

1 LEON W. WEIDMAN
2 KENDRA S. MCNALLY
3 WILLIAM L. WEBBER
4 Antitrust Division
5 U. S. Department of Justice
6 3101 Federal Building
7 300 No. Los Angeles Street
8 Los Angeles, California 90012
9 Telephone: (213) 688-2507

10 Attorneys for the United States

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA) Civil No. CV-81-0951-RJK(kx)
14)
15 Plaintiff,)
16)
17 v.) Filed: October 28, 1981
18)
19 BEVEN-HERRON, INC. and)
20 SIMPSON MANUFACTURING CO., INC.)
21)
22 Defendants.)

23 COMPETITIVE IMPACT STATEMENT

24 Pursuant to Section 2(b) of the Antitrust Procedures and
25 Penalties Act, 15 U.S.C. § 16(b), the United States of America
26 hereby files this Competitive Impact Statement relating to the
27 proposed Final Judgment submitted for entry in this civil antitrust
28 proceeding.

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NATURE AND PURPOSE OF THIS PROCEEDING

On February 25, 1981 the United States filed a civil antitrust action under Section 4 of the Sherman Act, 15 U.S.C. § 4, alleging that the defendants and unnamed co-conspirators conspired to submit rigged bids for industrial and commercial panelized roof structure construction contracts in Southern California, to allocate such contracts among themselves, and to fix the prices to be bid for such contracts. The complaint alleges that, as a result of this conspiracy, prices for industrial and commercial panelized roof structure construction projects in Southern California have been fixed at artificial and noncompetitive levels, competition for panelized roof structure construction projects has been restrained, and customers have been denied the benefits of free and open competition in contracting for panelized roof structure construction projects. The United States sought a judgment declaring the alleged conduct to be a conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and injunctive relief prohibiting the conduct alleged to have given rise to the violation.

Entry by the Court of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings which might be required to interpret, modify, or enforce the Final Judgment or to punish violations of any of the provisions of the Final Judgment.

1 The defendants in this civil action were also named as
2 defendants in a criminal indictment, filed by the United States in
3 the United States District Court for the Central District of
4 California on February 25, 1981, alleging a violation of Section 1
5 of the Sherman Act, 15 U.S.C. § 1.

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7 II

8
9 DESCRIPTION OF PRACTICES GIVING
10 RISE TO THE ALLEGED VIOLATION

11 A. The Defendants

12
13 Beven-Herron, Inc., (hereinafter "Beven-Herron") is a
14 corporation organized and existing under the laws of the State of
15 California and its principal place of business is in La Mirada,
16 California. Simpson Manufacturing Co., Inc., (hereinafter
17 "Simpson") is a corporation organized and existing under the laws of
18 the State of California with its headquarters in San Leandro,
19 California, and branch offices in Brea, California and Phoenix,
20 Arizona. Both Beven-Herron and Simpson are engaged in panelized
21 roof structure construction in Southern California.

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1 B. Co-Conspirators

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3 The complaint alleges that various persons not made defendants
4 in the complaint have participated as co-conspirators in the
5 violation alleged and have performed acts and made statements in
6 furtherance thereof.

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8 C. Trade and Commerce Involved

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10 The industry that the complaint alleges as the subject of
11 defendants' conspiracy is the industrial and commercial building
12 panelized roof structure construction business. Panelized roof
13 structure companies contract with general contractors or building
14 owners to construct the panelized roof structure portion of certain
15 commercial and industrial buildings. Panelized roof structure
16 companies frequently compete for contracts by submitting bids to
17 general contractors or building owners.

18
19 Roof structures form a base upon which roofing materials, such
20 as tar and shingles, are added to buildings. Panelized roof
21 structures are composed primarily of plywood panels and structural
22 glued laminated timbers.

23
24 D. Alleged Violations

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26 During the period of time covered by the complaint, general
27 contractors and owners of industrial and commercial building
28 projects in Southern California invited the defendants to submit

1 competitive bids for panelized roof structure construction. Each of
2 the defendants secured contracts for panelized roof structure
3 construction of industrial and commercial buildings as a result of
4 having submitted the lowest bid to general contractors or owners of
5 industrial and commercial building projects in Southern California.
6 Between 1977 and 1979 the defendants had total sales in excess of
7 \$100 million from panelized roof structure construction for
8 commercial and industrial buildings in Southern California.

9
10 In the course of performing panelized roof structure
11 construction contracts, there was a substantial flow in interstate
12 commerce of structural glued laminated timber and other essential
13 materials transported by the defendants or their suppliers from
14 states other than California for use by defendants in the
15 construction of panelized roof structures in Southern California.

16
17 The complaint alleges that from at least 1976 and continuing
18 thereafter until at least July 1980 the defendants and
19 co-conspirators engaged in a continuing conspiracy to suppress
20 competition in the market for industrial and commercial panelized
21 roof structure construction, resulting in an unreasonable restraint
22 of interstate trade and commerce in violation of Section 1 of the
23 Sherman Act, 15 U.S.C. § 1. The alleged conspiracy involved
24 discussions and agreements among officials or employees of
25 defendants and co-conspirators concerning the prices at which
26 defendants would offer to construct panelized roof structures, such

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1 activity being commonly referred to as bid-rigging. The complaint
2 alleged that these discussions and agreements had the purpose and
3 effect of restraining competition.
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5 The complaint alleges that the conspiracy had the following
6 effects: (a) prices for industrial and commercial building panelized
7 roof structures in Southern California were fixed at artificial and
8 noncompetitive levels; (b) competition for industrial and commercial
9 building panelized roof structures in Southern California was
10 restrained; and (c) customers were denied the benefits of free and
11 open competition in contracting for industrial and commercial
12 building panelized roof structures in Southern California.
13

14 III

15 EXPLANATION OF THE PROPOSED FINAL JUDGMENT

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18 The United States and the defendants have agreed in a
19 stipulation that a Final Judgment in the form negotiated by the
20 parties may be entered by the Court any time after compliance with
21 the Antitrust Procedures and Penalties Act, provided that the United
22 States has not withdrawn its consent. The Final Judgment provides
23 that there have been no admissions by any party with respect to any
24 issue of fact or law. Under the provisions of Section 2(e) of the
25 Antitrust Procedures and Penalties Act, entry of the Final Judgment
26 is conditioned upon the Court's determination that it is in the
27 public interest.
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1 A. Prohibited Conduct

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3 The proposed Final Judgment grants the fundamental relief the
4 United States sought in the complaint. In Section V of the Final
5 Judgment the defendants are enjoined from entering into, adhering
6 to, maintaining or furthering any contract, agreement,
7 understanding, plan, program, combination or conspiracy with any
8 other roof construction company to fix, maintain or stabilize
9 prices, to submit any collusive, noncompetitive or complementary
10 bids, or to allocate among any roof construction companies any such
11 bids for panelized roof construction projects.

12
13 The defendants are further prohibited by Section VI from
14 communicating with any roof construction company regarding past,
15 present or future panelized roof construction bids, prices, markups
16 or any other terms or conditions of panelized roof construction bids
17 or sales.

18
19 The scope of the Final Judgment is limited in two ways. First,
20 nothing contained in the Final Judgment shall apply to any
21 negotiation or necessary communication between a defendant and any
22 other defendant, or between a defendant and any other person, when
23 such parties are engaged in a contemplated or actual bona fide
24 purchase or sale of materials used in panelized roof structure
25 construction, to the extent such communications are necessary to
26 such bona fide purchase or sale. Second, the Final Judgment does
27 not apply to transactions or communications between a defendant and

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1 a parent or subsidiary of, or other person under common control
2 with, such defendant, or between the officers, directors, agents or
3 employees thereof.

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5 B. Scope of the Proposed Final Judgment

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7 The Final Judgment shall apply to each defendant and to each of
8 its officers, directors, agents, employees, subsidiaries,
9 successors, and assigns, and to all other persons in active concert
10 or participation with any of them who shall have received actual
11 notice of the Final Judgment by personal service or otherwise.
12 There is no geographical limitation in the Final Judgment.

13
14 The Final Judgment specifically requires that if a defendant
15 sells the assets used by it in the construction and sale of
16 panelized roof structures, the acquiring party must agree to be
17 bound by the provisions of the Final Judgment.

18
19 Within 30 days after entry of the Final Judgment, each defendant
20 will be required to furnish a copy of the Final Judgment to certain
21 of its officers, directors, employees and agents and to take
22 additional steps to advise them of their obligations under the Final
23 Judgment and of the criminal penalties for violation thereof.
24 Within 60 days of entry of Final Judgment an affidavit as to the
25 fact and manner of each defendant's compliance must be filed with
26 the Court. These provisions should help prevent future violations
27 of the Final Judgment by making each responsible employee
28 individually aware of the Final Judgment and its prohibitions.

1 In order to assure compliance, the Final Judgment authorizes the
2 Department of Justice to inspect and copy records and documents in
3 the possession or under the control of any defendant relating to any
4 matters contained in the Final Judgment. In addition, the
5 Department of Justice may require any defendant to submit reports
6 from time to time.

7
8 The Final Judgment is for a term of 10 years from the date it is
9 entered and the Court retains jurisdiction for that period.

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11 C. Effect of the Proposed Final Judgment on Competition

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13 The terms of the Final Judgment are designed to prevent any
14 recurrence of the activities alleged in the complaint. The Final
15 Judgment is designed to ensure that in the future defendants' prices
16 will be independently determined and will be free from the
17 restraining and artificial influences which result from
18 communications and agreements among competitors.

19
20 The Department of Justice believes that the proposed Final
21 Judgment provides fully adequate provisions to prevent continuance
22 or recurrence of the violations of the antitrust laws charged in the
23 complaint. In the Department's view, disposition of the lawsuit
24 without further litigation is appropriate in that the proposed Final
25 Judgment provides all the relief which the Government sought in its
26 complaint and the additional expense of litigation would not result
27 in additional public benefit.

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ALTERNATIVE REMEDIES CONSIDERED BY THE GOVERNMENT

The Government did not consider seeking any remedies other than those that appear in the proposed Final Judgment.

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REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment has no prima facie effect in subsequent lawsuits which may be brought against these defendants.

VI

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified

1 may submit written comments to Leon W. Weidman, Antitrust Division,
2 U.S. Department of Justice, 3101 Federal Building, 300 North
3 Los Angeles Street, Los Angeles, California 90012, within the 60-day
4 period provided by the Act. These comments and the Department's
5 responses to them will be filed with the Court and published in the
6 Federal Register. All comments will be given due consideration by
7 the Department of Justice, which remains free to withdraw its
8 consent to the proposed Final Judgment at any time prior to its
9 entry if it should determine that some modification is necessary.
10 The proposed Final Judgment provides that the Court
11 retains jurisdiction over this action and the parties may apply to
12 the Court for such order as may be necessary or appropriate for its
13 modification, interpretation or enforcement.

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15 VII

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17 ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

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19 The alternative to the proposed Final Judgment considered by the
20 Antitrust Division was a full trial of the issues on the merits and
21 on relief. The Division considers the substantive language of the
22 Final Judgment to be of sufficient scope and effectiveness to make
23 litigation on the issues unnecessary, as the Final Judgment provides
24 all or substantially all of the relief which could reasonably be
25 expected to be obtained after a full trial.

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VIII

OTHER MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, were considered in formulating this proposed Final Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated:

Respectfully submitted,

/s/ Kendra S. McNally

Kendra S. McNally

/s/ William L. Webber

William L. Webber

Attorneys,
U.S. Department of Justice