler

/s/ Baddia J. Rashid

/s/ Lester P. Kauffman
Attorneys Department of Justice

/s/ Joseph Kinneray
United States Attorney

For the consenting Defendants

Spear Carbon Co., by its attorneys,
Donovan, Leisure, Newton & Irvine
/s/ James R. Withrow, Jr.

/s/ Jack McCann

Of counsel: /s/ William F. Rogers

International Resistance Co., by its attorneys,
Pickrel, Schaeffer & Ebeling
/s/ F. Thomas Green

Schnader, Harrison, Segal & Lewis
/s/ W. Bradley Ward

/s/ Edward W. Mullinix

Stackpole Carbon Co., by its attorneys,
Cahill, Gordon, Reindell & Ohl
/s/ John F. Sonnett

/s/ David Ingraham

Turner, Wells, Granzow & Spayd
/s/ Guy Wells

Allen Bradley Co.
/s/ James C. Mallien

/s/ Harry P. Jeffrey

A P P E N D I X

AFFIDAVIT

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

(1) The bid to _____
(name of recipient of bid) dated _____
has been prepared by _____
(name of defendant) without collusion with any other seller of composition resistors, 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 composition resistors 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. 2565 entered by the United States District Court for the Southern District of Ohio on _____, 1961.

Dated: _____, _____

Signature of person responsible
for the preparation of the bid

Signature of person supervising
the above person, where feasible

United States v. Diebold, Inc.

Civil Action No. 4485

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Diebold, Inc., U.S. District Court, S.D. Ohio, 1963 Trade Cases ¶70,738, (May 10, 1963)

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United States v. Diebold, Inc.

1963 Trade Cases ¶70,738. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 4485. Entered May 10, 1963. Case No. 1471 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Divestiture—Bank Vaults—Consent Judgment.—A manufacturer of bank vaults was required, under the terms of a consent judgment, to divest itself of the assets of a competing bank vault manufacturer which it had acquired. The manufacturer was required to sell the acquired assets within twelve months in such a manner as to permit reactivation of them as an operating business, or, on court approval, to sell them on a piecemeal basis. If at the end of twelve months, divestiture is not possible, then divestiture would not be required.

For the plaintiff: Lee Loevinger, Larry L. Williams, William D. Kilgore, Jr., Donald F. Melchior, Walter T. Nolte, and John M. Toohey, Attorneys, Department of Justice.

For the defendant: Arnold, Fortas & Porter, by William L. McGovern, Milliean, Reister, Fitton & Latimer, by F. A. Reister.

Final Judgment

DRUFFEL, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 24, 1959; and the defendant herein having appeared and filed its answer to such complaint denying the substantive allegations thereof; and

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

NOW, THEREFORE, without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED, as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject-matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act; and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

As used in this Final Judgment:

(A) "Diebold" shall mean Diebold, Incorporated, an Ohio corporation, with its principal office in the City of Canton, Ohio;

(B) "Bank and Protection Equipment" shall mean bank vault doors and linings, safe deposit boxes, security and collateral lockers, money chests, night and lobby depositories, drive-up windows and safes, or any of them;

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(C) "Acquired Assets" shall include (1) the drawings, tools, jigs, dies, fixtures, pat terns, and moulds acquired from Herring-Hall-Marvin Safe Company in September 1959 and in the possession of Diebold on the date of the entry of this decree; (2) patents, applications for patents, inventions, trademarks and trade names, copyrights, manufacturing and other licenses or rights, and the exclusive right to use the name "Herring-Hall-Marvin Safe Company" acquired from said Company in September 1959; (3) land, plants, and buildings in Hamilton, Ohio, acquired by Diebold from Herring-Hall-Marvin Safe Company in September 1959; and (4) machinery, office furniture, equipment, and inventories owned by Diebold and now located in the Herring-Hall-Marvin plant in Hamilton, Ohio.

III

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

IV

(A)Diebold is ordered and directed to make a bona fide effort to sell said "Acquired Assets" within 12 months from the date of entry of this Final Judgment, on such basis as would permit them, to the extent possible, to be reactivated as an operating business in competition with other firms engaged in the manufacture and sale of "Bank and Protection Equipment."

(B)Within 30 days after the end of the period of 12 months provided in subparagraph (A) of this Paragraph IV, the plaintiff may apply to the Court for entry of such order as the Court deems appropriate including an order requiring Diebold for a further period to undertake to accomplish the required divestiture by selling or otherwise disposing of said acquired assets either as required by subparagraph (A) of this Paragraph IV, or on a piecemeal basis, provided, however, that no such extension shall exceed 6 months from the end of the 12 month period provided for in such subparagraph (A) above.

(C)If at the end of a period of 12 months from the date of the entry of this Final Judgment, or such further period as the Court may allow not to exceed six months under subparagraph (B) of this Paragraph IV, Diebold shall have been unable to sell said "Acquired Assets" in accordance with the provisions of subparagraphs (A) or (B) above, then Diebold shall no longer be required by any provision of this Final Judgment to divest itself of any of said "Acquired Assets."

(D)Diebold shall make known the avail ability of the "Acquired Assets" ordered to be divested by ordinary and usual means for the sale of a business. Diebold shall furnish to bona fide prospective purchasers such information, including business records, regarding the "Acquired Assets," and shall permit them to have such access to, and to make such inspection of, said "Acquired Assets" as are reasonably necessary. Diebold shall render monthly reports to the Assistant Attorney General in charge of the Antitrust Division, concerning its efforts to divest itself of the "Acquired Assets," and the first such report shall be rendered within thirty days after the date of entry of this Final Judgment.

(E)Plaintiff or defendant Diebold may apply to this Court for approval of any offer by any person to purchase the "Acquired Assets" or any part thereof. No sale of any of the "Acquired Assets" or any part thereof shall be made unless approved by this Court after hearing plaintiff and defendant Diebold in regard thereto if requested by either party. Sale of the "Acquired Assets" or any part thereof shall be approved by this Court unless the Court shall find that the effect of such offer, if accepted, may be substantially to lessen competition or to tend to create a monopoly, or unless the Court shall find that the offer is unreasonable or, if made within 12 months after the effective date of this Final Judgment, that such offer is inconsistent with the terms of subparagraph (A) of this

Paragraph IV. Diebold is not required to sell all or any part of said "Acquired Assets" except at a price that is reasonable under all circumstances, taking into account the divestiture requirements of this Final Judgment.

(F)The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified. None of the "Acquired Assets" so ordered to be disposed of shall be directly or indirectly sold or disposed of to any person who, at the time of the entry of this Final Judgment, is an officer, director, agent, or employee of Diebold, or is acting for or under the control of Diebold, or in which Diebold owns any stock or financial interest.

V

Defendant Diebold is enjoined and restrained for a period of five years or, if Diebold has not disposed of the "Acquired Assets" in accordance with Paragraph IV herein, for a period of ten years, from the effective date of this Final Judgment from acquiring (1) any capital stock of any corporation engaged in the manufacture, sale or distribution of "Bank and Protection Equipment" in the United States, or (2) any assets (except products purchased in the normal course of business) of a corporation which are used in the manufacture, sale or distribution of "Bank and Protection Equipment" in the United States. Diebold is not restrained by this Final Judgment from acquiring in good faith the stock or assets of a distributor if such distributor has been unable to pay its indebtedness to Diebold in the ordinary course of business and faces imminent bankruptcy or would not be able to continue in business. If Diebold wishes to make any acquisition otherwise prohibited under this Paragraph V at any time prior to five years from the effective date of this Final Judgment or, if Diebold has not disposed of the "Acquired Assets" in accordance with Paragraph IV herein, at any time prior to ten years, it may submit disclosure of the facts regarding such proposed acquisitions and the reasons therefor to plaintiff. If the plaintiff shall not object to the proposed acquisition within thirty days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event plaintiff shall object, Diebold may apply to this Court for permission to make such acquisition, which may be granted upon a showing by Diebold to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly.

VI

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 Diebold made to its principal office, be permitted:

1. Access during the office hours of Diebold to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Diebold which relate to any of the matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of Diebold and without restraint or interference from it, to interview officers or employees of defendant Diebold, who may have counsel present.

(B)Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Diebold shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment; provided, however, that no written request need be made for the reports which Diebold is required to make by the terms of Paragraph IV(D) herein.

(C)No information obtained by the means provided in this Paragraph 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 the Plaintiff except in the course of legal proceedings to which the United States is a party for the purposes of securing compliance with this Final Judgment or as otherwise required by law.

VII

Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

United States v. Cincinnati Ins. Bd.

Civil Action No. 5489

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Cincinnati Insurance Board., U.S. District Court, S.D. Ohio, 1963 Trade Cases ¶70,945, (Dec. 19, 1963)

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

United States v. Cincinnati Insurance Board.

1963 Trade Cases ¶70,945. U.S. District Court, S.D. Ohio, Western Division. Civil No. 5489. Entered December 19, 1963. Case No. 1770 in the Antitrust Division of the Department of Justice.

Sherman Act

Refusal to Deal—Association of Insurance Brokers—Refusal to Do Business with Insurance Companies Not Represented by Association Members—Consent Judgment.—An insurance board representing insurance agents and brokers, and its members, were enjoined by a consent judgment from entering into any agreement or understanding to boycott or refuse to do business with mutual insurance companies which appoint agents who are not members of the board or from expelling or taking punitive action against members for representing any mutual insurance company which appoints agents who are not members.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Norman H. Seidler, Dwight E. Moore and Joseph J. Calvert, Attorneys, Department of Justice.

For the defendant: Murray S. Monroe, Taft, Stettinius & Hollister.

Final Judgment

PECK District Judge [*In full text*]: Plaintiff, United States of America, having filed its Complaint herein; and Plaintiff and Defendant by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by any party hereto with respect to any such issues, it is hereby

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

The Court has jurisdiction of the subject matter hereof and of the parties herein. The Complaint states claims against the Defendant upon which relief may be granted 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 any individual, corporation, partnership, association or any other business or legal entity;
- (B) "Board" shall mean the defendant The Cincinnati Insurance Board, a corporation organized and existing under the laws of the State of Ohio;
- (C) "Insurance" shall mean fire, casualty and surety insurance and each of them;
- (D) "Mutual company" shall mean any insurance company in which proprietorship rights are vested in the policyholders rather than the stockholders, and any insurance company which is affiliated with, managed, by, or

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owned by an insurance company in which proprietorship rights are vested in the policyholders rather than in the stockholders.

III.

[Applicability]

The provisions of this Final Judgment applicable to the Defendant Board shall apply to such Defendant, its members, officers, directors, trustees, agents, employees, successors, and assigns and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[Practices Prohibited]

The Defendant Board is enjoined and restrained from adopting, entering into, maintaining, adhering to, enforcing or claiming any rights under any by-law, rule or regulation or any contract, agreement, understanding, plan or program in concert with any member or any other person having the purpose or effect of:

(A) Boycotting or otherwise refusing to do business with any mutual company, or with any insurance company which appoints agents in Hamilton County, Ohio who are not members of the Board;

(B) Requiring any person to refrain from placing brokerage business with, or receiving brokerage business from, any other person because some part of the insurance will be carried by a mutual company, or by any insurance company which appoints agents in Hamilton County, Ohio who are not members of the Board.

V.

[Dealings with Members]

The Defendant Board is enjoined and restrained from:

(A) Expelling from membership or otherwise taking punitive action against any member for the reason that such member represents or does business with a mutual company, or with any insurance company which appoints agents in Hamilton County, Ohio who are not members of the Board;

(B) Refusing to admit to membership any person for the reason that such person represents or does business with any mutual company or with any insurance company which appoints agents in Hamilton County, Ohio who are not members of the Board,

VI.

[By-laws Inconsistent with Judgment]

The Defendant Board and all those acting in concert with it are enjoined and restrained from maintaining, adopting, adhering to, enforcing or claiming any rights under any by-law, rule or regulation contrary to or inconsistent with any provision of this Final Judgment.

VII.

[Compliance]

The Defendant Board is ordered and directed to:

(A) Mail an exact copy of this Final Judgment to each of its agent members, and to each insurance company doing business through independent agents in Hamilton County, Ohio;

(B) Furnish to each agent applying for membership in said Board, a copy of this Final Judgment upon acceptance of his application for membership and require as a condition of membership in Defendant Board that each member agree to comply with the terms of this Final Judgment; and

(C) File, within 60 days from the date that this Judgment becomes final, an affidavit with the Clerk of the Court certifying that copies of the Final Judgment have been mailed in accordance with the provisions of sub-section (A) of this Section VII.

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, on a reasonable notice to Defendant Board at its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access, during office hours, to those parts of the books, ledgers, correspondence, memoranda and other records and documents in the possession or under the control of Defendant Board, which relate to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of Defendant Board, and without restraint or interference from it, to interview regarding any such matters officers and employees of Defendant Board, who may have counsel present.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Defendant Board 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 enforcement of this Final Judgment. No information obtained by the means provided 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any party 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 enforcement of compliance therewith and punishment of violations thereof.

United States v. E. W. Scripps Co.

Civil Action No. 5656

Year Judgment Entered: 1968

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. E. W. Scripps Co, U.S. District Court, S.D. Ohio, 1968 Trade Cases ¶72,586, (Nov. 12, 1968)

United States v. E. W. Scripps Co

1968 Trade Cases ¶72,586. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 5656. Entered November 12, 1968. Case No. 1804 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Acquisitions—Daily Newspaper—Divestiture—Consent Decree.—A Cincinnati publisher, alleged to have control of the only two remaining dailies in the city, was required by a consent decree to divest the most recently acquired of the two so that it will continue to operate as a strong and viable company, and forbidden by the decree from acquiring any newspaper in the 19-county Cincinnati area for five years.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen.; Baddia J. Rashid, Charles D. Mahaffie, Jr., William D. Kilgore, Jr., John W. Poole, Jr., Joseph A. Tate, Leonard J. Henzke, Jr. and Charles F. B. McAleer, Attys., Dept. of Justice; Robert M. Draper, U. S. Atty., by E. Winther McCroom, First Asst. U. S. Atty.

For the defendant: Richard F. Stevens and James W. Hengelbrok.

Final Judgment

PORTER, D. J.: Plaintiff, United States of America, having filed its Complaint herein on May 27, 1964; and defendant, The E. W. Scripps Company, having filed its Answer and Supplemental Answer 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 trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by any party in respect to any such issue,

Now, Therefore, without any testimony having 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:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states claims upon which relief may be granted 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, and under Section 7 of the Act of Congress of October 14, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (B) "Scripps" means the defendant The E. W. Scripps Company;

(C) "Trust" means The Edward W. Scripps Trust established pursuant to a Trust Agreement dated November 23, 1922, between Edward W. Scripps, Trustor, and Robert Paine Scripps, Trustee, as thereafter from time to time supplemented;

(D) "Enquirer" means The Cincinnati Enquirer, Inc., publisher of The Cincinnati Enquirer, a morning and Sunday newspaper of general circulation in Cincinnati, Ohio;

(E) "Equity interest" means any ownership or other beneficial interest in Enquirer including but not limited to common stock or voting trust certificates representing such common stock;

(F) The "Nineteen County Area" means the Counties of Brown, Butler, Clermont, Clinton, Hamilton, Highland and Warren in Ohio, the Counties of Boone, Bracken, Campbell, Gallatin, Grant, Kenton and Pendleton in Kentucky and the Counties of Dearborn, Franklin, Ohio, Ripley and Switzerland in Indiana, and each of them.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, affiliates, successors, and assigns and to each of their respective directors, officers, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Defendant is ordered to notify the Trust, majority shareholder of defendant, its trustees, agents and employees of the entry of this Final Judgment and to file with the Court in this case proof of the giving of such notice, with copy to plaintiff, within ten (10) days of such entry and thereafter, for a period of five (5) years from the date of the entry of this Final Judgment, to give similar notice to any successor or assign of the Trust and to file proof of the same within a like period with copy to plaintiff.

IV

[*Divestiture*]

Defendant is ordered to and shall divest itself of its entire equity interest in Enquirer within eighteen (18) months from the date of the entry of this Final Judgment pursuant to the following plan:

(A) Defendant's equity interest shall be divested, upon such terms and conditions as will permit the Enquirer to continue to operate as a strong and viable company, by a good faith sale to a person (1) who has no interest, financial or otherwise, in the defendant Scripps or the Trust and/or is not related to a holder of any such interest, (2) who is not an officer, director, shareholder, agent or employee of Scripps or the Trust or relative thereof, (3) who is not a person in whom defendant Scripps or the Trust has at the time of such sale any financial interest whether by stock ownership or otherwise.

(B) Scripps shall make generally known the availability for sale of its equity interest by the ordinary and usual means for the sale of such an equity interest. Scripps shall furnish to each bona fide prospective purchaser all appropriate information available to it regarding the Enquirer and shall use its best efforts to obtain from the Enquirer such additional appropriate information as may be desired by such a prospective purchaser, and to obtain permission, if requested, for such a prospective purchaser to make such inspection of the facilities and operations of the Enquirer as is reasonably necessary to properly advise himself.

(C) During the period from the date of entry hereof to the consummation of complete divestiture of such equity interest, defendant shall continue in effect The Enquirer Shareholders' Second Voting Trust Agreement dated and executed as of June 30, 1965 by defendant, The Fifth-Third Union Trust Company and Enquirer.

(D) Not less than sixty (60) days prior to the closing date designated in any contract for the sale of its equity interest, defendant shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale and other pertinent information and any additional information

plaintiff may request. At the same time, defendant shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer to purchase such equity interest together with the terms and conditions thereof. Not more than forty-five (45) days after its receipt of the name, address and other information concerning the proposed purchaser, plaintiff shall advise defendant and the Court in writing of any objection it may have to the consummation of the proposed sale. If no such objection is made known to defendant and to the Court within such period, plaintiff shall be deemed to have approved such sale. If such an objection is made by plaintiff, then the proposed sale shall not be consummated unless approved by the Court or unless plaintiff's objection is withdrawn.

(E) Any contract of sale pursuant to this Final Judgment shall require the purchaser to file with this Court its representation that it intends to continue to operate the business of the Enquirer as a going concern engaged in the publication, distribution and sale of a daily and Sunday newspaper.

(F) If divestiture is accomplished by exchange of the equity interest of Scripps for the stock of another person, Scripps is enjoined from voting such stock and is ordered to divest such stock within two (2) years of its acquisition either by way of public offering or offerings or to a person or persons who would have been eligible under this Final Judgment to have purchased the equity interest, such divestiture to be subject to the terms of IV (D) above.

(G) No divestiture under this Final Judgment shall be upon terms and conditions or to a person not first approved by the plaintiff, or failing such approval, by the Court.

V

[*Future Mergers*]

Defendant Scripps is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment, from acquiring or holding after such acquisition, any assets of, or stock or other ownership or beneficial interest in any person engaged in the publication of a newspaper in the Nineteen County Area.

VI

[*Compliance*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purposes:

(A) 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 Scripps made to its principal office, be permitted, subject to any legally recognized privilege:

1. Reasonable access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of defendant which relate to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request Scripps shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested; provided, however, that 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*]

WK Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v E W Scripps Co US District Court SD Ohio 1968 Trade Cases 72586 Nov 12 1968.pdf

Jurisdiction of this cause is retained by this Court for the purpose of enabling any party 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 modification, construction, or carrying out of the provisions of this Final Judgment and for the enforcement of compliance therewith and the punishment of violations thereof.

United States v. Simmons Co.

Civil Action No. 70-121

Year Judgment Entered: 1970

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,))	
)	
Plaintiff,))	Civil No. <u>70-121</u>
)	
v.))	Entered: June 4, 1970
)	
SIMMONS COMPANY,))	
)	
Defendant.))	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint on **May 4,** 1970, and defendant having appeared herein, 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

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 defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used herein:

(A) "Defendant" means the defendant Simmons Company, a corporation organized and existing under the laws of the State of Delaware;

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

(C) "Hospital furnishings" means the products manufactured or sold by Simmons which are usually sold to hospitals and related institutions, including, but not limited to, hospital beds, cribs, mattresses, and patient room furnishings;

(D) "Distributor" means any person engaged in selling or distributing hospital furnishings.

III

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

IV

The defendant is enjoined and restrained from directly or indirectly:

(A) Fixing or establishing the prices, terms, or conditions for the sale of hospital furnishings by any distributor to any third person;

(B) Suggesting the prices, terms or conditions for the sale of hospital furnishings by any distributor to any third person for a period of one (1) year from the date of entry of this Final Judgment after which one (1) year period defendant may suggest such prices, terms or conditions if defendant specifies in writing to such distributor that such furnishings may be sold at such prices, terms or conditions as the distributor may choose;

(C) Inducing any distributor to fix, establish, maintain or adhere to any prices or other terms or conditions for the sale of hospital furnishings to any third person;

(D) Requiring any distributor to provide or communicate to Simmons any pricing information on any bid on hospital furnishings prior to the award of such bid;

(E) Restricting or limiting the persons to whom, or the territories in which, any distributor may sell hospital furnishings;

(F) Requiring any distributor to offer only Simmons hospital furnishings where requests for bids specify "Simmons or equivalent."

V

For a period of three (3) years defendant shall notify the plaintiff of any cancellation of any distributorship together with the reasons therefore within sixty (60) days after such cancellation.

VI

For a period of ten (10) years the defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment to:

- (1) Each of its distributors within thirty (30) days from the date of entry thereof; and
- (2) Each of its new distributors upon or before the execution of such distributor's contract with defendant.

(B) Notify in writing:

- (1) Each of its distributors within thirty (30) days from the date of entry thereof; and
- (2) Each of its new distributors upon or before the execution of such distributor's contract with defendant,

that such distributor is free to establish his own prices, terms or conditions of sale and is free to sell in any area and to any person;

(C) Within thirty (30) days from the date of entry of this Final Judgment submit a new contract not inconsistent with the terms of this Final Judgment to each of its distributors;

(D) File with this Court, with a copy to the plaintiff herein, a notice of compliance with this Section VI within thirty (30) days following completion of the requirements of (A), (B), and (C).

VII

For a period of ten years from the date of entry of this Final Judgment, defendant is ordered and directed each year on the anniversary date of the final judgment to file a report with the plaintiff setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment.

VIII

Nothing contained in this Final Judgment shall prevent the defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act, (15 U.S.C. 1) as amended by the McGuire Act, (15 U.S.C. 45(a)(2)) provided, however, that before the defendant may fair trade hospital furnishings in any state or territory, it shall first identify each such state or territory in writing to each of its distributors. If the defendant's right to fair trade hospital furnishings in any state or territory should be terminated by statute or law (including the decision or order of a court of last resort), defendant shall notify promptly each of its distributors of that fact and that it has ceased to exercise such right.

IX

For the purpose of determining or 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, on reasonable notice to the defendant, be permitted:

(A) Access during the office hours of the defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment;

(B) To interview officers or employees of the defendant, who may have counsel present, regarding any such matters subject to the reasonable convenience of said defendant and without restraint or interference from it.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section shall be disclosed by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings, in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

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

/s/ JOSEPH P. KINNEARY
UNITED STATES DISTRICT JUDGE

Dated: June 4, 1970

United States v. Richter Concrete Corp.

Civil Action No. 7755

Year Judgment Entered: 1972

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Richter Concrete Corp. and Hilltop Concrete Corp., U.S. District Court, S.D. Ohio, 1972 Trade Cases ¶74,151, (Oct. 20, 1972)

United States v. Richter Concrete Corp. and Hilltop Concrete Corp.

1972 Trade Cases ¶74,151. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 7755. Entered October 20, 1972. Case No. 2137, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Rigged Bids—Ready-Mix Concrete—Consent Decree.—Two ready-mix concrete suppliers were barred by a consent decree from fixing the price of ready-mix concrete, from submitting rigged bids for the sale of the product, or from exchanging price information. Suggesting prices is also prohibited, as well as disclosing any intention of submitting a bid. Joint ventures are allowed for jobs that no one of the firms could singly perform. For a period of five years, all bids must be accompanied by a certification that the bid is not the result of any agreement between the bidding firm and any other supplier.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Carl L. Steinhouse, Attys., Dept. of Justice, Frank B. Moore, Joseph J. Calvert, David F. Hils and William F. Costigan, Attys., Dept. of Justice, Antitrust Div., Cleveland, Ohio.

For defendants: Murray S. Monroe, Cincinnati, Ohio; Joseph H. Head, Jr., Cincinnati, Ohio, for Hilltop Concrete Corp.; John M. Kunst, Jr., Cincinnati, Ohio, for Richter Concrete Corp.

Final Judgment

HOGAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 16, 1970, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, 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, and the Complaint states claims upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890 (15 U. S. C. 1), commonly known as the Sherman Act, as amended.

II.

[Definitions]

As used in this Final Judgment:

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

(B) "Ready mix concrete" means a mixture of cement and other materials, such as sand, stone, and water and, at times, additives, which mixture is delivered in mixer trucks and is widely used in the construction and improvement of various types of structures and their appurtenances.

(C) "Ready mix concrete supplier" means a person who is engaged in the business of producing and selling ready mix concrete.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors, assigns, directors, officers, agents, servants and employees, 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; provided, however, that this Final Judgment shall not apply to transactions or activity solely between a defendant and its directors, officers, employees, parent company, subsidiaries, or any of them, when acting in such capacity.

IV.

[*Price Competition*]

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, establish, maintain, stabilize, increase, or adhere to prices, discounts or other terms or conditions for the sale of ready mix concrete to any third person;
- (B) Eliminate or suppress price competition in the sale of ready mix concrete;
- (C) Submit collusive or rigged bids or quotations for the sale of ready mix concrete;
- (D) Communicate to or exchange with any other person selling ready mix concrete any information concerning any actual or proposed price, price change, discount, or other term or condition of sale at or upon which ready mix concrete is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally.

V.

[*Bidding*]

Each defendant is enjoined and restrained, individually and collectively, from directly or indirectly:

- (A) Urging, influencing or suggesting to any other ready mix concrete supplier that he quote or charge specified prices or other terms or conditions of sale for ready mix concrete to any third person;
- (B) Disclosing to or exchanging with any other ready mix concrete supplier, prior to the opening of bids submitted for the supplying of ready mix concrete:
 - 1. The intention to submit or not to submit a bid, or
 - 2. The content of any bid.

VI.

[*Joint Ventures*]

Nothing herein shall be deemed (a) to prohibit any *bona fide* and arm's length purchase or sale negotiations between any defendant and any supplier of any component of ready mix concrete, or (b) to enjoin either defendant from entering into, participating in, or maintaining with any other supplier of ready mix concrete or with any one acting for or in behalf of any other supplier of ready mix concrete, a joint venture agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for the sale and installation of ready mix concrete of such monetary value or in such quantities that each party to the joint venture could not singly bid on or perform the contract. Provided, however, that such joint ventures shall not

be used or permitted to circumvent or evade any of the other provisions of this Final Judgment or to implement other activities in derogation thereof.

VII.

[*Certifications*]

Each Defendant is ordered and directed for a period of 5 years from and after the date of entry of this Final Judgment to furnish a certification simultaneously with each bid or quotation for the sale of ready-mix concrete which is required to be sealed and which is submitted by it to any governmental body or agency thereof or for any job to be let by any such governmental body or agency thereof. Said certification, in substantially the form set forth in the appendix hereto, shall be by an official of such Defendant knowledgeable about and having authority to determine the price or prices of such bid or quotation, to the effect that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such Defendant and any other persons selling ready-mix concrete.

VIII.

[*Sale Terms*]

Within sixty (60) days of the entry of this Final Judgment each defendant is ordered and directed, individually and independently:

(A) To review, determine and establish its prices and other terms and conditions of sale for ready mix concrete, on the basis of its independent judgment; provided, however, that compliance with the provisions of this Paragraph VIII (A) and (B) shall not be required if within such sixty (60) day period an affidavit signed by the officer or officers responsible for the determination of such prices, terms and conditions is filed with this Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) stating that such defendant, prior to the effective date of this Final Judgment and subsequent to November 16, 1970, reviewed, determined and announced the prices, discounts, or terms and conditions of such ready mix concrete in accordance with the requirements of this Section.

(B) To withdraw its then current price lists, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (A) above.

IX.

[*Reports*]

For a period of 10 years from the date of entry of this Final Judgment each defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise the defendant's appropriate officers, directors, employees and members of its and their obligation under this Final Judgment.

X.

[*Access to Records*]

For the purpose of determining or 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege (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, directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the

Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, 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 requested. No information obtained by the means provided in this Section X shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

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

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of ready mix concrete and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001 relating to the making of false statements.

United States v. AAV Cos.

Civil Action No. 8698

Year Judgment Entered: 1976

[¶ 60,800] **United States v. The AAV Companies, ARA Services, Inc., and Western Vending Machine Co.**

U. S. District Court, Southern District of Ohio, Western Division. Civil Action No. 8698. Entered March 22, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 2403).

Case No. 2303, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Vending Machines—Cigarette Prices—Customer Commissions—Consent Decree.—Three vending machine operators were prohibited by a consent decree from agreeing on cigarette prices and commissions paid to customers, allocating customers, or exchanging information on cigarette prices or commissions. A specified notice of the consent decree had to be placed in a local newspaper. See ¶ 1610, 4630, 4730.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, John A. Weedon, Robert S. Zuckerman, and Jerome C. Finefrock, Trial Atty., Attys., Antitrust Div., Dept. of Justice. **For defendants:** Ronald J. Goodman, Trial Atty., Cincinnati, Ohio, Jules L. Markowitz, Cleveland, Ohio, for AAV Companies; C. R. Beirne, Trial Atty., Cincinnati, Ohio, John T. Loughlin, of Bell, Boyd, Lloyd, Haddad & Burns, for ARA Services, Inc.; William B. Peterman, Trial Atty., Cincinnati, Ohio, for Western Vending Machine Co.

¹⁹ On the issue of establishing intent for a § 2 violation, see also *International Railways of Central America v. United Brands* [1976-1 TRADE CASES ¶ 60,764], slip op. 2303 (2d Cir. March 4, 1976).

Trade Regulation Reports

Court Decisions
U. S. v. AAV Companies

Final Judgment

HOGAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on January 16, 1973 and the plaintiff and the 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 this Final Judgment constituting evidence or an admission by any party signatory 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 consent of the parties as aforesaid, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto, and the Complaint states claims upon which relief may be granted against defendants and each of them 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 (15 U. S. C. A. § 1). Entry of this Judgment is in the public interest.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Cincinnati Area" means the City of Cincinnati, Ohio, and its surrounding area, including the Counties of Hamilton, Clermont and Butler in the State of Ohio, and the Counties of Kenton, Campbell and Boone in the Commonwealth of Kentucky;

(B) "Vending Machine" means any device which dispenses cigarettes automatically when appropriate coins are inserted;

(C) "Location" means any business or other establishment in the Cincinnati Area at which one or more vending machines are maintained in operation by one or more vending machine operators;

(D) "Vending Machine Operator" means any person who owns vending machines which are in operation in locations other than the vending machine operator's place of business;

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

(F) "Customer" means any person who operates a location; and

(G) "Vending Machine Business" means virtually all of the locations of a vending machine operator.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall also apply to its subsidiaries, successors, assigns, directors, officers, agents and employees, 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/Allocation*]

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, enforcing, furthering, maintaining or claiming any rights under, any contract, agreement, understanding, plan or program with any vending machine operator not owned or controlled by such defendant, directly or indirectly to:

(A) Fix, raise or maintain prices or other terms or conditions of and for the sale to the public of cigarettes at any location through a vending machine;

(B) Fix, raise or maintain commissions or payments to the owner of any location or other terms and conditions, for the placement of one or more vending machines in a location;

(C) Divide, allocate or apportion customers or locations;

(D) Refrain from soliciting the business of any customer or potential customer;

(E) Refrain from placing a vending machine in any location.

V

[*Exchange of Information*]

Each defendant is enjoined and restrained from:

(A) Discussing or exchanging information with any vending machine operator concerning the prices charged, or to be charged, for cigarettes sold through a vending machine or machines in any location;

(B) Discussing or exchanging information with any vending machine operator concerning the commissions paid, or to be paid, to any customer or potential customer.

Cited 1976-1 Trade Cases
U. S. v. AAV Companies

VI

[Notice]

The defendants shall jointly within thirty (30) days of the date of the entry by this Court of this Final Judgment publish one day a week for two consecutive weeks a notice in each edition of the Cincinnati Enquirer, which notice shall appear in such publication in the Business Section, and which notice shall read as follows:

NOTICE

NOTICE IS HEREBY GIVEN THAT A CONSENT JUDGMENT HAS BEEN ENTERED BY THE UNITED STATES DISTRICT COURT IN THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION, IN CIVIL ACTION NO. 8698, ENTITLED: UNITED STATES OF AMERICA v. THE AAV COMPANIES; ARA SERVICES, INC.; and WESTERN VENDING MACHINE COMPANY.

THE COMPLAINT IN THIS CASE ALLEGED A CONSPIRACY BETWEEN DEFENDANTS AND CO-CONSPIRATORS TO FIX PRICES AND COMMISSIONS AND TO ALLOCATE CUSTOMERS WITH RESPECT TO THE SALE OF CIGARETTES THROUGH VENDING MACHINES IN LOCATIONS OPEN TO THE GENERAL PUBLIC IN THE CINCINNATI AREA. WHILE THE CONSENT JUDGMENT PROHIBITS THE DEFENDANTS FROM ENGAGING IN SUCH ACTIVITIES, SAID CONSENT JUDGMENT DOES NOT CONSTITUTE EVIDENCE OR AN ADMISSION BY ANY OF THE DEFENDANTS WITH RESPECT TO ANY OF THE ALLEGATIONS IN THE COMPLAINT.

THE CONSENT JUDGMENT HAS BEEN FILED WITH THE UNITED STATES DISTRICT COURT IN CINCINNATI, OHIO, AND SAID CONSENT JUDGMENT IS AVAILABLE TO THE PUBLIC FOR INSPECTION AT THE OFFICE OF THE CLERK OF THE UNITED STATES DISTRICT COURT IN CINCINNATI, OHIO.

VII

[Exceptions]

(A) This Final Judgment shall not apply to relations between a defendant and a parent or subsidiary of, or a corporation under common control with, such defendant.

(B) The provisions of Subdivisions (D) and (E) of Paragraph IV shall not be applicable to covenants not to compete, rea-

sonable as to time and geographic area, entered into in good faith and on a non-reciprocal basis between a defendant and another vending machine operator ancillary to the purchase or sale of the vending machine business of a defendant or other vending machine operator.

(C) The provisions of Paragraph V shall not be applicable to discussions or exchanges of information between a defendant and another Vending Machine Operator incidental to bona fide negotiations for the purchase or sale of the vending machine business of a defendant or another vending machine operator, except that such discussions or exchanges of information shall not include the names and addresses of customers.

VIII

[Inspection]

For the purpose of determining or 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) 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, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters. A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 requested. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States and 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.

Trade Regulation Reports

Court Decisions

IX

[Retention of Jurisdiction]

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 or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violation hereof.

United States v. Leggett & Platt, Inc.

Civil Action No. 7976

Year Judgment Entered: 1978

UNITED STATES-DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 7976
)	
v.)	Filed: January 25, 1978
)	
LEGGETT & PLATT, INCORPORATED,)	Entered: June 7, 1978
)	
Defendant.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on May 18, 1971; Defendant, Leggett & Platt, Incorporated, having filed its Answer denying the substantive allegations of the Complaint; and the parties, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party in respect to any issue of fact or law herein;

NOW, THEREFORE, without any testimony having been taken herein, and without trial or adjudication of or finding on 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 hereof and the parties hereto. The Complaint states claims

upon which relief may be granted against the Defendant under Section 7 of the Clayton Act.

II

As used in this Final Judgment:

(A) "Leggett & Platt" means the Defendant, a Missouri corporation, and its subsidiaries and divisions or any of them, and any successors or assigns.

(B) "Greeno" means Leggett & Platt's interest in the manufacturing assets and facilities listed on Exhibit A.

(C) "Innerspring" means a non-upholstered wire unit which consists, essentially, of a number of connected high carbon steel coil springs tied together with and in a border of high carbon steel wire and which is used in the bedding industry.

(D) "Boxspring" means a non-upholstered wire unit which consists, essentially, of a number of connected high carbon steel coil springs tied together with and in a border of low carbon steel wire and which is used in the bedding industry. Boxsprings may be either mounted in a wood frame or unmounted.

(E) "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity.

III

The provisions of this Final Judgment applicable to the Defendant, Leggett & Platt, shall apply also to its officers,

directors, agents and employees, and to its subsidiaries, successors and assigns, and to any person in active concert or participation with any of them who receives actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Leggett & Platt is ordered and directed to sell Greeno. Such sale shall be made within thirty (30) months as provided in this Section IV.

(B) For twelve (12) months from the date of entry of this Final Judgment, Leggett & Platt shall actively and in good faith attempt to sell Leggett & Platt's interest in Greeno.

(C) If Greeno has not been sold within twelve (12) months from the date of entry of this Final Judgment, the Court shall appoint a Trustee to effect the sale, who shall serve at the cost and expense of Leggett & Platt. Leggett & Platt shall place its interest in Greeno in the control of a Trustee promptly after the Trustee's appointment by this Court. The Trustee shall have full authority to dispose of such interest in accordance with the provisions of this Final Judgment. The Trustee shall be governed in all matters hereunder by standards of reasonableness. Leggett & Platt shall fully cooperate with the Trustee in the performance of Trustee's duties hereunder.

(D) Leggett & Platt and thereafter the Trustee shall use their best efforts to sell Greeno to a person (i) which intends to operate Greeno as a going business for the manufacture of innersprings and boxsprings and for the sale of such products to parties independent of such person and (ii) which is deemed suited to increase competition in the sale of such products.

(E) If such a purchaser for Greeno is not found within twenty-four (24) months from entry of this Final Judgment, the Trustee shall sell the assets of Greeno individually or collectively for the best obtainable price.

(F) The sale shall be for cash or cash equivalent and, when made, shall be absolute and unqualified. Thereafter Leggett & Platt shall have no interest in or liability (contingent or otherwise) as to Greeno.

(G) Not less than sixty (60) days prior to the closing date of any proposed sale made pursuant to Section IV, Leggett & Platt or Trustee, whichever is then acting, shall notify Plaintiff and, if the Trustee is acting, Leggett & Platt in writing of the proposed sale. The notice shall set forth the details of the proposed transaction. Within thirty (30) days thereafter, Plaintiff may request supplementary information concerning the proposed sale. Within thirty (30) days after the receipt of the notice or within thirty (30) days after receipt of the supplementary information, Plaintiff shall notify Leggett & Platt and the Trustee, if then acting, in writing if Plaintiff objects to the proposed sale. Upon objection by the Plaintiff, the proposed sale shall not be consummated unless approved by the Court. If the Trustee is acting, the Court shall provide the Defendant with the opportunity for a hearing on the proposed sale should the Defendant raise an objection within thirty (30) days after Trustee has furnished Defendant notice of the sale.

(H) Leggett & Platt and Trustee, after appointment, shall furnish to any bona fide prospective purchaser all

information regarding the business of Greeno which is reasonably necessary and shall permit such prospective purchaser to inspect Greeno, provided that any information so obtained shall be held in confidence, not used for commercial purposes, and used only by the prospective purchaser to evaluate the merits of the proposed acquisition. If necessary, Leggett & Platt may request the Court to issue an appropriate protective order.

V

During the first twelve (12) months after the entry of this Final Judgment, Defendant shall cause reports to be submitted every sixty (60) days to the United States Assistant Attorney General in charge of the Antitrust Division ("Assistant Attorney General") outlining in detail the efforts made to comply with the provisions of Section IV above and setting forth the names and addresses of all persons who have made an offer to acquire Greeno, together with the terms and conditions of such offer. Thereafter, within the time specified by Section IV above, Trustee shall cause such reports to be submitted every sixty (60) days, or as requested by either party, to the Assistant Attorney General and to Leggett & Platt.

VI

For a period of ten (10) years from the date of entry of this Final Judgment, Leggett & Platt shall not acquire any of the assets (except goods or merchandise acquired in the normal course of business), stock or share capital of,

or merge with, a person located in the United States and engaged in the manufacture and sale of innersprings or boxsprings to parties independent of such person, unless it first obtains the consent of Plaintiff or the approval of this Court.

VII

(A) For the purpose of securing or determining compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of Defendant, who may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant which relate to any matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of Defendant and without restraint or

interference from it, to interview officers, directors, agents, servants, or employees of Defendant, who may have counsel present, regarding any such matters.

(2) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to its principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided for in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

(C) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceedings (other than a Grand Jury proceeding) to which Defendant is not a party.

VIII

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

/s/ CARL B. RUBIN

UNITED STATES DISTRICT JUDGE

Dated: June 7, 1978

EXHIBIT A

(1) EQUIPMENT (LEASED OR OWNED)

HEAVY COILING DEPT.

- 4 Wells Single End Automatic Coilers
- 2 Wunderlich Single End Automatic Coilers
- 1 Wells Straighten & Cut Machines 21'
- 1 Wells Straighten & Cut Machines 21' (Spare)
- 1 Greeno Hydraulic Frame Bender

CRIMPING DEPT.

- 2 Link Making Machines with Paper Roll
- 7 Wells Single Stroke Crimper
 - 1 With Eyer Attachment
- 1 Bock Automatic Crimper, Dropper & Eyer
- 3 Wells Weaving Helical Machines with Heat Treat Attach.
- 1 Wells Weaving Helical Machines with Heat Treat Attach. (Spare)
- 4 Greeno Weaving Helical Machines with Heat Treat Attach.
- 2 Bock Automatic Sequence Crimpers & Eyers

(SIMPLEX) BOX SPRING ASSEMBLY DEPT.

- 21 Sets Assembly Tables (2 per set) Assembly & Stock Table
- 6 Clip & Wrap Air Gun Stations with Table
- 1 Electric Butt Welder

PRESS & FURNITURE FRAME DEPT.

- 2 Ingersoll-Rand Horizontal Water Cooled Compressors
- 1 Electric Fork Lift Trucks (3000# & 4000# cap.)
- 2 Electric Fork Lift Trucks (3000# & 4000# cap.) (Worn Out)

EXHIBIT A

OFFSET EQUIPMENT

12 Greeno OST Assembly Tables with Wunderlich
Coilers attached
8 Wunderlich Double End Automatic Coilers
(not attached) (Spares)
8 Greeno OST Assembly Tables (Spares)
1 Special-Hand Assembly Table with Helical Former
3 Cut & Clinch Tables - Air Operated
7 Border Wire Framing Tables with Helical Former
6 Inspection Tables
2 Spring Crating Presses

BONNELL EQUIPMENT

4 Anderson Assembly Tables with Wells D.E.
Auto Coilers Attached
5 Anderson Assembly Tables with Wunderlich
D.E. Auto Coilers Attached
2 Wells Assembly Tables with Wunderlich
D.E. Auto Coilers Attached
2 Johnson Assembly Tables with Wells D.E.
Auto Coilers Attached
3 Anderson Type Helical Formers with Greeno
Heat Treat. Attach.
3 Border Wire Framing Tables with Helical Former
4 Inspection Tables
2 Bock Spring Crating Presses
1 Ingersoll-Rand Air Cooled Air Compressor
1 Cushion Baling Press
3 Wells D.E. Automatic Coilers (Spares)

EXHIBIT A

(2) LEASED REAL ESTATE

(A) Main Building

The building leased to Leggett & Platt, Inc. by The J. R. Greeno Company on or about January 1, 1969 and known as the Main Building and presently used for the manufacturing of springs, and located on the south side of Ellis Street in the City of Cincinnati, County of Hamilton, and State of Ohio.

(B) Bonnell Building

The building leased to Leggett & Platt, Inc. by The J. R. Greeno Company on or about January 1, 1969 and known as the Bonnell Building and presently used as a warehouse, and located on the north side of Ellis Street in the City of Cincinnati, County of Hamilton, and State of Ohio.

United States v. Leggett & Platt, Inc.

Civil Action No. C-1-78-36

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Leggett & Platt, Inc., U.S. District Court, S.D. Ohio, 1979-1 Trade Cases ¶62,453, (Jun. 7, 1978)

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

United States v. Leggett & Platt, Inc.

1979-1 Trade Cases ¶62,453. U.S. District Court, S.D. Ohio, Western Division, Civil Action No. C-1-78-36 Entered June 7, 1978.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 5594). Case No. 2395, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Divestiture: Metal Bed Frames: Consent Decree.— A Missouri metal bed frame manufacturer was barred by a consent decree, for a period of five years, from acquiring any of the assets, stock or share capital of, or merger with, a metal bed frame manufacturer located East of the Rocky Mountains. The manufacturer was also required to divest itself of its interests in plants located in Oklahoma and Kentucky. Under the terms of the decree, if those plants were not sold within twelve months, appointment of a trustee was required to effect the sale at the cost and expense of the manufacturer.

For plaintiff: Hugh P. Morrison, Jr., Acting Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John L. Wilson, John A. Weedon, William A. LeFaiver, David F. Hils, Saundra B. Wallack, and Donald S. Scherzer, Attys., Dept. of Justice, Antitrust Div. **For defendant:** Shughart, Thomson & Kilroy, by Harry P. Thomson, Jr., Kansas City, Mo.

Final Judgment

RUBIN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on June 28, 1974; Defendant, Leggett & Platt, Incorporated, having filed its Answer denying the substantive allegations of the Complaint; and the parties, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment Constituting any evidence against or admission by any party in respect to any issue of fact or law herein;

Now, Therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under [Section 7 of the Clayton Act](#).

II

[Definitions]

As used in this Final Judgment:

(A) "Leggett & Platt" means the Defendant, a Missouri corporation, and its subsidiaries and divisions or any of them, and any successors or assigns.

(B) "East of the Rocky Mountains" means the geographical area of the United States which is located east of the eastern borders of the States of Idaho, Utah, and Arizona.

(C) "Metal bed frame" means a metal frame which consists, essentially, of steel angle rails riveted together in such a manner as to form, together with casters and brackets, a platform which is used to support a bedding ensemble (i. e., mattress and boxsprings).

(D) "Metal bed rails" means the steel angle side rails of a bed which connect headboard and footboard and support a boxspring and mattress.

(E) "Metal trundle beds" means a high and low steel bed combination sold in pairs where the low bed slides under the high bed for storage when not in use. Both beds are foundation supports for mattresses.

(F) "Metal pop-up" means a low height steel bed section generally on casters or glides which is a foundation for a mattress and which activates with a tension helical manually to raise up to average level sleeping height. It may be sold separately or in combination with other beds.

(G) "Metal rollaway bed" means a steel angle link fabric metal bed that jackknives when not in use so that it can be rolled away into a closet for storage. It is usually made with a small foot and head attachment to contain the bed clothes and is mounted on casters. It acts as a foundation spring for a mattress.

(H) "Trundle bed springs" means a steel angle link fabric spring suspended from a head and foot trundle bed section and used as a foundation support for a mattress.

(I) "Bunk bed springs" means a steel angle link fabric spring suspended from a head and foot bunk bed section and used as a foundation support for a mattress.

(J) "Hominy" means Leggett & Platt's interest in the manufacturing assets and facilities listed on Exhibit A.

(K) "Winchester" means the building presently owned by Leggett & Platt and located at 301 West Broadway, Winchester, Kentucky.

(L) "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant, Leggett & Platt, shall apply also to its officers, directors, agents and employees, and to its subsidiaries, successors and assigns, and to any person in active concert or participation with any of them who receives actual notice of this Final Judgment by personal service or otherwise.

IV

[*Divestiture*]

(A) Leggett & Platt is ordered and directed to sell Hominy and, at the option of the purchaser of Hominy, to sell Winchester to such purchaser. Such sales shall be made within thirty (30) months as provided in this Section IV.

(B) For twelve (12) months from the date of entry of this Final Judgment, Leggett & Platt shall actively and in good faith attempt to sell Leggett & Platt's interest in Hominy and, at the option of the purchaser of Hominy, Winchester.

(C) If Hominy has not been sold within twelve (12) months from the date of entry of this Final Judgment, the Court shall appoint a Trustee to effect the sale, who shall serve at the cost and expense of Leggett & Platt. Leggett & Platt shall place its interest in Hominy and Winchester in the control of a Trustee promptly after the Trustee's appointment by this Court. The Trustee shall have full authority to dispose of such interest in accordance with the provisions of this Final Judgment. The Trustee shall be governed in all matters hereunder

by standards of reasonableness. Leggett & Platt shall fully cooperate with Trustee in the performance of Trustee's duties hereunder.

(D) Leggett & Platt and thereafter the Trustee shall use their best efforts to sell Hominy to a person (i) who intends to operate Hominy as a going business for the manufacture of metal bed frames and related products and for the sale of such products to parties independent of such person and (ii) who is deemed suited to increase competition in the sale of such products.

(E) If the purchaser of Hominy elects to purchase Winchester, Leggett & Platt shall prepare and provide to such purchaser all plans and layouts necessary to give Winchester the capability of producing \$1,500,000 of metal bed frames annually.

(F) At the option of the purchaser of Hominy, Leggett & Platt shall buy, F. O. B., Hominy, Oklahoma, during the first eighteen (18) months following the divestiture of Hominy, at least \$500,000 of metal bed frames at Leggett & Platt's list price for purchases of comparable quantity, less 20 percent. Leggett & Platt shall have the right to establish reasonable specifications for such frames.

(G) If such a purchaser for Hominy is not found within twenty-four (24) months from the entry of this Final Judgment, the Trustee shall sell the assets of Hominy individually or collectively for the best obtainable price.

(H) The sale shall be for cash or cash equivalent and, when made, shall be absolute and unqualified. Thereafter, Leggett & Platt shall have no interest in or liability (contingent or otherwise) as to Hominy, provided that neither this paragraph nor any other part of this decree shall prevent Leggett & Platt from assigning its leases or subletting its leased premises to a purchaser hereunder, and to such extent remaining liable as to its leases.

(I) Not less than sixty (60) days prior to the closing date of any proposed sale made pursuant to Section IV, Leggett & Platt or Trustee, whichever is then acting, shall notify Plaintiff and, if the Trustee is acting, Leggett & Platt in writing of the proposed sale. The notice shall set forth the details of the proposed transaction. Within thirty (30) days thereafter, Plaintiff may request supplementary information concerning the proposed sale. Within thirty (30) days after the receipt of the notice or within thirty (30) days after receipt of the supplementary information, Plaintiff shall notify Leggett & Platt and the Trustee, if then acting, in writing if Plaintiff objects to the proposed sale. Upon objection by the Plaintiff, the proposed sale shall not be consummated unless approved by the Court. If the Trustee is acting, the Court shall provide the Defendant with the opportunity for a hearing on the proposed sale should Defendant raise an objection within thirty (30) days after Trustee has furnished Defendant notice of the sale.

(J) Leggett & Platt and Trustee, after appointment, shall furnish to any bona fide prospective purchaser all information regarding the business of Hominy and Winchester which is reasonably necessary and shall permit such prospective purchaser to inspect Hominy and Winchester, provided that any information so obtained shall be held in confidence, not used for commercial purposes, and used only by the prospective purchaser to evaluate the merits of the proposed acquisition. If necessary, Leggett & Platt may request the Court to issue an appropriate protective order.

V

[Reports]

During the first twelve (12) months after the entry of this Final Judgment, Defendant shall cause reports to be submitted every sixty (60) days to the United States Assistant Attorney General in charge of the Antitrust Division ("Assistant Attorney General") outlining in detail the efforts made to comply with the provisions of Section IV above and setting forth the names and addresses of all persons who have made an offer to acquire Hominy, together with the terms and conditions of such offer. Thereafter, within the time specified by Section IV above, Trustee shall cause such reports to be submitted every sixty (60) days, or as requested by either party, to the Assistant Attorney General and to Leggett & Platt.

VI

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[Acquisitions; Mergers]

For a period of five (5) years from the date of entry of this Final Judgment, Leggett & Platt shall not acquire any of the assets (except goods or merchandise acquired in the normal course of business), stock or share capital of, or merge with, a person located East of the Rocky Mountains and engaged in the manufacture and sale of metal bed frames, metal bed rails, metal trundle beds, metal pop-ups, metal rollaway beds, trundle bed springs, or bunk bed springs to parties independent of such person, unless it first obtains the consent of Plaintiff or the approval of this Court.

VII

[Inspection]

(A) For the purpose of securing or determining compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of Defendant, who may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant which relate to any matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, directors, agents, servants, or employees of Defendant, who may have counsel present, regarding any such matters.

(2) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to its principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided for in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

(C) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Defendant is not a party.

VIII

[Retention of Jurisdiction]

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

IX

[Public Interest]

Entry of this Final Judgment is in the public interest.

United States v. Baldwin-United Corp.

Civil Action No. C-1-82-179

Year Judgment Entered: 1982

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Baldwin-United Corp. and MGIC Investment Corp., U.S. District Court, S.D. Ohio, 1982-2 Trade Cases ¶64,788, (May 21, 1982)

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

United States v. Baldwin-United Corp. and MGIC Investment Corp.

1982-2 Trade Cases ¶64,788. U.S. District Court, S.D. Ohio, Western Division, Civil Action No. C-1-82-179, Entered May 21, 1982, (Competitive impact statement and other matters filed with settlement: 47 *Federal Register* 9591).

Case No. 2937, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Mortgage Guaranty Insurance: Divestiture: Hold-Separate Order: Ban on Future

Acquisitions: Consent Decree.— A holding company that acquired the largest private mortgage guaranty insurer was required by a consent decree to divest its pre-existing interest in the sixth largest such insurer. Until the divestiture was accomplished, the entity to be divested was required to be held completely separate. A 10-year ban on acquisitions in the industry without prior government approval was imposed.

For plaintiff: William F. Baxter, Asst. Atty. Gen., Mark Leddy, Stanley M. Gorinson, Robert E. Hauberg, John V. Thomas, Gordon G. Stoner, Julie L. Akins, Antitrust Div., Dept. of Justice, Washington, D. C. **For defendants:** Joshua F. Greenberg, of Kaye, Scholer, Fierman, Hays & Handler, for Baldwin-United Corp.; Ephraim Jacobs, of Foley, Lardner, Hollabaugh & Jacobs, for MGIC Investment Corp. (J. Leland Brewster, III and Neil Ganulin, of Frost & Jacobs, Alan F. Goott, of Kaye, Scholer, Fierman, Hays & Handler, of counsel, for Baldwin-United Corp.).

Final Judgment

Rubin, D. J.: Plaintiff, United States of America, having filed its Complaint herein on February 22, 1982, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment, and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

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.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under [Section 7 of the Clayton Act](#), as amended (15 U. S. C. §18).

II.

[*Definitions*]

As used in this Final Judgment:

A. "AMIC" shall mean AMIC Corporation and each of AMIC's directly and indirectly owned subsidiaries.

B. "Baldwin-United" shall mean defendant, Baldwin-United Corporation, and each of Baldwin-United's directly and indirectly owned subsidiaries including without limitation AMIC and MGIC Investment Corporation and Mortgage Guaranty Insurance Corporation. Provided, however, that for the purposes of paragraphs IV, V, VI and VII, the term Baldwin-United does not include AMIC.

C. "Private mortgage guaranty insurance" shall mean all forms of mortgage guaranty insurance on 1-4 family residential homes (including individual condominium policies) by licensed insurers that are not government or quasi-government organizations.

D. "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to Baldwin-United and its officers, directors, agents, employees, affiliates, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Divestiture*]

A. Baldwin-United is ordered and directed to divest all direct or indirect ownership interest in and control over AMIC by February 8, 1983. If such divestiture is not effected by means of a sale to a third party or otherwise by February 8, 1983, Baldwin-United shall effect such divestiture on February 8, 1983 by means of a spin-off of all of its interest in AMIC to the shareholders of Baldwin-United. Such a spin-off shall be accomplished by a divestiture agent, who shall be proposed by Baldwin-United subject to the approval of plaintiff, which shall have all authority and power necessary to effect the spin-off on February 8, 1983. Said divestiture agent may be a commercial bank or trust company, or other appropriate entity; the divestiture agent shall have no present or past fiduciary relationship with Baldwin-United, and shall be paid by Baldwin-United. Baldwin-United shall engage the services of a divestiture agent sufficiently in advance of February 8, 1983 to ensure that the spin-off shall be accomplished on that date.

B. The period within which divestiture must be effected may be extended, for a maximum of six months, by the plaintiff, which shall not unreasonably withhold its consent, if Baldwin-United demonstrates that such an extension is necessary to enable Baldwin-United or any acquiring party to obtain necessary approvals from state insurance departments or other state or federal agencies having jurisdiction; provided, however, that all applications or notices required to be filed in connection with obtaining such approvals shall have been filed not later than January 9, 1983. If such an extension is granted by plaintiff, the date for the spin-off of AMIC by the divestiture agent specified above shall be the last day of the extended period. There shall be no other extensions granted.

C. The divestiture required by this Section IV shall be to a purchaser (or to the shareholders of Baldwin-United) and upon terms and conditions approved by the plaintiff or, failing such approval by the plaintiff, by the Court. Within 15 days after Baldwin-United presents to the plaintiff notice of any proposed divestiture, and full details of same, the plaintiff shall indicate its approval or disapproval in writing or shall request additional information concerning the proposed divestiture.

D. If plaintiff requests additional information concerning the proposed divestiture, it must indicate its approval or disapproval in writing within 15 days after receipt of the additional information. Failure to respond within the required time under either circumstance shall be deemed to be approval by the plaintiff. If plaintiff objects to the proposed divestiture, then such divestiture shall not be consummated unless approved by the Court or unless plaintiff notifies Baldwin-United in writing that its objection has been withdrawn.

V.

[**Compliance**]

Sixty (60) days after the date of entry of this Final Judgment and every sixty (60) days thereafter until Baldwin-United has complied with Section IV hereof, Baldwin-United and the divestiture agent shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Final Judgment. Each report from Baldwin-United shall include the name and address of each person, if any, who, since the last such report, made an offer, expressed a desire in writing, or entered into negotiations to acquire the property to be divested together with full details of same. Each report from the divestiture agent shall describe the state of preparation for the spin-off. All reports required by this subparagraph shall, to the extent permitted by law, be kept confidential within the meaning of 15 U. S. C. §18a(h).

VI.

[**Hold-Separate Order**]

Baldwin-United shall, until the divestiture required by this Final Judgment is accomplished:

A. Maintain persons on the AMIC Board of Directors who are all demonstrably independent of Baldwin-United's control; the directors will not be stockholders, officers, directors or employees of Baldwin-United, nor will they be relatives of any officers or directors of Baldwin-United, nor will they have any other substantial business relationship with Baldwin-United; such directors will be chosen on the basis of their business reputation and judgment; the Board of Directors will have the same authority and responsibilities as the board of directors of any independent corporation. Provided, however, that Baldwin-United may cause AMIC's directors to prevent AMIC from entering businesses other than the business of insurance.

B. Exercise no control over the conduct of AMIC's business. No competitive information shall be communicated by AMIC to Baldwin-United or MGIC. Each member of AMIC's Board of Directors and each officer of AMIC shall be given copies of this Final Judgment and shall submit to plaintiff, prior to entry of this Final Judgment, affidavits that they will comply with its terms.

In furtherance of these commitments, Baldwin-United will not (i) use any advertising agency or public relations counsel now being used in any material respect by AMIC; (ii) use the same principal bank now used by AMIC; (iii) share personnel with AMIC; or (iv) engage in financial or other transactions with AMIC except treaty reinsurance in the ordinary course of AMIC's business.

C. Baldwin-United and its independent auditors, where appropriate, will be entitled to receive from AMIC such information, reports and documents as are reasonably required to enable Baldwin-United to (i) prepare its regular financial reports and any filings made with the SEC or other regulatory agencies which require data or information concerning AMIC, (ii) to monitor and comply with the requirements of the Amended Stock Purchase Agreement and the officers' Stock Purchase Agreement among Baldwin-United and the five members of AMIC's management, and (iii) to prepare its federal income tax returns and other tax returns or reports which may require AMIC figures; in addition, Baldwin-United will be entitled and expects to receive monthly, quarterly and annually, as applicable, financial statements and notes thereto in reasonable detail and in form similar to financial statements and notes thereto sent to the shareholders of publicly-held companies on a quarterly and annual basis; such statements shall include the following:

- (i) AMIC's consolidated and consolidating balance sheets together with notes thereto.
- (ii) AMIC's consolidated and consolidating statements of income together with notes thereto.
- (iii) AMIC's analysis of risks to capital ratios for companies involved.
- (iv) AMIC's consolidated statement of changes in financial position together with notes thereto.
- (v) AMIC's annual statements filed with state insurance commissioners.
- (vi) AMIC's detailed analysis by company of investment portfolios.

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Baldwin-United reserves the right to inquire in writing about and to receive such further information related to such reports and analyses as may be reasonably required to comply with the provisions of this paragraph; any information required to be supplied to regulatory agencies which may be of a confidential nature will, to the extent possible within the rules of the agency involved, be supplied by AMIC directly to the agency and not to Baldwin-United.

D. Not request or otherwise seek to obtain, any information of a confidential nature concerning AMIC's present lines of business (except for the financial information described above), its short and long-term plans, its customers or customer prospects, or any trade secrets.

E. Not cause the destruction of AMIC or cause the viability of AMIC to be impaired.

VII.

[10-Year Ban on Acquisitions]

At any time during the period of ten (10) years from the date of entry of this Final Judgment, without prior written approval of the plaintiff, Baldwin-United is enjoined and restrained from acquiring:

A. Any capital stock of any person engaged in the sale of private mortgage guaranty insurance in the United States (excluding, however, Baldwin-United's planned acquisition of MGIC Investment Corporation and its subsidiary corporations engaged in such business); and

B. Any assets employed in the sale of private mortgage guaranty insurance in the United States by any other person, but this shall not prohibit Baldwin-United from acquiring assets in the ordinary course of the mortgage guaranty insurance business.

VIII.

[Inspections]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Baldwin-United made to its principal offices, be permitted:

(i) Access during regular office hours of Baldwin-United to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Baldwin-United and without restraint or interference from Baldwin-United, which may have counsel present; and

(ii) Subject to the reasonable convenience of Baldwin-United and without restraint or interference from Baldwin-United, to interview officers, employees, and agents of Baldwin-United, who may have counsel present.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Baldwin-United's principal offices, Baldwin-United shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law; and

D. If at the time information or documents are furnished by Baldwin-United to plaintiff in accordance with this Section, Baldwin-United represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure and

Baldwin-United marks each pertinent page of such material “Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then unless a court of competent jurisdiction orders otherwise, ten (10) days' notice shall be given by plaintiff to Baldwin-United prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which Baldwin-United is not a party.

IX.

[Retention of Jurisdiction]

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

X.

[Public Interest]

Entry of this Final Judgment is in the public interest.