UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

APPENDIX A

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

United States v. Cleveland Stone Co.

In Equity No. 175

Year Judgment Entered: 1916

UNITED STATES v. CLEVELAND STONE CO.

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

In Equity No. 175.

THE UNITED STATES OF AMERICA, PLAINTIFF.

vs.

THE CLEVELAND STONE COMPANY, ET AL., DEFENDANTS.

FINAL DECREE

This cause coming on to be heard this day upon the motion of the petitioner, and upon the pleadings; the plaintiff asking that the defendants be restrained from violating the provisions of the Act of Congress approved July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," as prayed for in said petition, and for other relief; and all parties appearing by counsel; and the defendants by leave of court withdrawing their answers herein and not desiring to plead further; and stating in open court through their counsel that it is not their desire or intention, nor the desire nor intention of any or either of them to violate the provisions of the Act above referred to, but stating that it is their desire and intention, and the desire and intention of each of them, to comply with each and every and all of the provisions of the Statutes of the United States, referring to agreements, combinations or conspiracies in restraint of trade, and that their previous action in the premises was in the belief that it was not in violation of law, and that it is the desire and intention of them and each of them not to operate under or make or carry on any such contract or contracts as are contemplated by said Act of Congress as construed by the courts, the court finds that the defendants attempted to monopolize trade and commerce in the various articles described in the petition, contrary to the provisions of an Act of Congress approved July 2nd, 1890, entitled:

"An Act to protect Trade and Commerce against Unlawful Restraints and Monopolies;" and the Court finding upon the petition that the plaintiff is entitled to certain relief—

1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the petition herein be, and hereby is, dismissed as to the defendants William B. Sanders, E. R. Perkins, Andrew Squire, George A. Garretson, J. H. Wade, George K. Beddoe, Charles W. Walters, Thomas J. Voernia and J. C. O'Brien.

2. It is ordered, adjudged and decreed that The Cleve-

land Stone Company, The Ohio Building Stone Company, The Ohio Stone Company, The Kipton Stone Company, The Malone Stone Company, The Forest City Stone Company, The Grafton Stone Company, The Currier Stone Company, The Ohio Grindstone Company, The Mussey Stone Company, The Clough Stone Company, The Berea Stone Company, The Atlantic Stone Company, The Haldeman Stone Company, The American Quarries Company, The Perry, Matthews, Buskirk Stone Company, The Bedford Quarries Company, The Indiana Quarries Company, and The Indiana Quarries Company of New York, and the officers and agents of each of them be perpetually enjoined and restrained from entering into any contracts or agreements with their competitors to fix or agree upon the prices of grindstone, grindstone frames, mounted grindstones, grindstone fixtures, scythe stones, whetstones, flag stone, curb stone, building or other stone, and from inducing any competitor to enter into any such contract, agreement, or understanding.

3. It is ordered, adjudged and decreed that The Cleveland Stone Company, its officers and agents, and the other companies herein named, their officers and agents, in paragraph two hereof be perpetually enjoined from fixing re-sale prices and from issuing re-sale price lists and from agreeing with dealers and jobbers and requiring dealers and jobbers to agree to maintain re-sale prices of grindstones, grindstone frames, mounted grindstones, grindstone fixtures, or any other stone, as fixed by the defendant, The Cleveland Stone Company; and from refusing or threatening to refuse to do business with dealers in case they fail to maintain such re-sale prices.

4. It is ordered, adjudged and decreed that The Cleveland Stone Company may retain and maintain the separate corporate organization of the following defendant companies: The Ohio Building Stone Company, The Ohio Stone Company, The Kipton Stone Company, The Malone Stone Company, The Forest City Stone Company, The Grafton Stone Company, The Currier Stone Company, The Ohio Grindstone Company, The Mussey Stone Company, The Clough Stone Company, The Berea Stone Company, The Atlantic Stone Company, The Haldeman Stone Company, The American Quarries Company, The Perry, Matthews, Buskirk Stone Company, The Bedford Quarries Company, for the sole and only purpose of retaining the trade name, the good will and the corporation name, and for such purposes only.

5. It is ordered, adjudged and decreed that The Indiana Quarries Company and The Indiana Quarries Company of New York, a selling agency of The Indiana Quarries Company, may retain their corporate powers and names for all purposes, provided that defendants or any of them in doing business shall cause it to appear to the public that such corporations are owned and controlled by the defendant, The Cleveland Stone Company.

6. It is ordered, adjudged and decreed that defendant, The Cleveland Stone Company, its officers and agents, and the other companies named, their officers and agents, be perpetually enjoined from requiring of or entering into of any contract with any jobber or dealer in grindstones, grindstone frames, mounted grindstones, grindstone fixtures, scythe stones, whetstones, or other articles mentioned in the catalog of The Cleveland Stone Company for the year 1910, or in any other catalog or list, now or hereafter issued, wherein and whereby such jobber or dealer agrees not to buy or to receive any grindstones, grindstone frames, mounted grindstones, grindstone fixtures, scythe stones, whetstones, or other articles listed in the catalog herein referred to, or in any other catalog or list, made by any other manufacturer or competitor of said The Cleveland Stone Company and the other defendant companies herein named, and also from refusing or threatening to refuse to deal with such jobber or dealer in case he fails to carry out such contract or agreement, provided always that nothing herein contained shall be construed as enjoining defendants from entering into contracts with purchasers authorized by an Act of Congress passed October 15th, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes" commonly known as the "Clayton Act."

7. It is ordered, adjudged and decreed that The Cleveland Stone Company, its officers and agents, and the other companies herein named, their officers and agents, be perpetually enjoined from agreeing to pay and from paying to any jobber or dealer a rebate or premium on the articles mentioned and referred to in paragraph 6 hereof, purchased by said jobber or dealer from the Cleveland Stone Company, or the companies herein named, on condition that such jobber or dealer shall refuse to purchase, to receive, or to handle the like products manufactured or produced by any competitor of The Cleveland Stone Company or the other companies herein named.

8. It is ordered, adjudged and decreed that The Cleveland Stone Company, its officers and agents, and the other companies named, their officers and agents, be perpetually enjoined from agreeing with jobbers or dealers and from requiring or compelling jobbers or dealers to agree to maintain re-sale prices of the articles mentioned fixed by the defendants, or any of them and from refusing or threatening to refuse to do business with jobbers or dealers in the event that they fail to maintain such re-sale prices.

9. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree, or taking such other action, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree.

10. Any party to this cause, or any one succeeding to the rights of said party, in whole or in part, may make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree.

11. And it is further ordered that the defendants pay the costs of this suit to be taxed.

Entered at Cleveland, Ohio, this 11th day of February, 1916.

JOHN H. CLARKE,
Judge.

United States v. Great Lakes Steamship Co.

In Equity No. 2546

Year Judgment Entered: 1928

UNITED STATES OF AMERICA vs. GREAT LAKES STEAMSHIP COMPANY, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

In Equity No. ~~2456~~. 2546

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GREAT LAKES STEAMSHIP COMPANY ET AL., DEFENDANT.

FINAL DECREE.

The United States of America, having filed its petition herein on the 7th day of April, 1928, and defendants having accepted service of process and having duly appeared through their respective counsel and filed answers herein; and the United States having appeared by A. E. Bernsteen, its Attorney for the Northern District of Ohio, and H. B. Teegarden, Special Assistant to the Attorney General; and having moved the court for an injunction in accordance with the prayer of that petition, no evidence having been taken:

And it appearing to the court that the petition herein states a cause of action against the defendants under the provisions 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 thereto, and that the court has jurisdiction of the subject matter alleged in the petition and of the parties; that the defendants herein do hereby consent to the making and entry of this decree; provided that nothing herein contained shall be construed to restrain or interfere with the action of any single company, or companies under one management, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their property or affairs, so long as the same is not in any way related to or motivated by any agreement or common understanding

between the defendants or any of them not under one management.

And the court being duly advised in the premises, and all of the defendants, through their respective counsel, now and hereby consenting to the rendition of the following decree:

NOW, THEREFORE, it is adjudged, ordered, and decreed as follows:

1. That the defendants, together with their directors, officers, agents, servants, and other representatives, and all persons acting under or through them or in their behalf, or claiming so to act, and each of them, be, and they hereby are perpetually enjoined and restrained:

(*a*) From agreeing among themselves or with any of the defendants or with other ship owners or operators, either orally or in writing:

(1) As to the date for resuming operation of their vessels for the transportation of grain.

(2) As to the rate or rates for the rendition of such transportation services.

(3) As to the ratio or relation to be maintained between rates for the transportation of grain and the rate charged for the transportation of iron ore or other commodities.

(*b*) From doing any act in pursuance of, or for the purpose of carrying out, any agreement, understanding or commitment among them, or any of them, to delay or refrain from operating their respective boats or vessels, or any of them, on the Great Lakes and connecting waterways.

(*c*) From doing any act in pursuance of, or for the purpose of carrying out, any agreement, understanding or commitment among them, or any of them, to maintain any certain relationship between rates to be charged by them for the transportation of grain in their boats or vessels, or any of them, and those charged for the transportation of ore; or to maintain a rate of 3¢ per bushel,

or any other certain rate for the transportation of grain in their respective boats or vessels, or any of them.

D. C. WESTENHAVER,
United States District Judge.

Entered: MAY 9, 1928.

United States v. Porcelain Appliance Corp.

In Equity No. 1640

Year Judgment Entered: 1930

UNITED STATES OF AMERICA v. PORCELAIN APPLIANCE CORPORATION ET AL., DEFENDANTS.

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

In Equity No. 1640.

UNITED STATES OF AMERICA, PETITIONER

v.

PORCELAIN APPLIANCE CORPORATION ET AL., DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this Term, and upon consideration thereof and upon motion of the Petitioner by Wilfred J. Mahon, United States Attorney for the Northern District of Ohio, and by H. B. Teegarden,

Special Assistant to the Attorney General, for relief in accordance with the prayer of the Petitioner, and it appearing to the Court that it has jurisdiction of the subject matter hereof, and of the parties hereto, and no testimony or evidence having been taken, but all of the defendants herein having appeared by their attorneys and having consented thereto in open court:

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

I. That the combination and conspiracy in restraint of interstate trade and commerce, the acts, agreements, and understandings in restraint of interstate trade and commerce, as described in the petition herein, and the restraint of such trade and 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 Antitrust Act.

II. That each and every of the license agreements described in the petition herein, wherein defendant Porcelain Appliance Corporation, is licensor and the other defendant corporations are severally licensees, is a contract in restraint of interstate trade and commerce, and is violative of the aforesaid act of Congress.

III. That the defendants and 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 further enforcing or recognizing in any way the now existing license agreements described in the petition herein, wherein defendant Porcelain Appliance Corporation is licensor and the other defendant corporations are severally licensees, and from entering into any agreement or agreements of a similar character to said agreements, or that will have an effect like unto the effect of said agreements.

IV. That the defendants, their officers, agents, servants, and employees, and all persons acting under,

through, or in behalf of them, or any of them, are hereby perpetually enjoined, restrained and prohibited from combining, conspiring, or agreeing to do any of the following acts.

(*a*) To fix in any manner whatsoever or to maintain uniform or non-competitive prices for assembled split knobs to jobbers and/or to purchasers other than jobbers.

(*b*) To fix in any manner whatsoever or to maintain uniform or non-competitive charges for the barrels or containers used for the shipment of assembled split knobs.

(*c*) To do any acts or acts having the purpose or necessary effect of causing or enabling them, or any of them, to establish or maintain uniform or non-competitive prices for assembled split knobs, or uniformly to increase or to diminish such prices, or to maintain uniform policies as to prices and sales.

(*d*) To establish and/or maintain the following rules and regulations relating to the sale of assembled split knobs, or any rules or regulations similar thereto, or which have the purpose or necessary effect of eliminating competition in the sale of assembled split knobs:

(*a*) Freight may be equalized with manufacturing competitor having lowest freight rates to point of delivery.

(*b*) All sales must be based on prices ruling at date of shipment.

(*c*) Local sales shall be f. o. b. factory stock room.

(*d*) Sales from warehouse stocks (if warehouse is outside of city in which plant is located), consigned stocks, or agent's stocks, must be on basis f. o. b. Car Factory, plus freight, by same means of transit, from manufacturing competitor having lowest rate to destination, and five (5) per cent as a warehouse or consigned or agent's stock charge.

(*e*) Carting from warehouse, consigned, or agent's stocks shall not be done at the expense of the licensee, consignee, or agent.

averaging of the number of assembled split knobs per barrel for a period of not less than one month, semiannually.

(*f*) Terms of sale to be thirty (30) days net, or an allowance of two (2) per cent for cash payment on or before the 10th proximo.

(*g*) Container charges may be billed separately or may be added to and included in the net selling price. In the latter case the amount added shall entirely absorb the container charge and shall be determined by an actual averaging of the number of assembled split knobs per barrel for a period of not less than one month, semiannually.

(*h*) In equalizing freight, the customer shall be credited with the difference between the freight, by the same means of transit from factory to destination, and from factory of nearest manufacturing competitor to destination; provided that where such competitor has a cheaper means of transit, freight may be equalized between a high rate and a low rate. Shipments by American Railway Express or similar companies shall be equalized on the basis of ordinary rail freight.

(*i*) "Jobbers" and "jobbers of electrical supplies," to denote a vendor of electrical supplies who maintains a permanent office, carries a stock of goods, and who travels one or more salesmen.

(*j*) No salesman, agent, or representative of a manufacturer shall buy or sell knobs on his own account in the capacity of jobber; and no jobber, dealer in electrical supplies, or electrical contractor shall be appointed as salesman, representative, or agent of a manufacturer.

(*k*) Salesmen, factory representatives, and manufacturers' agents shall herein be deemed to constitute an integral part of the manufacturers' own organization, and their acts shall be considered as being the acts of the manufacturer. The splitting of commissions and similar practices shall be considered the equiv-

alent of the manufacturer rebating the customer, thereby in effect reducing the price of assembled split knobs.

Provided, however, that nothing contained in this Paragraph IV shall be construed as prohibiting any defendant from individually adopting and following any method of pricing and selling assembled split knobs 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 assembled split knobs or other person.

V. That the combination and consolidation under one control of the patents and patent rights relating to assembly devices for split knobs, as described in the petition herein, are violative of the aforesaid Act of Congress, and that defendant Porcelain Appliances Corporation shall execute proper asignments of such of said patents and said patent rights as are now held by it, whether by license, assignment, or otherwise, to the persons or corporations who owned or held the same prior to said combination and consolidation, or to any subsequent purchaser or purchasers thereof for value, to the end that said patents and said patent rights shall not be used hereafter as instrumentalities for monopolizing and/or restraining in any way the interstate trade and commerce in assembled split knobs.

VI. None of the provisions in this decree contained shall prevent any defendant owning a valid patent, or patents, or interest therein, from granting licenses thereunder upon lawful terms and conditions or from in any manner exercising any exclusive right enjoyed by owners of United States patents, or of an interest therein.

VII. Jurisdiction of the cause is maintained for the purpose of giving full effect to this decree and of making such other and further orders and decrees 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 the United States to apply to the Court for a modification or enlargement of the provisions of said decree on the ground that they are inadequate and for the defendants or any of them to apply for a modification of said provisions on the ground that they or any of them have become inappropriate or unnecessary.

Made and entered this 25th day of February, 1930.

SAMUEL H. WEST,
District Judge.

United States v. Am. Lecithin Co.

Civil Action No. 24115

Year Judgment Entered: 1947

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Lecithin Company, et al., U.S. District Court, N.D. Ohio, 1946-1947 Trade Cases ¶57,542, (Feb. 17, 1947)

United States v. American Lecithin Company, et al.

1946-1947 Trade Cases ¶57,542. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. 24115. Filed February 17, 1947.

Consent decree entered against producers of lecithin, an oil extract widely used in industry, enjoins defendants from restraining trade in the manufacture and sale of lecithin by participating in common selling or purchasing arrangements.

A defendant company is required to license a group of its patents on a royalty-free basis and without restriction, and the remainder of its patents at uniform reasonable royalties and without restriction. Various illegal domestic agreements, a cartel agreement between defendants and foreign producers of lecithin, future price fixing, and divisions of fields, customers, or markets among defendants, are also enjoined.

For plaintiff: Don C. Miller, Cleveland, Ohio, George B. Haddock, Melville C. Williams, and Willis L. Hotchkiss, all of Chicago, Ill.

For defendants: Roger Hinds and Richard F. Seaman, of New York City and Cleveland, Ohio, for American Lecithin Co.; Glenn S. Stiles, Minneapolis, Minn., and Raymond T. Jackson and Clayton A. Quintrell, both of Cleveland, Ohio, for Archer-Daniels-Midland Co.; John A. Duncan, Cleveland, Ohio, for The Glidden Co.; Eugene T. McQuade, New York City, and Wm. L. West, Cleveland, Ohio, for Ross and Rowe, Inc.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on June 24, 1946; all the defendants having appeared and severally filed their answers to such complaint denying any violation of law; and all parties by their respective attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of facts or law herein and without admission of any party defendant in respect of any such issue;

NOW THEREFORE, without any testimony or evidence having been taken herein, and without trial or adjudication of facts or law herein, and upon consent of all parties hereto, it is hereby ordered and decreed

I

That this Court has jurisdiction of the subject matter and of all parties hereto; that the complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies, “commonly known as the Sherman Act and acts amendatory thereof and supplemental thereto.

[*Definitions*]

II

Definitions as used in this judgment:

(a) “American” means the defendant American Lecithin Company.

(b) “Archer” means the defendant Archer-Daniels-Midland Company.

(c) “Glidden” means the defendant The Glidden Company.

(d) “Rowe” means the defendant Ross and Rowe, Inc.

(e) “Person” includes any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity.

(f) “Lecithin” means a phosphatide consisting of a natural organic substance found in many animal and vegetable products such as egg yolks, soy beans and corn. As of the time of this judgment, it is principally produced as a by-product in the recovery and processing of soy-bean oil, and, to a lesser extent, of corn oil.

(g) “Process Patents” mean all United States and foreign letters patent, and applications for such letters patent, owned or controlled by defendant American or under which American has the power to issue licenses or sublicenses, which relate to any method or process, or improvements on any method or process, employed or useful in the manufacture, production, or extraction of lecithin, and shall also include any such patents in the field hereafter issued upon applications therefor which are now pending, and any renewals, extensions, reissues, or divisions, of any such letters or applications. Such process patents as are now owned or controlled by defendant American are listed in Exhibit A which is hereto attached and made a part hereof.

(h) “Use Patents” mean all United States or foreign letters patent and applications for such letters patent, owned or controlled by defendant American or under which American has power to issue licenses or sublicenses, which relate to the use of, or improvements on the use of, or to any method or process or improvements on any method or process of using, lecithin alone or in combination with other materials in the production, processing, or treatment of any other article or product, and shall include any such patents in the field hereafter issued upon any applications therefor now pending and any renewals, continuations, reissues, or divisions of any such letters patent or applications. Such “use patents” as are now owned or controlled by defendant American are listed in Exhibit B which is hereto attached and made a part hereof.

(i) “Patents” where used without further qualification means both process and use patents as herein defined.

III

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

[*Unrestricted Licensing of Process Patents Ordered*]

IV

(a) Defendant American is hereby ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend under any, some, or all process patents as herein defined, and is hereby enjoined and restrained from making any sale or disposition of any of said patents which deprives it 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 Sections IV, X and XI of this judgment and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections IV, X and XI of this judgment.

(b) Defendant American is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of this section except that (1) the license may be non-transferable; (2) a reasonable nondiscriminatory royalty may be charged; (3) reasonable provision 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 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; (5) the license must provide that the licensee may cancel the license at any time after two years from the initial date thereof by giving thirty days' notice in writing to the licensor.

(c) Upon receipt of written request for a license under the provisions of this section, defendant American 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 sixty (60) days from the date such request for the license was received by American, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and American 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 American to establish the reasonableness of the royalty requested by it, and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use, and vend under the patents to which his application pertains without payment of royalty or other compensation, but subject to the provisions of subsection (d) of this section.

(d) Where the applicant has the right to make, use, and vend under subsection (c) of this section, defendant American may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, American shall then issue and the applicant shall accept a license, or, as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licenses under the same patents to the date the applicant files his application with the Court.

(e) Each defendant shall, to the extent that it may do so, grant or cause to be granted, to any applicant making written request therefor, a non-exclusive license or sublicense as to the respective patents which now or hereafter shall come, within the scope and operation of any license or other agreement now or hereafter held by such defendant in behalf of or in trust for, the defendant American; including but not limited to the agreements which are now held in trust by the defendant Glidden for the defendant American, and described in Exhibit C attached hereto and made a part hereof. Each such license or sublicense shall be granted by the particular defendant subject to the terms and conditions and pursuant to the procedures set forth in Section IV-(a), (b), (c) and (d). If, as, and when the defendant American shall acquire the right to grant such licenses or sublicenses substantially as may now be granted by another defendant now holding such rights in behalf of or in trust for American, then the obligation upon such other defendant (other than the defendant American) to grant said licenses or sublicenses under the patents referred to in the first sentence of this subsection shall automatically cease and terminate but such obligation shall then devolve upon the defendant American which is ordered and directed, in such event, to grant to any applicant making written request therefor a non-exclusive license or sublicense as above referred to and upon the terms and conditions and pursuant to the procedures set forth in Section IV-(a), (b), (c) and (d) above.

(f) Defendant American shall grant to any applicant making written request therefor, a non-exclusive unrestricted and royalty-free right and license to make, use and vend under any one or more of the use patents as herein defined, and is hereby enjoined and restrained from making any disposition of any of said patents which deprives it 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 thereof shall observe the requirements of Sections IV, X and XI of this judgment and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections IV, X and XI of this judgment.

(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 patents nor shall this judgment be construed as importing any validity or value to any of said patents.

[*Infringement Suits Enjoined*]

V

Defendant American is enjoined and restrained from instituting or threatening to institute, or maintaining, or continuing any suit or proceeding for acts of infringement of any of its patents alleged to have occurred prior to the date of this judgment.

[*Price Fixing and Other Practices in Restraint of Trade Enjoined*]

VI

Each defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or furthering any contract, combination, agreement, undertaking or arrangement among themselves or with any other person:

(a) To fix, establish, maintain, or make uniform the price at which lecithin is sold;

(b) To restrict sales of lecithin by any licenses or sublicenses, or any purchaser;

(c) To refrain from competing in the manufacture and sale of lecithin in any territory, or for any customers or markets;

(d) To refrain from making particular types of grades of lecithin or products containing lecithin;

(e) To establish or perpetuate any arrangement under which the defendants who produce lecithin sell all or substantially all of their production through a common sales agent or to a common purchaser for resale.

This section shall not be construed to apply to the legality or illegality of licenses under any patents not covered by this judgment.

VII

The defendants American and Rowe are each enjoined and restrained from (a) lecithin for resale from, or acting as the sales agent in selling lecithin for, both defendants Archer and Glidden, or (b) acting as the exclusive sales agent for, or making any exclusive purchasing arrangement with, any two producers of lecithin provided, however, that if either American or Rowe, in purchasing lecithin from or acting as sales agent in selling lecithin produced by either Archer or Glidden, cannot secure from such single defendant producer lecithin of a general classification not produced by such defendant producer although produced by the other defendant producer, then American or Rowe may buy for resale such general classification of lecithin from the defendant producing it.

VIII

The defendants, Archer and Glidden, are each enjoined and restrained from selling lecithin through either defendant American or Rowe as a common sales agent or from selling lecithin to either of them as a common purchaser for resale except to the extent allowed by Section VII, unless it can establish that it exercised due business diligence and had no knowledge of the existence of such act or practice.

[*Agreements Cancelled, Performance Enjoined*]

IX

Each of the contracts, agreements, arrangements or regulations hereafter described, is hereby cancelled, as provided below, and each defendant is hereby enjoined and restrained from the further performance of any such contract, agreement, arrangement or understanding, except as herein expressly permitted, and from adopting, adhering to or furthering any course of conduct for the purpose, or with the effect, of maintaining, reviving, or reinstating any such contract, agreement, arrangement or understanding:

(a) Agreement of December 5, 1934, among Archer, Glidden, Rowe, American, Aarhus Oliefrabrik and Hansa-Muehle, which is set forth as Exhibit “A” of the Complaint; but such cancellation shall not relate to or affect the validity or invalidity of such optional rights, if any, as presently exist under said agreement, permitting American to purchase any of its outstanding shares of stock.

(b) All license agreements relating to the patents which have been heretofore entered into between American and Glidden, such cancellation to be effective upon the execution by American and Glidden of a uniform license agreement pursuant to Section IV hereof, or upon the expiration of sixty days from the date of the entry of this judgment, whichever is earlier.

(c) All license agreements relating to the patents heretofore entered into between American and Archer, such cancellation to be effective upon the execution by Archer and American of a uniform license agreement pursuant to Section IV hereof or upon the expiration of sixty days from the date of this judgment, whichever is earlier; provided, however, that the agreement of May 1, 1941 between said defendants may remain in force and effect but not beyond one year from the date hereof and solely for such quantities of lecithin as are needed by American in order to perform its existing contracts for the sale of lecithin.

(d) Agency agreement of November 10, 1939, by and between American and Rowe which is set forth as Exhibit C of the complaint, except that said agreement may remain in force and effect but not beyond one year from the date hereof for such quantities of lecithin as American is obligated thereunder to Rowe with respect to sales made or contracted for through Rowe prior to the date hereof.

(e) The agreement entered into between American and The Proctor & Gamble Company on or about February 1944 under which Proctor & Gamble agreed to sell and American to buy certain lecithin produced by Proctor & Gamble, such cancellation to be effective 60 days from the date of the entry of this judgment.

[*Justice Department Given Access to Records of Defendants*]

X

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, be permitted, subject to any legally recognized privileges, (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 of the matters contained in this judgment; and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Licensees To Be Notified of Decree*]

XI

Defendant American, within thirty days after the entry of this judgment, shall send to each present licensee under patents subject to subsection (a), (b), (c), and (d) of Section IV a copy of this judgment, and shall notify each licensee under patents subject to subsection (f) of Section IV, in a form of notice submitted to and approved by the Assistant Attorney General in charge of the Antitrust Division, informing them of their rights under this decree. In the case of licenses applied for after the entry of this judgment and subject to subsections (a), (b), (c), and (d) of Section IV, a copy of this judgment shall be sent to each such applicant promptly after the application is made. Each applicant for a license subject to subsection (f) of Section IV shall be provided with a copy of the notice provided for aforesaid promptly after the application is made.

[*Defendants To File Report of Compliance*]

XII

Each of the defendants shall file with this Court and with the Attorney General of the United States, or with the Assistant Attorney General in charge of the Antitrust Division, a report within ninety days after the date of the entry of this judgment, of all action taken by them to comply with or conform to the terms of this judgment.

[*Jurisdiction Retained*]

XIII

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

EXHIBIT "A"

U. S. Patent: No. 1,776,720, Purification of Phosphatides (Vacuum-Solvent); No. 1,892,588, Treatment of Vegetable Lecithin (Dibenzoyl Peroxide); No. 1,893,393, Refinement of Vegetable Phosphatides (H_2O_2) ; No. 1,895,424, Phosphatides & Fatty Oil (Selective Solvent); No. 1,917,734, Extracting Oil from Seeds (Benzol-Alcohol); No. 2,020,662, Prod. of Phosphatide Prep. (Alkali Metal Hydroxide); No. 2,024,398, Production of Lecithin (Hexane); No. 2,057,695, Prod. of Phosphatide Prep. (Oil Free with Carrier); No. 2,194,842, Soft Lecithin Preparation; No. 2,249,002, Prep. of Vegetable Phosphatides (Use of Foots); No. 2,287,838, Confection & Product (Phosphatides plus a salt)—Claims 16, 17, 18, 19, 20; No. 2,355,081, Phosphatide Comp. (Reduce emulsifying); No. 2,373,686, Phosphatide product (Methylated); No. 2,374,681, Phosphatide Comp. (Organic Sulforic Acid); No. 2,391,462, Phosphatide Comp. (Glycerol Phosph. Acid) ; No. 2,400,120, Phosphatide Comp. (Acid Liberating); No. 2,403,284, Phosphatide Lubricants—Claims 1, 2, 3 , 4.

Application No. 501,178, Sulfur Containing Phosphatide—Claims 10, 19, 20; No. 504,904, Heat Treated Phosphatide—Claims. 7, 30, 31, 32 33, 34; No. 512,970, Nitrated Cephalin—Claims 8, 11, 13; No. 606,716, Improved Margarine Lecithin—-Claims 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 19.

Canada: Patent No. 411,090, Confection & Product—Claims 16, 17, 18, 19, 20.

Britain: Patent No. 528,377, Confection & Product—Claim 9; Application No. 21272-46, Improved Margarine Lecithin—-Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

France: Application No. 518,430, Improved Margarine Lecithin—Claims 1, 2.

Belgium: Application No. 362,240, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 5, 6, 7, 8.

Holland: Application No. 126,628, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 5, 6, 7, 8.

EXHIBIT "B"

U. S. Patent No. 1,762,077, Egg Yolk Substitute; No. 1,776,721, Uniform Pulverulent Mixtures; No. 1,779,012, Leather Dressing; No. 1,831,728, Shortening Composition; No. 1,843,051, Baking Composition; No. 1,859,240, Food Product (Confectionery) ; No. 1,903,397, Separating Fatty Constituents; No. 1,934,005, Stable Aqueous Emulsions (Benzyl alcohol) ; No. 1,935,718, Baking Product; No. 1,938,864, Insecticidal Emulsion; No. 1,946,332, Dressing, Sizing & Softening Oil; No. 1,965,490, Making Margarine; No. 1,982,186, Frying Fat; No. 1,986,360, Thickening Material (Textile); No. 2,019,494, Flavoring Material; No. 2,020,496, Process of Dyeing; No. 2,020,517, Treatment of Textile Material; No. 2,039,739, Lecithin Nutrient Material; No. 2,115,088, Acid Phosphatide Emulsion; No. 2,181,129, Adhesive; No. 2,287,838, Confection—Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; No. 2,355,061, Turpentine Composition; No. 2,373,687, Confection; No. 2,402,690, Making Margarine.

Application No. 471,367, Treatment of glyceride oils; No. 606,716, Improved Margarine Lecithin—Claims 5, 6, 7, 8, 9, 10, 11, 12.

Canada: Patent No. 323,036, Chocolate; No. 325,961, Shortening Composition; No. 347,118, Food Product (Confection); No. 406,919, Confection Composition (Halogenated Phosph.); No. 411,090, Confection & Product —Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29.

Britain: Patent No. 528,377, Confection & Product—Claims 3, 4, 5, 6, 7, 8; Application No. 21272-46, Improved Margarine Lecithin –Claims 11, 12.

France: Application No. 518,430, Improved Margarine Lecithin—Claim 3.

Belgium: Application No. 362,240, Improved Margarine Lecithin—Claim 9.

Holland: Application No. 126,628, Improved Margarine Lecithin—Claim 9.

EXHIBIT “C”

1. Agreement dated January 1, 1940 by and between The Glidden Company, Texaco Development Corporation and The Texas Company relating to U. S. Letters Patent Nos. 2,155,678, 2,165,651 and 2,208,105 of The Texas Company and to U. S. Letters Patent No. 1,884,899 of American Lecithin Company, these patents relating to the use of lecithin in the production of gasoline.

(a) Amendment to the foregoing as of January 1, 1940 between the aforesaid corporations, bringing the following patents, within the operation of the aforesaid agreement:

Australia No. 25,165

Canada Nos. 364,658, 364,659

France No. 808,690

British No. 464,055

South Africa No. 1,166/35

2. Agreement dated April 1, 1942 by and between The Glidden Company and Texaco Development Corporation relating to U. S. Letters Patents Nos. 2,212,020, 2,212,021, 2,221,162, 2,244,416, 2,257,601, of The Texas Company and U. S. Letters Patent No. 2,374,682 and claims 5, 6 and 7 of U. S. Letters Patent No. 2,403,284 of American Lecithin Company, each of said patents relating to the use of lecithin in mineral lubricating oil.

3. Agreement between The Glidden Company and E. I. DuPont de Nemours and Company dated December 23, 1942 relating to Claim No. 21 of U. S. Letter Patent No. 2,285,854 which relates to use of lecithin in mineral lubricating oil.

4. Agreement dated September 24, 1940, between Socony-Vacuum Oil Company, Incorporated, and The Glidden Company, covering the non-exclusive right to license others under Socony-Vacuum Oil Company's Patent 2,151,300 to incorporate lecithin in lubricant composition and to use and sell lubricant composition containing lecithin.

United States v. Nat'l Acme Co.

Civil Action No. 24530

Year Judgment Entered: 1947

Filed December 15, 1947

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-vs-	:	CIVIL ACTION NO. 24530
THE NATIONAL ACME COMPANY,	:	
Defendant.	:	

FINAL JUDGMENT

Plaintiff, UNITED STATES OF AMERICA, having filed its complaint herein on January 2, 1947; the defendant having appeared and filed its answer to such complaint denying any violation of law; and the parties by their respective attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of facts or law herein, and without admission by the party defendant in respect of any such issue:

NOW, THEREFORE, without any testimony or evidence having been taken herein, without trial or adjudication of facts or law herein, and upon consent of all parties hereto, it is hereby

ORDERED AND DECREED

I

That this Court has jurisdiction of the subject matter and of the parties hereto; that the complaint states a cause of action 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, and acts amendatory thereof and supplemental thereto.

II

As used in this judgment the terms:

A. "Multiple-spindle automatics" means multiple-spindle automatic screw machines, multiple-spindle automatic bar machines and multiple-spindle automatic chucking machines, or any type, variety, or design thereof.

B. "Namco" means the defendant herein, The National Acme Company, a corporation organized and existing under the laws of the State of Ohio and having its principal place of business at Cleveland, Ohio.

C. "B. S. A. Tools" means the co-conspirator herein BSA Tools Limited, a corporation organized and existing under the laws of the United Kingdom, and a subsidiary of The Birmingham Small Arms Company Limited, with its principal place of business at Harston Green, Birmingham, England.

D. "Pittler" means the co-conspirator herein Pittler Werkzeugmaschinenfabrik Aktiengesallschaft, a corporation organized and existing under the laws of Germany and having its principal place of business at Leipzig-Wahren, Germany.

III

Reference herein to Namco, B. S. A. Tools, and Pittler in each case includes its parents, subsidiaries, successors, assigns and affiliates, and its directors, officers, agents and employees, and those of its parents, subsidiaries, successors, assigns and affiliates, and all persons acting or claiming to act under, through or for them, or any of them.

IV

Each of the contracts, agreements, arrangements, or understandings hereafter described is hereby declared illegal and cancelled, and Namco is hereby enjoined and restrained from the further performance or enforcement of any of said contracts, agreements, arrangements, or understandings, or from entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose of or with the effect of maintaining, reviving or reinstating, or from entering into, adopting, adhering to, or furthering any contract, agreement, arrangement or understanding similar to those so enjoined:

A. The contract between Namco and Pittler entered into on or about September 30, 1930, and described in paragraph 14 of the complaint.

B. The written agreement between Namco and Pittler executed in or about September 1932 and described in paragraph 16 of the complaint.

C. The written agreements between Namco, Pittler and B. S. A. Tools executed in or about August 1932 and described in paragraphs 17 and 18 of the complaint.

D. The written agreement between Namco and B. S. A. Tools entered into on or about September 1, 1932, and described in paragraph 19 of the complaint.

E. The amendment to the agreement described in D entered into on or about May 1, 1946, and described in paragraph 20 of the complaint.

F. The written agreement between Namco and Pittler entered into on or about April 24, 1940, and described in paragraph 22 of the complaint.

G. All existing amendments, renewals and extensions of the foregoing contracts, agreements, arrangements, and understandings set forth in A to F above.

V

Defendant Namco is hereby enjoined and restrained from:

A. Entering into, abiding by, carrying out, adhering to, maintaining, furthering or enforcing, directly or indirectly, any com-

bination, conspiracy, contract, agreement, understanding, plan or program with respect to multiple-spindle automatics with any manufacturer thereof:

(1) To allocate or divide territories or markets for manufacture, sale, or distribution.

(2) To refrain from, restrict or limit production or distribution.

(3) To limit, restrict or prevent importation into or exportation from the United States, its territories or possessions.

(4) To exclude any manufacturer or distributor thereof from any market.

(5) To refrain from competing in manufacture, or sale, in any territory or market.

(6) To require any manufacturer to refrain from or restrict the manufacture or distribution of multiple-spindle automatics of a type, variety, or design different than or competitive with those manufactured by Namco.

(7) To fix, maintain or adhere to prices, terms or conditions for the sale of multiple-spindle automatics.

B. Entering into any arrangements for the distribution of multiple-spindle automatics with:

(1) B. S. A. Tools, Pittler, or any other foreign manufacturer of multiple-spindle automatics; or

(2) Anyone retained or employed as an agent or sales representative by any such manufacturer referred to in (1).

Provided that for a period of five years from December 31, 1947, Namco may appoint B. S. A. Tools as its distributor for the sale and servicing in England, Scotland, Wales, and Ireland, of multiple-spindle automatic machines of Namco's manufacture and may pay B. S. A. Tools a commission as compensation for its services; provided further, that any such arrangement, and its operation, shall in no wise restrict the complete freedom of Namco to sell or service, directly or through others, in said territories.

C. Selling multiple-spindle automatics to B. S. A. Tools or Pittler or any other foreign manufacturer of multiple-spindle automatics, or their agents or sales representatives, unless it shall at all times offer to sell without discrimination as to prices, terms, and conditions to any other person selling, dealing in, or otherwise distributing, multiple-spindle automatics in the same export area.

D. Referring orders or inquiries for multiple-spindle automatics to B. S. A. Tools or Pittler or other foreign manufacturers of multiple-spindle automatics, or their agents or sales representatives.

E. Entering into any contract or agreements with B. S. A. Tools or Pittler or other foreign manufacturers of multiple-spindle automatics without filing within 30 days after the execution

thereof copies with the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division to take any action pursuant to this subparagraph shall not be construed as an approval of the matters and things so filed, and shall not operate as a bar to any action or proceeding, civil or criminal, that may later be brought, or pending, pursuant to any law of the United States, based on things and matters so filed.

The provisions of Subsections B and D of this Section shall not take effect until one year from December 31, 1947, to enable the defendant to revise its distribution arrangements in conformity with the provisions of this judgment.

VI

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

VII

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

Dated December 15, 1947.

Freed
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Civil Action No. 24,530

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
vs.	:	ORDER MODIFYING FINAL JUDGMENT
THE NATIONAL ACME COMPANY,	:	
Defendant.	:	

The defendant The National Acme Company having filed its motion for modification of the Final Judgment entered herein on December 15, 1947; and the plaintiff having indicated that it does not object to the entry of this Order:

IT IS HEREBY ORDERED AND DECREED that the last paragraph of Article V, Section B, of the said Final Judgment be and is hereby modified to read as follows:

> "Provided that for a period of six years from December 31, 1947, Namco may appoint B. S. A. Tools as its distributor for the sale and servicing in England, Scotland, Wales, and Ireland, of multiple-spindle automatic machines of Namco's manufacture and may pay B. S. A. Tools a commission as compensation for its services; provided further, that any such arrangement, and its operation shall in no wise restrict the complete freedom of Namco to sell or service, directly or through others, in said territories."

IT IS FURTHER ORDERED AND DECREED that all other provisions of the Final Judgment herein, dated December 15, 1947, shall remain in full force and effect.

Dated 3/29 1952

s/ Freed
United States District Judge

Not objected to:

S.T. N.N. s/ H. G. Morison
H. G. Morison
Assistant Attorney General

Approved for the Defendant:

s/ C. W. Sellers

s/ illegible
Secretary
The National Acme Company

A True Copy of the Original
Filed 3-29-52
Attest: C. B. Watkins, Clerk
By James D. Ramey
Deputy Clerk
Dated 4-2-52
Cleveland, Ohio.

United States v. Morton Gregory Corp.

Civil Action No. 6279

Year Judgment Entered: 1951

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Morton Gregory Corp., U.S. District Court, N.D. Ohio, 1950-1951 Trade Cases ¶62,750, (Jan. 3, 1951)

United States v. Morton Gregory Corp.

1950-1951 Trade Cases ¶62,750. U.S. District Court, N.D. Ohio. Civil Action No. 6279. Filed January 3, 1951.

Sherman Antitrust Act

Consent Decrees—Stud-Welding Materials and Equipment—Restraints on Competition, Patent Licenses, and Import Restrictions.—In a government consent decree agreed to by a holder of patents on stud-welding equipment and materials, the defendant is prohibited from carrying out any contract declared illegal or any contract to allocate territory, refrain from competition, exclude any manufacturer from any market, prevent use of materials and equipment purchased from others, or require use or non-use of any trademark; the patentee is also forbidden to grant licenses except on a non-exclusive basis, bring infringement suits which would interfere with the importation of competing equipment, collect more than a reasonable royalty upon infringing imported materials, or transfer patents except where the transferee binds himself to the terms of the decree.

For the plaintiff: Peyton Ford, Acting Attorney General; Wm, Amory Underhill, Acting Assistant General; Don C. Miller, United States Attorney; Marcus A. Hollabaugh and Sigmund Timberg, Special Assistants to the Attorney General; Robert B. Hummel, Trial Attorney; Lester P. Kauffmann, Robert M. Dixon, Miles Francis Ryan, Jr., and Max Freeman, Special Attorneys.

For the defendant: Lewis & Watkins, by Milton F. Mallender; Shumaker, Loop, Kendrick & Winn, by Ross W. Shumaker.

Final Judgment

KLOEB, D. J.:[*In full text.*] Plaintiff, United States of America, having filed its complaint herein on December 19, 1949; the defendant having filed its answer denying the substantive allegations thereof; and the plaintiff and defendant by their attorneys having consented to the entry of this Final Judgment without trial of any issue of fact or law herein and without admission by the parties in respect of any such issue; and the Court having considered the matter and being duly advised;

Now, THEREFORE, before any testimony has been taken and without trial 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 defendant, and the complaint states a cause of action against 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,” as amended.

II

[*Definitions*]

As used in this judgment:

(1) “Defendant” means Morton Gregory Corporation, a corporation organized and existing under the laws of the state of Michigan, and having its principal place of business in Toledo, Ohio;

(2) “Foreign licensees” means each and all of the following:

(a) Cooke and Ferguson, Ltd., a corporation organized and existing under the laws of Great Britian;

(b) Electromecanique, a corporation organized and existing under the laws of Belgium;

(c) Hulftegger & Company, a corporation organized and existing under the laws of Switzerland;

(d) The Lincoln Electric Company (Australia) Proprietary Limited, a corporation organized and existing under the laws of Australia;

(e) N. A. Gasaccumulator, a corporation organized and existing under the laws of Norway;

(f) Svenska Aktiebolaget Gasaccumulator, a corporation organized and existing under the laws of Sweden;

(g) Jean Sarazin & Company, a corporation organized and existing under the laws of France;

(h) Fusarc Saldatura Elettrica, a corporation organized and existing under the laws of Italy;

(3) "Stud welding" means the welding of metal studs to metal surfaces so that other materials or objects may be secured, attached, or fastened thereto;

(4) "Stud welding equipment" means materials and supplies (including, but not limited to, guns, studs and ferrules) and devices and apparatus used in stud welding, and special purpose equipment used in the manufacture of such materials, supplies, devices or apparatus;

(5) "Person" means any individual, corporation, partnership, association, joint stock company, or any other business or legal entity;

(6) "United States patents" means all all United States letters patent and applications therefor, including all re-issues, divisions, continuations or extensions thereof, and patents issued upon said applications, relating to stud welding or stud welding equipment;

(7) "Foreign patents" means all foreign letters patent and applications therefor, including all re-issues, divisions, continuations or extensions thereof, and patents issued upon said applications, relating to stud welding or stud welding equipment.

III

[*Application*]

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents, employees, successors, assigns, and all other persons acting under, through, or for such defendant.

IV

[*Illegal Agreements*]

(A) The following agreements are hereby adjudged and declared to be illegal and unenforceable, and defendant is hereby enjoined and restrained from further performance or enforcement of the said agreements and any amendments thereto and from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, arrangement, understanding, plan or program for the purpose or effect of continuing, reviving or renewing any of the said agreements and any amendments thereto:

(1) The agreement of June 17, 1947 with Cooke and Ferguson, Ltd.;

(2) The agreement of May 10, 1948 with Electromecanique;

(3) The agreement of May 13, 1948 with Hulftegger & Company;

(4) The agreement of May 28, 1948 with The Lincoln Electric Company (Australia) Proprietary Limited;

(5) The agreement of August 31, 1948 with N. A. Gasaccumulator;

(6) The agreement of October 19, 1948 between defendant and Svenska Aktiebolaget Gasaccumulator;

(7) The agreement of November 1, 1948 with Jean Sarazin & Company;

(8) The agreement of December 27, 1949 with Fusarc Saldatura Elettrica.

(B) Defendant is hereby ordered and directed to file with this Court, within one year following the entry of this Final Judgment, an affidavit that the agreements listed in the foregoing paragraph (A) of this Section have been terminated and that defendant is not a party to any then existing agreement or arrangement that is not in conformity with this Final Judgment.

V

[*Agreements Prohibited*]

Defendant is hereby enjoined and restrained from combining or conspiring with, or from entering into, adhering to, renewing, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, understanding, or concerted plan of action with any foreign person which has the purpose or effect of:—

(A) Allocating or dividing territories or markets for the manufacture, distribution or sale of stud welding equipment;

(B) Refraining from competing, or leaving any person from competition, in the manufacture, distribution or sale of stud welding equipment in any market or territory;

(C) Excluding any manufacturer or distributor of stud welding equipment from any marketer territory, or interferring with or restricting any such manufacturer or distributor in competing in any market or territory;

(D) Restraining or preventing any other person from making, using or selling stud welding equipment manufactured or sold by anyone else;

(E) Requiring any person to use or not to use any trade-mark or trade name.

VI

[*Prohibitions of Patent Uses*]

Defendant is hereby enjoined and restrained from:

(A) Securing, claiming or exercising any rights under any option to purchase stud welding equipment from any licensee under foreign patents owned or controlled by defendant;

(B) Granting any license, immunity, or other rights under any foreign patent except upon a non-exclusive basis;

(C) Conditioning in any manner, directly or indirectly, the grant by defendant to any foreign persons of rights under any United States patents or foreign patents, upon the grant to defendant of any rights under any United States patents or foreign patents.

VII

[*Importations*]

Defendant is hereby enjoined and restrained from instituting, maintaining, or furthering, or threatening to institute, maintain or further any claim, suit or proceeding, judicial or administrative, based on the patent, trade-mark or customs laws of the United States which would interfere with the importation of stud welding equipment into the United States or with the sale or other distribution of such imported stud welding equipment within the United States, provided however, that this shall not be construed to prevent the defendant (a) from taking such steps as may be necessary to avoid deception of purchasers of such imported stud welding equipment as to the source of origin of such equipment, and (b) from collecting an amount not to exceed reasonable royalties, and from taking such incidental steps as are necessary in connection therewith, for infringement of United States patents by such imported stud welding equipment, where such equipment has not been subjected, directly or indirectly, to the payment of any royalties under foreign patents corresponding to such United States patents.

VIII

[*Patent Assignment Terms*]

Defendant is hereby enjoined and restrained from selling, transferring or assigning any United States patents or foreign patents unless it requires, as a condition of such sale, transfer or assignment, that the purchaser, transferee or assignee (a) shall observe the requirements of Section VII of this Final Judgment and also file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Section VII, and (b) shall grant such immunities under the patents so sold, transferred or assigned as will assure unimpeded exports of stud welding equipment from the United States into the country in which said patents were issued or applied for.

IX

[*Visitation, Inspection, and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to defendant be permitted, subject to any legally recognized privilege, (1) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, relating to any matters contained in this Final Judgment and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters. Upon written request of the Attorney General or an Assistant Attorney General defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be reasonably necessary to the enforcement of this Final Judgment. Information obtained by the means permitted in this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

X

[*Jurisdiction Retained*]

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

United States v. Lorain Journal Co.

Civil Action No. 26823

Year Judgment Entered: 1951

IN THE DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
vs	:	CIVIL ACTION NO. 26823.
THE LORAIN JOURNAL COMPANY, SAMUEL A. HORVITZ, ISADORE HORVITZ, D. P. SELF, and FRANK MALOY,	:	FINAL JUDGMENT
Defendants.	:	

Plaintiff, United States of America, filed its complaint herein on September 22, 1949 and filed its amended complaint on January 4, 1950. The defendants filed their answers to said complaint on October 11, 1949, and to said amended complaint on January 13, 1950. This cause came on for trial March 1, 1950, and trial was completed on March 14, 1950. The Court filed its opinion August 29, 1950 and on January 5th 1951 filed its findings of fact and conclusions of law, finding and adjudging the defendants to have violated Section 2 of the Sherman Act.

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

1

The provisions of this judgment applicable to defendant The Lorain Journal Company shall apply to it, its officers, directors, agents, employees and attorneys and to those persons in active concert or

participation with it or them who receive actual notice of this judgment by personal service or otherwise.

II

Defendants have violated Section 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, Title 15 U.S.C. §2, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, by engaging in an attempt to monopolize trade and commerce among the several states.

III

Defendant The Lorain Journal Company is enjoined and restrained from:

A. Refusing to accept for publication or refusing to publish any advertisement or advertisements or discriminating as to price, space, arrangement, location, commencement or period of insertion or any other terms or conditions of publication of advertisement or advertisements where the reason for such refusal or discrimination is, in whole or in part, express or implied, that the person, firm or corporation submitting the advertisement or advertisements has advertised, advertises, has proposed or proposes to advertise in or through any other advertising medium.

B. Accepting for publication or publishing any advertisement or making or adhering to any contract for the publication of advertisements on or accompanied by any condition, agreement or understanding, express or implied:

1. That the advertiser shall not use the advertising medium of any person, firm or corporation other than defendant The Lorain Journal Company;

2. That the advertiser use only the advertising medium of defendant The Lorain Journal Company;

C. Cancelling, terminating, refusing to renew or in any manner impairing any contract, agreement or understanding, involving the publication of advertisements, between the defendants, or any of them, and any person, firm or corporation for the reason, in whole or in part, that such person, firm or corporation advertised, advertises or proposes to advertise in or through any advertising medium other than the newspaper published by the corporate defendant.

IV

Commencing fifteen (15) days after the entry of this judgment and at least once a week for a period of twenty-five weeks thereafter the corporate defendant shall insert in the newspaper published by it a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location.

V

Defendant The Lorain Journal Company and the individual defendants are ordered and directed to:

A. Maintain for a period of five (5) years from the date of this judgment, all books and records, which shall include all correspondence, memoranda, reports and other writings, relating to the subject matter of this judgment;

B. Advise in writing within ten (10) days from the date of this judgment any officers, agents, employees, and any other persons acting for, through or under defendants or any of them of the terms of this judgment and that each and every such person is subject to the provisions of this judgment. The defendants shall make readily available to such persons a copy of this judgment and shall inform them of such availability.

VI

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of the Lorain Journal Company, and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said corporate defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said corporate defendant relating to any matters contained in this judgment;

B. Subject to the reasonable convenience of said corporate defendant and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section VI shall be divulged by the Department of Justice to any person other than a duly authorized

representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

VII

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

VIII

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

/s/ Freed
United States District Judge

January 5, 1951.

(SEAL)

A True Copy of the Original
Filed 1/5/51
Attest: C. B. Watkins, Clerk
By James C. Rainey
Deputy Clerk
Dated 1/5/51
Cleveland, Ohio

United States v. Mansfield Journal Co.

Civil Action No. 28253

Year Judgment Entered: 1952

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Mansfield Journal Company, Samuel A. Horvitz, Isadore Horvitz, Ralph Disler, and Erwin Maus, Jr., U.S. District Court, N.D. Ohio, 1952-1953 Trade Cases ¶67,210, (Jan. 15, 1952)

United States v. The Mansfield Journal Company, Samuel A. Horvitz, Isadore Horvitz, Ralph Disler, and Erwin Maus, Jr.

1952-1953 Trade Cases ¶67,210. U.S. District Court, N.D. Ohio. Eastern Division. Civil No. 28253. Filed January 15, 1952. Case No. 1088 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Refusal To Accept Advertisements and Discrimination, Accepting Advertisements on Condition, and Cancelling of Advertising Contracts—Newspaper Advertising.—A newspaper is enjoined by a consent decree from refusing to accept advertisements for publication, or discriminating as to price, space, arrangement, period of insertion, or any other conditions of publication, where the reason for such refusal or discrimination is that the advertiser has advertised or proposes to advertise by any other medium; from accepting for publication any advertisement on the condition that the advertiser shall not use the advertising medium of any person other than the defendant or that the advertiser use only the advertising medium of the defendant; and from cancelling any advertising contract for the reason that the advertiser has advertised or proposes to advertise in any advertising medium other than the defendant's newspaper.

For the plaintiff: H. Graham Morison, Assistant Attorney General; Victor H. Kramer, Special Assistant to the Attorney General; Don C. Miller, United States Attorney; Robert B. Hummel, Trial Attorney; and Eugene C. Peck, II, Miles F. Ryan, Jr., and Norman H. Seidler, Attorneys.

For the defendants: Charles A. Baker and Parker Fulton.

Final Judgment

[*Parties Consent To Entry of Judgment*]

MCNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on May 31, 1951; the defendants having filed their joint and several answer to said complaint on June 19, 1951; and the plaintiff and defendants by their attorneys having consented to the entry of this Final Judgment without trial of any issue of fact or law herein and without admission by the parties in respect of any such issue; and the Court having considered the matter and being duly advised; Now, therefore, before any testimony has been taken and without trial 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

[*Cause of Action Under Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the defendants herein, and the complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890. entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended.

II

[*Applicability of Judgment*]

The provisions of this judgment applicable to defendant The Mansfield Journal Company shall apply to it, its officers, directors, agents, employees and attorneys and to those persons, if any, in active concert or participation with it or them who receive actual notice of, this judgment by personal service or otherwise.

III

[*Newspaper Advertising Practices Enjoined*]

Defendant, The Mansfield Journal Company, is enjoined and restrained from:

A. Refusing to accept for publication or refusing to publish any advertisement or advertisements or discriminating as to price, space, arrangement, location, commencement or period of insertion or any other terms or conditions of publication of advertisement or advertisements where the reason for such refusal or discrimination is, in whole or in part, express or implied, that the person, firm or corporation submitting the advertisement or advertisements has advertised, advertises, has proposed or proposes to advertise in or through any other advertising medium.

B. Accepting for publication or publishing any advertisement or making or adhering to any contract for the publication of advertisements on or accompanied by any condition,; agreement or understanding, ex press or implied:

1. That the advertiser shall not use the advertising medium of any person, firm or corporation other than defendant The Mansfield Journal Company;

2. That the advertiser use only the advertising medium of defendant The Mansfield Journal Company;

C. Cancelling, terminating, refusing to renew or in any manner impairing any contract, agreement or understanding, involving the publication of advertisements, between the defendants, or any of them, and any person, firm or corporation for the reason, in whole or in part, that such person, firm or corporation advertised, advertises or proposes to advertise in or through any advertising medium other than the newspaper published by the corporate defendant.

IV

[*Notice of Judgment To Appear in Newspaper*]

Commencing fifteen (15) days after the entry of this judgment and at least once a week for a period of twenty-five weeks thereafter the corporate defendant shall insert in the newspaper published by it a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location.

V

[*Maintenance of Records and Notices Required*]

Defendant The Mansfield Journal Company and the individual defendants are ordered and directed to:

A. Maintain for a period of five (5) years from the date of this judgment, all books and records, which shall include all correspondence, memoranda, reports and other writings, relating to the subject matter of this judgment;

B. Advice in writing within ten (10) days from the date of this judgment any officers, agents, employees, and any other persons acting for, through or under defendants or any of them of the terms of this judgment and that each and every such person is subject to the provisions of this judgment. The defendants shall make readily available to such persons a copy of this judgment and shall inform them of such availability.

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of The Mansfield Journal Company, and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said corporate defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the pos session or under the control of said corporate defendant relating to any matters contained in this judgment;

B. Subject to the reasonable convenience of said corporate defendant and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section VI shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

VII

[*Jurisdiction Retained*]

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

VIII

[*Judgment Against Defendants for Costs*]

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

United States v. Republic Steel Corp.

Civil Action No. 26043

Year Judgment Entered: 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Republic Steel Corporation, et al., U.S. District Court, N.D. Ohio, 1952-1953 Trade Cases ¶67,510, (Jun. 15, 1953)

United States v. Republic Steel Corporation, et al.

1952-1953 Trade Cases ¶67,510. U.S. District Court, N.D. Ohio. Eastern Division. Civil Action No. 26043. Filed June 15, 1953. Case No. 964 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act and Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Allocation of Markets, Exclusive Dealing, Refusing To Deal, and Discriminating in Price or Services—Manufacturer of Corrugated Metal Sheets and Fabricators of Culverts.—A manufacturer of corrugated metal sheets and fabricators of corrugated metal culverts were enjoined by a consent decree from (A) entering into any agreement or from requesting persons to enter into any agreement (1) to allocate markets, customers, or territories for production, (2) to deal exclusively with any person, and (3) to exclude any manufacturer or seller from any territory or market; and from (B) refusing to sell to or purchase from any person, imposing discriminatory terms or prices, or refusing to make available services or technical information because of the refusal of any person to enter into any agreement contrary to (A) above.

Consent Decrees—Practices Enjoined—Requirement Contracts Exclusive Dealing, Limitations on Use, and Sales Limitations.—A manufacturer of corrugated metal sheets was enjoined by a consent decree from entering into any agreement, from refusing to sell because any person has refused to accept an agreement, or from entering into any plan which has as its purpose the making of an agreement, on condition (1) that the purchaser shall purchase all of its requirements of such sheets from the manufacturer, (2) that the purchaser shall not purchase such sheets or culverts manufactured by any other person, (3) that the purchaser shall also purchase from the manufacturer any type of culvert not fabricated by such purchaser, (4) that the purchaser shall not use such sheets purchased from the manufacturer for any other purpose, and (5) that the purchaser agrees to limit its sales of culverts to any quota or to any portion of the market.

Consent Decrees—Practices Enjoined—Trade Association—Membership Activities.— A culvert manufacturers' trade association was enjoined by a consent decree from (1) accepting or soliciting any membership fees from a manufacturer of corrugated metal sheets, (2) admitting such manufacturer to membership in, or permitting such manufacturer to direct or dominate any of the activities of the association, and (3) requesting any defendant to violate any of the provisions of the consent decree.

Consent Decrees—Specific Relief—Sale of Products.—A manufacturer of corrugated culvert sheets was ordered by a consent decree to sell such sheets to all fabricators of corrugated metal culverts, for a period of five years and upon orders placed in good faith and seasonably in accordance with the manufacturer's current trade practices, at non-discriminatory prices and terms and without any discrimination as to trademarks or in the filling of orders. This order was subject to not less than such part of 66 2/3 per cent of the manufacturer's total production of such' sheets for each such, year as the fabricators shall offer to purchase.

Consent Decrees—Specific Relief-Trade Association—Membership. A culvert manufacturers' trade association was ordered by a consent decree to admit to membership any independent fabricator which uses corrugated culvert sheets manufactured by a named defendant, without any condition or restriction, except that, on a nondiscriminatory basis, (1) a reasonable and uniform membership fee and annual dues may be imposed, and (2) by-laws not inconsistent with any provision of the consent decree may be adopted.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and Edwin H. Pewett, Allen A. Dobey, Vincent A. Gorman, and Robert W. Murray, Attorneys for the United States.

For the defendants: Luther Day and Thomas F. Patton, Cleveland, Ohio, for Republic Steel Corporation; Ralph W. Malone, Dallas, Texas, for Wyatt Metal and Boiler Works; Ashley M. Van Duzer, Cleveland, Ohio, for Toncaii

Culvert Manufacturers Ass'n, Inc., Beall Pipe and Tank Corp. Berger Metal Culvert Co., Inc., The Boardman Co., Central Culvert Corp., Choctaw, Inc., V. R. Conner and S. V. Conner, doing business as The Conner Manufacturing Co., a co-partnership, Dominion Metal and Culvert Corp., Eaton Metal Products Corp., Eaton Metal Products Co. of Montana, Empire State Culvert Corp., Illinois Culvert and Tank Co., A. P. Jensen and L. S. Frame, doing business as Jensen Bridge and Supply Co., a co-partnership, H. V. Johnston Culvert Co. of Minneapolis, Minnesota, H. V. Johnston Culvert Co. of Aberdeen, South Dakota, M and M Hiway Materials Co., Thompson Pipe and Steel Co., Tri-State Culvert and Manufacturing Co., and Wisconsin Culvert Co.

Final Judgment

[*Judgment Entered by Consent*]

FREED, District Judge [*In full text*] Plaintiff, United States of America, having filed its complaint herein on November 30, 1948, the defendants having appeared and filed their answers denying the substantive allegations thereof; and the plaintiff and the defendants by their attorneys having severally consented to the entry of this Final Judgment without trial of any issue of fact or law herein and without admission by the parties in respect of any such issue, and the Court having considered the matter and being duly advised;

Now, therefore, before any testimony has been taken and without trial 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

[*Cause of Action Under Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto, and the complaint states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment,

(A) “Corrugated metal culvert” shall mean any tube or channel commonly used for drainage purposes, constructed from corrugated culvert sheets, finished, plain, dipped, galvanized or paved, including full circle culvert, part circle culvert, nestable culvert and arches;

(B) “Corrugated culvert sheets” shall mean corrugated metal sheets in the gauges, sizes, analyses and weights of coating of the type sold to manufacturers of corrugated metal culverts for use in the fabrication thereof;

(C) “Republic” shall mean the defendant Republic Steel Corporation, a corporation organized and existing under the laws of New Jersey;

(D) “The Association” shall mean the defendant Toncan Culvert Manufacturers Association, Inc., a corporation organized and existing under the laws of Ohio;

(E) “Defendant fabricators” shall mean the defendants Beall Pipe & Tank Corporation, Berger Metal Culvert Co., Inc., The Boardman Co., Central Culvert Corporation, Choctaw, Inc., V. R. Conner and S. V. Conner doing business as The Conner Manufacturing Company, a co-partnership, Dominion Metal and Culvert Corporation, Eaton Metal Products Corporation, Eaton Metal Products Co. of Montana, Empire State Culvert Corporation, Illinois Culvert & Tank Company, A. P. Jensen and L. S. Frame doing business as Jensen Bridge and Supply Company, a co-partnership, H. V. Johnston Culvert Co. of Minneapolis, Minnesota, H. V. Johnston Culvert Co. of Aberdeen, South Dakota, M & M Hiway Materials Company, Thompson Pipe and Steel Company, Tri-State

Culvert & Manufacturing Company, Wisconsin Culvert Company, Wyatt Metal & Boiler Works, and each of them, and their majority-owned or controlled subsidiaries;

(F) "Independent fabricator" shall mean a fabricator of corrugated metal culverts from corrugated culvert sheets, but shall not include (i) any defendant fabricator, (ii) Republic, (iii) any majority-owned or controlled subsidiary of Republic, (iv) any manufacturer of corrugated culvert sheets, or (v) any majority-owned or controlled subsidiary of such manufacturer;

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

III

[*Applicability of Judgment]*

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, its subsidiaries, successors or assigns.

IV

[*Allocation of Markets, Exclusive Dealing, and Refusing To Deal Prohibited*]

Republic and the defendant fabricators are jointly and severally enjoined and restrained from:

(A) Entering into, adhering to, maintaining or furthering or claiming any rights under, any contract, agreement or understanding, directly or indirectly, with any defendant or any other person, providing for, or for the purpose of:

(1) allocating, apportioning or dividing markets, customers, product or territories for the production, distribution or sale of corrugated metal culverts or corrugated culvert sheets;

(2) dealing exclusively with, or having any person deal exclusively with, any other person in the sale, purchase or other distribution of corrugated culvert sheets or corrugated metal culverts, but, subject to the provisions of Section VII hereof, nothing in this Final Judgment shall prevent any person at any time or during any period from purchasing corrugated culvert sheets or corrugated metal culverts from Republic in such amounts as such person may desire;

(3) excluding any manufacturer, seller or distributor (including any of such defendants) of corrugated metal culverts from any territory or market; or interfering with or restraining any such manufacturer, seller or distributor in competing in any territory or market;

(B) Requesting, requiring, inducing or persuading any buyer from or seller to any of such defendants to enter into or adhere to any contract, agreement or understanding, contrary to any of the provisions of subsection (A) of this Section IV;

(C) Because of the refusal of any person to enter into or adhere to any contract, agreement or understanding contrary to any of the provisions of subsection (A) of this Section IV:

(1) refusing to sell to or purchase from any such person any corrugated culvert sheets or corrugated metal culverts;

(2) imposing on any such person discriminatory terms, conditions or prices in the sale or purchase of any corrugated culvert sheets or corrugated metal culverts;

(3) refusing to make available to any such person services or technical information relating to corrugated culvert sheets or corrugated metal culverts.

V

[*Exclusive Dealing and Requirement Contracts Prohibited*]

Republic is hereby enjoined and restrained from:

(A) Entering into, performing, enforcing, furthering or adhering to any contract or agreement to sell or of sale, on or accompanied by any condition, agreement or understanding, express or implied:

(1) that the purchaser shall purchase from Republic all its requirements of corrugated culvert sheets, but, subject to the provisions of Section VII hereof, nothing in this Final Judgment shall prevent any person at any time or during any period from purchasing corrugated culvert sheets or corrugated metal culverts from Republic in such amounts as such person may desire;

(2) that the purchaser shall not purchase corrugated culvert sheets or corrugated metal culverts manufactured or supplied by any person other than Republic or any other designated source;

(3) that the purchaser shall also purchase from Republic any type of corrugated metal culvert not fabricated by such purchaser;

(4) that the purchaser shall not use corrugated culvert sheets purchased from Republic for any purpose other than the fabrication of corrugated metal culverts; or that the purchaser shall use corrugated culvert sheets purchased from Republic only for the fabrication of corrugated metal culverts or for any other designated purpose;

(5) that the purchaser agrees to limit its sales of corrugated metal culverts to any volume, quota or percentage, or to any portion of the market.

(B) Refusing to sell, or discriminating in any sale, to any person because such person (i) refuses to accept or adhere to any condition, agreement or understanding, express or implied, contrary to any of the provisions of subsection (A) of this Section V, or (ii) is not, or indicates an unwillingness to become, a member of the Association;

(C) Entering into, adopting or adhering to any plan, program, or policy which has as its purpose the making or adhering to a condition, agreement or understanding contrary to any of the provisions of subsection (A) of this Section V; or entering into, adopting or adhering to any course of conduct contrary to any of the provisions of subsection (B) of this Section V.

VI

[*Trade Association's Membership*]

(A) The Association is enjoined and restrained from:

(1) accepting, collecting, procuring or soliciting, or causing to be accepted, collected, procured or solicited, any dues or any other membership fees from Republic or, through Republic, directly or indirectly, from any member;

(2) admitting Republic to membership in, or permitting Republic to direct or dominate any of the activities of the Association;

(3) requesting, requiring, inducing or persuading any defendant to violate any of the provisions of this Final Judgment, or entering into, adopting or adhering to any course of conduct contrary to any of the provisions of this Final Judgment.

(B) The Association is ordered and directed to admit to membership therein, upon application being made, any independent fabricator which uses, in whole or in part, corrugated culvert sheets manufactured by Republic, without any condition or restriction whatsoever, except that, on a nondiscriminatory basis:

(1) a reasonable and uniform membership fee and annual dues may be imposed; and

(2) by-laws and other regulations, including reasonable nondiscriminatory provisions relative to qualifications of membership, not inconsistent with any provision of this Final Judgment may be adopted.

VII

[*Sale of Products Ordered*]

Defendant Republic is ordered and directed, for a period of five years following the date of entry of this Final Judgment, but in any event only so long as it shall produce corrugated culvert sheets, to make available and to sell each calendar year to defendant fabricators and independent fabricators, upon orders placed (a) in good faith for use in their own manufacturing operations and (b) seasonably in accordance with Republic's then current trade practices, at and upon nondiscriminatory prices, terms and conditions, and without any discrimination as to trademarks or in the filling of orders, but subject to Republic's regular terms and conditions of sale, not less than such part of 66 2/3% of Republic's total production of corrugated culvert sheets for each such year as such fabricators shall offer to purchase.

VIII

[*Compliance and Visitation*]

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

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

(B) 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 such matters, and, upon such request, said defendant shall submit such reports in writing 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 the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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

United States v. Norma-Hoffman Bearings Corp.

Civil Action No. 24216

Year Judgment Entered: 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Norma-Hoffmann Bearings Corporation., U.S. District Court, N.D. Ohio, 1952-1953 Trade Cases ¶67,523, (Jun. 26, 1953)

United States v. Norma-Hoffmann Bearings Corporation.

1952-1953 Trade Cases ¶67,523. U.S. District Court, N.D. Ohio. Civil Action No. 24216. Filed June 26, 1953. Case No. 867 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Arrangements with Foreign Company.—A manufacturer of bearings was enjoined by a consent decree (1) from referring to a foreign company any order or inquiry from a prospective purchaser, (2) from referring to any affiliate of the foreign company not engaged in the manufacture of bearings any order or inquiry from a prospective purchaser unless the referral specifies that the order or inquiry be filled by bearings produced by the manufacturer or unless the manufacturer is unable to supply such bearings, (3) from agreeing with the foreign company or its affiliates that it will not appoint other distributors in the United Kingdom of Great Britain and Northern Ireland, or that the foreign company or its affiliates will not appoint other distributors in the United States and its possessions and territories, and (4) from refusing, upon the application of any person resident in the United Kingdom of Great Britain or Northern Ireland, to enter into an agreement with such person covering such territories for the distribution of bearings made by the manufacturer upon terms comparable to the terms extended by the manufacturer to any other distributor in said territory.
Consent Decrees—Practices Enjoined—Allocation of Territories and Restriction of Production.—A manufacturer of bearings was enjoined by a consent decree, with respect to bearings which may be the subject of import into or export from the United States, from entering into any plan with any person (except in certain instances) (1) to allocate territories or markets or to impose any territorial sales restrictions, (2) to refrain from producing, selling, or distributing or to refrain from competing in any market, (3) to prevent or restrict production, sale, or distribution or to exclude any other person from any market, and (4) to prevent or restrict the importation into or the exportation from the United States, its territories or possessions.
Consent Decrees —Pratices Enjoined—Use of Trade-Mark.—A manufacturer of bearings was enjoined by a consent decree from using the trade-mark of a foreign company on bearings manufactured for sale by such manufacturer.
Consent Decrees—Practices Enjoined—Affiliations with Foreign Company.—A manufacturer of bearings was enjoined by a consent decree (1) from knowingly permitting any officer, director, or employee of a foreign company or its subsidiaries to serve as a director of it, and (2) from causing or authorizing any officer, director, or employee of it to serve as a director of the foreign company or its subsidiaries.
Consent Decrees—Specific Relief—Trade-Marks.—A manufacturer of bearings was ordered by a consent decree (1) to take all necessary steps to register and secure the right to use specified trade-marks and any other trade-marks (different from those used or owned by a foreign company) as to bearings to be used by it in the future in all foreign countries into which exports of bearings from the United States in the bona fide judgment of the manufacturer are or become commercially practicable, and (2) to take such reasonable steps as in the bona fide judgment of the manufacturer are or become commercially practicable to promote and develop export sales of bearings marked with a trade-mark referred to in (1) above. The manufacturer was enjoined from granting any exclusive rights to any person other than a wholly-owned subsidiary of it for any country in or to the trade-marks referred to in (1) above unless, at the same time, its whole business enterprise is transferred. The manufacturer also was ordered to reassign all right, title, and interest in a specified trade-mark to a foreign company.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Marcus A. Hollabaugh and Edwin H. Pewett, Trial Attorneys; and William D. Kilgore, Jr., Max Freeman, and William T. Jeter.

For the defendant: McCarter, English and Studer by James R. E. Ozias, of counsel, and Ray T. Miller by Creighton E. Miller.

Final Judgment

[*Consent to Entry of Decree*]

FREED, District Judge [*In full text*] *:* Plaintiff, United States of America, having filed its complaint herein on July 31, 1946; defendant, Norma-Hoffmann Bearings Corporation, having appeared and filed its answer to such complaint denying the substantive allegations thereof; the United States of America and Norma-Hoffmann Bearings Corporation, by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without admission by any of the parties in respect to any such 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, it is hereby Ordered, adjudged and decreed as follows:

I

[*Sherman Act Action*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint alleges a cause of action against the defendant under Sections 1 and 3 of the Act of Congress of July 2, 1890, Chap. 647, 26 Stat. 209, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Norma-Hoffmann” shall mean defendant Norma-Hoffmann Bearings Corporation, a corporation incorporated under the laws of the State of New York, having a factory at Stamford, Connecticut;

(B) “Hoffmann” shall mean Hoffmann Manufacturing Company, Ltd., a joint stock company, organized and existing under the laws of the United Kingdom, having a factory at Chelmsford, England;

(C) “Bearings” shall mean each and all types of antifriction ball bearings, roller bearings, steel balls, steel rollers and accessories for and parts of such bearings;

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

III

[*Applicability of Decree*]

The provisions of this Final Judgment applicable to defendant Norma-Hoffmann shall apply to each of its subsidiaries, successors, assigns and nominees and to each of its officers, directors and agents and to any other person acting or claiming to act under, through or for said defendant.

IV

[*Contract and Trade-Mark*]

(A) Norma-Hoffmann is enjoined and restrained from enforcing, reviving, observing or carrying out, in whole or in part, any of the provisions of the agreement dated August 31, 1922, between Hoffmann and The Norma Company of America, a predecessor of Norma-Hoffmann, its successors and assigns, insofar as the said agreement affects the foreign commerce of the United States, its territories and possessions.

(B) Norma-Hoffmann is enjoined and restrained from using the "Hoffmann" trademark on bearings manufactured for sale by Norma-Hoffmann and ordered and directed to reassign all right, title and interest in the said trade-mark to Hoffmann.

V

[*Allocation of Territories Enjoined*]

Norma-Hoffmann is enjoined and restrained with respect to bearings which may be the subject of import into or export from the United States, its territories and possessions, from entering into, adhering to, maintaining or furthering any combination, conspiracy, contract, agreement, understanding, plan or program, directly or indirectly, with any person (except for the distribution or agency arrangements with Hoffmann not inconsistent with the provisions of Section VI (D), (E) and (F) hereof and lawful distributorship or agency arrangements with any person other than a manufacturer of bearings):

(A) To allocate or divide territories, fields, markets or customers or to impose any territorial sales restriction upon the purchase or sale of bearings;

(B) To refrain from producing, selling or distributing bearings or to refrain from competing in or from any market, territory, field or customer in the production, sale or distribution of bearings;

(C) To prevent, limit or restrict the production, sale or distribution of bearings, or to exclude any other person from any market for bearings;

(D) To prevent, limit or restrict the importation into or exportation from the United States, its territories or possessions, of bearings.

VI

[*Practices Concerning Foreign Company Enjoined*]

Norma-Hoffmann is enjoined and restrained from:

(A) Referring to Hoffmann or to any manufacturing affiliate of Hoffmann any order or inquiry from a prospective purchaser for bearings produced by NormaHoffmann; this, however, shall not be deemed to prevent Norma-Hoffmann from informing a prospective purchaser, from whom it has received an order or inquiry for bearings which Norma-Hoffmann is unable to supply, that Hoffmann might be able to supply such bearings;

(B) Referring to any Hoffmann affiliate, not engaged in the manufacture of bearings, any order or inquiry from a prospective purchaser for bearings produced by NormaHoffmann unless the referral specify that the order or inquiry be filled by bearings produced or to be produced by Norma-Hoffmann or unless Norma-Hoffmann is unable to supply such bearings;

(C) Following or adhering, directly or indirectly, to any instructions, directions or requests from Hoffmann, which, if complied with, would be contrary to the provisions of this Final Judgment, or participating in any agreement, plan or program with Hoffmann contrary to any of the provisions of this Final Judgment;

(D) Agreeing with Hoffmann or its affiliates that it will not appoint other distributors or agents in the United Kingdom of Great Britain and Northern Ireland for the sale and servicing of bearings made by Norma-Hoffmann;

(E) Agreeing with Hoffmann or its affiliates that Hoffmann or its affiliates will not appoint other distributors or agents in the United States, its possessions and territories for the sale and servicing of bearings made by Hoffmann or its affiliates;

(F) Refusing, upon application of any person resident in the United Kingdom of Great Britain or Northern Ireland and duly qualified to sell and service bearings made by Norma-Hoffmann to enter into an agreement with such person covering the United Kingdom of Great Britain and Northern Ireland for the sale, distribution and servicing of bearings made by Norma-Hoffmann upon terms comparable to the terms extended by Norma-Hoffmann to

any other distributor or agent for the sale, distribution and servicing in said territory of bearings made by Norma-Hoffmann.

VII

[*Trade-Mark Rights to Be Secured*]

(A) Norma-Hoffmann is ordered and directed:

(1) To take all necessary steps to register and secure the right to use the trademarks "Norma" and "Norma-Hoffmann", and any other trade-marks (different from those used or owned by Hoffmann) as to bearings to be used by it in the future, in all foreign countries into which exports of bearings from the United States in the bona fide judgment of Norma-Hoffmann are or become commercially practicable;

(2) To take such reasonable steps as in the bona fide judgment of Norma-Hoffmann are or become commercially practicable to promote and develop export sales of bearings, marked with a trade-mark referred to in the foregoing paragraph (1).

(B) Norma-Hoffmann is enjoined and restrained from assigning or granting any exclusive rights to any person other than a wholly owned subsidiary of NormaHoffmann for any country in or to the trade-marks referred to in subsection (A) (1) of this Section VII unless, at the same time, its whole business enterprise is transferred.

VIII

[*Prohibited Directorships*]

Norma-Hoffmann is enjoined and restrained after ninety days from the date of entry of this Final Judgment, from:

(A) Knowingly permitting any officer, director or employee of Hoffmann or its subsidiaries to serve as a director of NormaHoffmann;

(B) Causing, authorizing or knowingly permitting any officer, director or employee of Norma-Hoffmann to serve as a director of Hoffmann or its subsidiaries.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Norma-Hoffmann, be permitted (1) access during the office hours of Norma-Hoffmann to all its books, ledgers, accounts, correspondence, memoranda and other of its records and documents in its possession or under its control relating to any matters contained in this Final Judgment; (2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers or employees of Norma-Hoffmann, who may have counsel present, regarding any such matters; and, further, (3) upon such request, Norma-Hoffmann 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 reasonably necessary to the enforcement of this Final Judgment; provided, however, that no information obtained by any representative of the Department of Justice by the means provided in this Section IX shall be divulged 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 Retained*]

Jurisdiction is retained for the purpose of enabling the United States of America or Norma-Hoffmann Bearings Corporation to apply to this Court at any time for such further orders and directions as may be necessary or

appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, or for the enforcement of compliance therewith or for the punishment of violations thereof.

United States v. Goff-Kirby Co.

Civil Action No. 26537

Year Judgment Entered: 1953

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE GOFF-KIRBY COMPANY, THE CLIFTON COAL & SUPPLY COMPANY, THE COLLINWOOD SHALE BRICK & SUPPLY COMPANY, THE ZONE COAL & SUPPLY COMPANY, ST. CLAIR COAL & SUPPLY COMPANY, THE GEIST COAL & SUPPLY COMPANY, THE IDEAL BUILDERS SUPPLY & FUEL COMPANY, THE QUEISSER BUILDERS SUPPLY COMPANY, INC., SOUTH EUCLID CONCRETE COMPANY, THE MAYFIELD BUILDERS SUPPLY COMPANY, CITY MATERIAL & COAL, INC., THE PACIFIC BUILDERS SUPPLY COMPANY, CUYAHOGA-DUNHAM SUPPLY COMPANY, and ARNOLD BRECKLING, doing business as THE BRECKLING COAL & SUPPLY COMPANY, Defendants.	CIVIL ACTION NO. 26537 Filed: October 5, 1953

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 31, 1949, and the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof, and all parties hereto by their attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken and without adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I

The Court has jurisdiction of the subject matter hereof and the parties hereto, and the complaint states a cause of action against defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act (15 U.S.C. §1).

II

As used in this final judgment:

(A) The term "Cleveland area" includes the counties of Cuyahoga, Lake, Geauga and Medina, in the State of Ohio.

(B) The term "hard building material" refers to those materials supplies and fixtures, other than lumber and lumber mill products, utilized in the construction, alteration or repair of homes, dwellings, residential apartments, industrial buildings, institutional buildings and commercial buildings, and includes, among other items, sand, stone, gravel, slag, cement, lime, gypsum, plaster, brick, lath, and insulation.

(C) The term "building material dealer" refers to a corporation, partnership, or individual engaged in the purchase of hard building material in large lots or quantities from producers or manufacturers thereof for resale to building contractors, private builders, home owners and industrial users.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, officers, agents, directors, servants and employees 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

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, combination, conspiracy, agreement, understanding, plan or program with

any other defendant or with any other building material dealer, trade association, or central agency of or for building material dealers, to fix, determine, establish or maintain prices, pricing systems, discounts or other terms or conditions of sale to third parties for hard building materials in the Cleveland area, whether by means of the utilization of the prices, pricing systems, discounts or other terms or conditions of sale contained in any publication or other document designated by the said defendants or any of them, or by any other means.

V

The defendants are jointly and severally enjoined and restrained from contributing to or participating in any plan, scheme or project to foster, promote or support financially or otherwise, the preparation, publication, distribution, use or circulation of any publication or other document which:

(A) Sets forth or purports to set forth standard, group, average or approximate prices, pricing systems, discounts or other terms or conditions of sale for hard building materials in the Cleveland area; or

(B) Reports or purports to report prices, discounts or other terms or conditions of sale for hard building materials of any building material dealer in the Cleveland area in advance of same being made generally available to the customers of said dealer.

VI

Each defendant is hereby enjoined from communicating in any manner to any other defendant or any other building material dealer, or to any trade association or central agency in the Cleveland area of or for building material dealers, its own prices or price lists for hard building materials in advance of the same being made generally available to the customers of said defendant.

VII

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, 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 judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the sole purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

VIII

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the

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

/s/ Emerich B. Freed
United States District Judge

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

For plaintiff:

/s/ Stanley N. Barnes
Stanley N. Barnes
Assistant Attorney General

/s/ W. D. Kilgore, Jr.
Attorney for the United States

/s/ John J. Kane, Jr.
John J. Kane, Jr.
District Attorney

/s/ Harry N. Burgess
Attorney for the United States

/s/ Robert B. Hummel
Robert B. Hummel
Chief of the Great Lakes Office

/s/ Lester P. Kauffmann
Attorney for the United States

For Defendants:

/s/ Norman H. Seidler
Attorney for the United States

/s/ John R. Kistner

Attorney for The Goff-Kirby Company

/s/ King A. Wilmot
(Green, Lausche & Wilmot)

Attorneys for The Clifton Coal & Supply Company

/s/ Maurice F. Hanning
McAfee Grossman Taplin Hanning Newcomer & Hazlett

Attorneys for The Collinwood Shale Brick & Supply Company

(Continued on following page)

/s/ Leonard S. Danaceau
Kahn & Danaceau

Attorneys for The Zone Coal &
Supply Company

/s/ Leonard S. Danaceau
Kahn & Danaceau

Attorneys for St. Clair Coal
& Supply Company

/s/ William H. Thomas and
/s/ Arnold M. Edelman

Attorneys for The Geist Coal
& Supply Company

/s/ John D. Drinko
/s/ John R. Baskin
/s/ Richard F. Stevens
Baker, Hostetler & Patterson

Attorneys for The Ideal
Builders Supply & Fuel Company

/s/ Leonard S. Danaceau
Kahn & Danaceau

Attorneys for The Queisser
Builders Supply Company, Inc.

/s/ Charles D. Marsh
Nicola & Marsh

Attorneys for South Euclid
Concrete Company

/s/ Victor S. Leanza
of Leanza Bernard & Hodous

Attorneys for The Mayfield
Builders Supply Company

(Continued on following page)

/s/ Harold Fallon
Rosenfeld, Palay & Fallon

Attorneys for City Material
& Coal Inc.

/s/ Harold Galvin
Galvin and Galvin

Attorneys for The Pacific Builders
Supply Company

/s/ Verne L. Harris For Breckling Coal & Supply Co.

/s/ Elsie R. Tarcai for Cuyahoga Dunham Supply Company

Attorneys for Cuyahoga-Dunham
Supply Company, and Arnold
Breckling, doing business as
The Breckling Coal & Supply
Company

United States v. Tobacco and Candy Jobbers Ass'n

Civil Action No. 28293

Year Judgment Entered: 1954

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Tobacco and Candy Jobbers Association, Inc.; Commission House Drivers and Employees Union, Local #400, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; The Anter Brothers Company; H. Katovsky, Inc.; Safier's, Inc.; Zell Co.; Robert Greene, and Max M. Cohen., U.S. District Court, N.D. Ohio, 1954 Trade Cases ¶67,798, (Jun. 29, 1954)

United States of America v. Tobacco and Candy Jobbers Association, Inc.; Commission House Drivers and Employees Union, Local #400, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; The Anter Brothers Company; H. Katovsky, Inc.; Safier's, Inc.; Zell Co.; Robert Greene, and Max M. Cohen.

1954 Trade Cases ¶67,798. U.S. District Court, N.D. Ohio , Eastern Division. Civil No. 28293. Dated June 29, 1954. Case No. 1096 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Types of Practices Enjoined—Price Fixing—Restraint of Trade.—An association of tobacco and candy jobbers, its members, and a labor union local consented to the entry of a decree prohibiting the maintenance or furthering of any contract, combination, conspiracy, or plan with any other person (1) to adopt or maintain a plan or device, including the collection or dissemination of price lists, to fix prices, profit margins, markups, discounts, or other sales terms, (2) to refuse to sell candy, cigarettes, or other tobacco products to any person or class of persons, (3) to restrict or prevent any persons from purchasing or selling such merchandise, and (4) to influence or attempt to influence third persons in regard to prices, profit margins, markups, discounts, or other sales terms.

Consent Decree—Types of Practices Enjoined—Control of Prices—Dissemination of Price Information.—A consent decree restrained an association of tobacco and candy jobbers, its members, and a labor union (1) from controlling or attempting to control, through the defendant labor union or otherwise, prices, profit margins, pricing systems, markups, discounts, or other sales terms to be charged or used in the sale of candy, cigarettes, and other tobacco products, (2) from restricting or preventing any purchase or sale of such merchandise from or to any other person, and (3) from disseminating price lists containing or purporting to contain prices, profit margins, pricing systems, markups, discounts, or other sales terms determined by agreement between two or more jobbers and/or subjobbers.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Worth Rowley, Special Assistant to the Attorney General, Sumner Canary, United States Attorney, Robert B. Hummel, W. D. Kilgore, Jr., Harry N. Burgess, Lester P. Kaufmann, Edward J. Masek, and Harry E. Pickering.

For the defendants: William H. Rosenfeld, Alfred Palay, Robert C. Knee, Ralph Vince, Fred Mandel, and Aaron A. Weiser.

Final Judgment

CHARLES J. MCNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 20, 1951, and the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof, and all parties hereto by their attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue:

Now, therefore, before any testimony has been taken and without adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby: ordered, adjudged, and decreed, as follows:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and the parties hereto, and the complaint states a cause of action against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U. S. C. Sec. 1) as amended.

II.

[*Definitions*]

As used in this final judgment:

(A) The term “person” means an individual, partnership, corporation or other legal entity;

(B) The term “jobber” means any person engaged in the business of buying candy, cigarettes and other tobacco products directly from the manufacturers thereof for sale to subjobbers and retailers;

(C) The term “subjobber” means any person engaged in the business of buying cigarettes from jobbers and buying other tobacco products and candy either from the manufacturers thereof or from jobbers, for sale to retailers;

(D) The term “retailer” means any person engaged in the business of buying candy, cigarettes and other tobacco products for sale to consumers;

(E) The term “candy” means any and all types of candy, including, but not limited to, bar, bulk, boxed and packaged candy and chewing gum;

(F) The term “other tobacco products” means any and all products whose basic ingredient is tobacco including, but not limited to, cigars, chewing tobacco, smoking tobacco and snuff but excluding cigarettes.

III.

[*Applicability*]

The provisions of this final judgment applicable to any defendant shall apply to such defendant, its subsidiaries, members, officers, agents, directors, servants and employees and to those persons in active concert or participation with them who shall receive actual notice of this final judgment by personal service or otherwise.

IV.

[*Price Fixing and Restraint of Trade Enjoined*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program with any other person:

(A) To adopt, maintain or adhere to any plan, program or device, including specifically the collection, preparation, distribution or dissemination of price lists among themselves or with any other person, the purpose or effect of which is to fix, determine, establish, maintain or stabilize prices, profit margins, pricing systems, markups, discounts or other terms Or conditions of sale to be charged or used by any jobber, subjobber, retailer or any other person for candy, cigarettes or other tobacco products;

(B) To refuse to sell candy, cigarettes or other tobacco products to any person or any class of persons;

(C) To hinder, restrict, limit or prevent any person, including specifically any sub-jobber, from purchasing or selling candy, cigarettes or other tobacco products;

(D) To influence, or attempt to influence any third person with respect to the price or prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale to be charged or used by such third person for the sale of candy, cigarettes or other tobacco products.

V.

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(A) Controlling or attempting to control, through the defendant Union or otherwise, the prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale to be charged or used by any person for the sale of candy, cigarettes or other tobacco products.

(B) Restricting, or preventing, or attempting to restrict or prevent, any person, including specifically any subjobbers, from purchasing or selling candy, cigarettes or other tobacco products from or to any other person;

(C) Distributing or disseminating, in any manner, any price list or purported price list, containing or purporting to contain prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale determined by agreement between two or more jobbers and/or subjobbers for the sale of candy, cigarettes or other tobacco products.

VI.

[*Publication of Terms of Decree*]

(A) Defendant Association is ordered and directed to furnish to each of its present and future members a copy of this Final Judgment;

(B) Defendant Local #400 is ordered and directed to furnish a copy of this Final Judgment to each of its present and future officers and to each of its present members engaged in the sale of candy, cigarettes or other tobacco products.

(C) Defendants Association and Local #400 are each ordered and directed to maintain a record of all persons to whom a copy of this Final Judgment is furnished as required in subsections A and B of this Section.

VII.

[*Inspection and Compliance*]

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, 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, minutes, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment, and ‘(b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters, and (c) upon like request the defendants shall submit such reports with respect to any of the matters contained in this judgment as from time to-time may be necessary for the purpose of enforcement of this judgment; provided, however, that no information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

VIII.

[*Retention of Jurisdiction*]

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

United States v. Pittsburgh Crushed Steel Co.

Civil Action No. 28126

Year Judgment Entered: 1954

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PITTSBURGH CRUSHED STEEL COMPANY THE GLOBE STEEL ABRASIVE COMPANY STEEL SHOT AND GRIT COMPANY, INC. THE AMERICAN STEEL ABRASIVES COMPANY STEEL SHOT PRODUCERS, INC. CLAYTON-SHERMAN ABRASIVES COMPANY STEELBLAST ABRASIVES COMPANY THE NATIONAL METAL ABRASIVE COMPANY WESTERN METAL ABRASIVES COMPANY THE PHILADELPHIA STEEL ABRASIVE CO. THE CLEVELAND METAL ABRASIVE COMPANY AMERICAN WHEELABRATOR & EQUIPMENT CORPORATION PANGBORN CORPORATION METAL ABRASIVE COUNCIL GUSTAVE H. KANN, WILLIAM L. KANN, ISAAC A. DIAMONDSTONE, ARTHUR J. TUSCANY, Defendants.	CIVIL ACTION NO. 28126

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 3, 1951, and all of the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof and denying any violations of law as alleged in the complaint; and the defendants Gustave H. Kann and Arthur J. Tuscany having since died, and the defendant American Wheelabrator and Equipment Corporation, a Delaware corporation having been merged into a Nebraska corporation of the same name which has consented to be substituted in this judgment as a defendant herein in place of said Delaware corporation; and it appearing from a certificate of dissolution this day filed with the Court that the defendant Metal Abrasive Council has been dissolved and that its accounts have been fully liquidated and settled; and the United States of America and the defendants by their respective attorneys having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law

and without admission by any of said parties in respect to any such issues:

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This action is dismissed as to the deceased defendants Gustave H. Kann and Arthur J. Tuscany, and as to the dissolved defendant Metal Abrasive Council.

II.

American Wheelabrator and Equipment Corporation (a Nebraska corporation) is substituted as a defendant herein in place of American Wheelabrator and Equipment Corporation (a Delaware corporation).

III.

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto; and the complaint states a cause of action against the defendants and each of them under Section 1, and against the defendants Kann Affiliates, American Wheelabrator and Equipment Corporation, and Pangborn Corporation under Section 2 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

IV.

As used in this Judgment:

A. "Metal abrasives" means any, some or all of the following: iron or steel shot or grit used or usable as a cutting, sawing, blast cleaning, peening or polishing agent in the processing of metal or stone products, and includes chilled iron shot sometimes called "steel shot"; iron grit sometimes called "steel grit" or "angular grit"; heat treated iron shot and genuine steel shot.

B. "Person" means any individual, partnership, firm, corporation, association, whether incorporated or unincorporated, trustee, or any other business or legal entity.

C. "Affiliate" means a person engaged in the manufacture, distribution or sale of metal abrasives and which, on the date of this Final Judgment, is related to a defendant corporation in that (1) the defendant corporation owns a majority of the voting stock of such corporation; or (2) the defendant corporation and such corporation are directly or indirectly controlled or managed by the same person.

D. "Kann affiliates" means the following companies: Pittsburgh Crushed Steel Company; The Globe Steel Abrasive Company, Clayton-Sherman Abrasives Company; Steel Shot and Grit Company, Inc.; The American Steel Abrasives Company; Steel Shot Producers, Inc. and each of them.

E. The term "manufacturer" means a person engaged in the manufacture of metal abrasives.

F. The term "patents" means and includes the following:

(1) United States Letters Patent, and rights under United States Letters Patent, and all continuations and reissues thereof;

(2) Applications for United States Letters Patent, and

(3) United States Letters Patent which may, at any time hereafter, issue upon any application therefor

owned, or directly or indirectly controlled, by any defendant on the date of this Final Judgment, and relating to the manufacture, or any machinery, equipment or process used or usable in the manufacture, of metal abrasives.

V.

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, and to each of its officers, directors, agents, employees, affiliates, successors and assigns, and all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment a defendant and its officers, directors and employees and/or its affiliates (as hereinbefore defined in Section IV C) shall be considered one person so long as, and only so long as, such relationship exists.

VI.

The defendants are jointly and severally enjoined and restrained from:

Organizing, contributing anything of value to, or participating in any of the activities of, any trade association or any other central agency of or for persons engaged in the manufacture, sale or distribution of metal abrasives the purposes or activities of which are inconsistent with any of the provisions of this Final Judgment.

B. Disseminating, exchanging or communicating among themselves, or to or with any person, or any trade association or any other central agency any information or statistics relating to prices, discounts, terms or conditions of sale, or costs or elements of cost in connection with the manufacture, sale or distribution of metal abrasives.

VII.

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, participating in, maintaining or claiming any rights under, any agreement, undertaking, arrangement, plan or program with any other person engaged in the manufacture, sale or distribution of metal abrasives, including any trade association or central agency of or for such persons directly or indirectly:

A. To fix, determine, establish or maintain prices, pricing systems, discounts or other terms or conditions for the sale of metal abrasives to any third person or persons;

B. To establish, maintain or adhere to any price list or price quotations, or any other means of determining or fixing price lists or price quotations or any other terms or conditions for the sale of metal abrasives to any third person or persons.

C. To distribute, circulate or exchange among themselves or with any other person, any price list or price quotation for the sale of metal abrasives to any third person or persons.

D. To disclose to, receive from or exchange with, any other person any data, information or statistics concerning costs of production, sales, costs of sales, inventories, deliveries or other elements concerning, relating to or affecting the price or prices for the sale of metal abrasives.

E. To establish, maintain or adhere to any basing point or delivered price system, program or practice.

F. To hinder, limit, restrict or prevent any person from engaging in the business of manufacturing, selling or distributing metal abrasives.

G. To allocate, divide or restrict territories, fields or markets for the manufacture, sale or distribution of metal abrasives.

H. To refrain from competition or leave any person free from competition in any territory, field or market in manufacture, sale or distribution of metal abrasives.

I. To disseminate, exchange or disclose to or with any other person the terms of any bid submitted or to be submitted by any defendant in response to any invitation for competitive bids prior to the opening of such competitive bids.

J. To communicate or disseminate to, or exchange with, any other person any information as to excess supplies or surplus quantities of metal abrasives on hand or anticipated, or to offer to purchase, or to offer for sale all or any part of any such excess supplies or surplus quantities of metal abrasives.

K. To compile, maintain, use or adhere to, any compilation of freight rates for metal abrasives.

L. To refuse to sell metal abrasives to any person or to refuse to appoint any person a distributor or sales agent.

VIII.

The defendants are jointly and severally enjoined and restrained, from directly or indirectly:

A. Circulating to each other or to other manufacturers or to any central agency for manufacturers, any list of their distributors, but this subsection A shall not prohibit the announcement to the general public of the names and addresses of a defendant's distributors.

B. Distributing, disseminating or exchanging any price list or price quotation for metal abrasives to or with any other manufacturer or to or with any trade association or other central agency of or for manufacturers in advance of the announcement thereof to the general public.

C. Disclosing to, or receiving from, or exchanging with, any other manufacturer or any other central agency for manufacturers, any data, information or statistics relating to prices, discounts, terms or

conditions of sale, costs of production, sales, costs of sales, inventories, deliveries or any other information relating to prices for the sale of metal abrasives.

D. Disclosing to any other person the terms of any bid submitted or to be submitted by such defendant in response to any invitation for competitive bids prior to the opening of such bids.

IX.

The defendants are jointly and severally enjoined and restrained from publishing, printing, quoting or charging prices for metal abrasives on any basis other than either (1) f.o.b. at the actual place of manufacture or origin of shipment thereof, or (2) on a delivered price basis, which at destination at no time shall exceed the f.o.b. price at the actual place of manufacture or origin of shipment thereof, plus actual transportation and delivery charges to the point of delivery, with every purchaser having the right to purchase f.o.b. at the actual place of manufacture or origin of shipment.

X.

The Kann affiliates are jointly and severally enjoined and restrained:

A. For a period of ten (10) years after the date of this Final Judgment, from acquiring, directly or indirectly, by purchase, lease or otherwise, any of the capital stock, physical assets, business (including customer accounts) or good will of, or any financial interest in, any other person engaged in the manufacture, sale or distribution of metal abrasives except upon application to this Court, after notice to the Attorney General, and a showing to the satisfaction of this Court, that such acquisition will not substantially lessen competition or tend to create a monopoly in the manufacture, sale or distribution of metal abrasives.

B. For a period of ten (10) years after the date of this Final Judgment, from constructing or operating, in conjunction with any other person engaged in the manufacture, sale or distribution of metal abrasives, any plant or facility for the manufacture, sale or distribution of metal abrasives.

C. From knowingly permitting any of their directors, officers, servants or employees to also serve, at the same time, as a director, officer, servant or employee of any other person engaged in the manufacture, sale or distribution of metal abrasives.

D. From entering into, adhering to or maintaining, or claiming any rights under, any contract, agreement, or understanding with any other person to hinder, restrict, limit or prevent such other person from engaging in the business of manufacturing, selling or distributing metal abrasives.

XI.

The defendants Pangborn Corporation, American Wheelabrator and Equipment Corporation and Kann affiliates, and each of them, are hereby enjoined and restrained from holding or acquiring, directly or indirectly, legal title to or any beneficial interest in any shares of stock, bonds, debentures or other evidences of indebtedness issued by each other, and from exercising any voice in the management of each other through the appointment of directors or other representatives in each other's organizations or otherwise, but this Section shall not prohibit any of the aforesaid defendants from holding or acquiring indebtedness arising out of purchases or sales in the ordinary course of business.

XII.

The defendants Kann affiliates, American Wheelabrator & Equipment Corporation and Pangborn Corporation are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding or arrangement with each other or with any other person, the purpose or effect of which is to:

A. Hinder, restrict, limit or prevent any of them or any such other person from distributing or selling metal abrasives produced by any person.

B. Hinder, restrict, limit or prevent any of them or any such other person from, in any manner, engaging in the manufacture, sale or distribution of metal abrasives.

C. Require that any of them or any such other person shall offer or give to each other or to any other particular person any preferential or prior rights to any development in connection with the manufacture of metal abrasives before offering or giving such rights to anyone else.

D. Pay, except pursuant to Section XIII of this Final Judgment, to American Wheelabrator & Equipment Corporation or Pangborn Corporation, or either of them, any commission, sum of money or other thing of value (1) based upon any consideration other than actual services performed or to be performed in connection with the sale of metal abrasives or (2) not available to any other distributor willing and able to perform comparable services, or (3) on the basis that either has national outlets, or has particular experience in the field, or is a manufacturer of machinery using metal abrasives.

XIII.

A. Each of the defendants is ordered and directed:

(1) Insofar as it has the power or authority to do so, to grant to any applicant making written request therefor a nonexclusive and unrestricted license to make, use and sell metal abrasives, for the full life of the patent, under any, some or all of its patents without any limitation or condition whatsoever except that:

(a) a reasonable and non-discriminatory royalty may be charged and collected;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of the royalty due and payable and no other information;

(c) the license may be non-transferable;

(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section XIII;

(e) the license must provide that the licensee may cancel the license at any time after one (1) year by giving thirty (30) days' notice in writing to the licensor.

(2) Upon receipt of a written application for a license in accordance with the provisions of subsection (1) of this Section XIII, to advise the applicant in writing of the royalty it deems reasonable for the patent or patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, within sixty (60) days from the date such application for the license was received by the defendant, the defendant or the applicant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the defendant or applicant as may be appropriate and the Attorney General, and the defendant shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish a reasonable royalty. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant or the applicant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, the defendant patent owner 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 to the Court. If the applicant fails to execute a license for the payment of royalties determined by the Court or fails to pay any interim or other royalty or to perform any other condition stipulated by the Court, in accordance therewith,

such action shall be ground for the dismissal and denial of his application. Where an interim license or sublicense has been issued pursuant to this subsection or where the applicant has exercised any right under the patent, reasonable royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and for all other licensees under this judgment at the option of such licensees to the date of the application to the Court to fix such reasonable royalty rate.

B. Nothing herein contained shall prevent any applicant or licensee from attacking in any manner the validity or scope of any of the aforesaid patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

C. Each defendant is ordered and directed within ninety (90) days after the date of this Final Judgment to file with this Court, with a copy to the Attorney General, a report setting forth a full and complete list of all patents required by this Section XIII to be licensed by such defendant.

XIV

Each of the defendants is enjoined and restrained from:

A. Making any disposition of any patents which deprives it of the power or authority to grant licenses as hereinbefore provided in Section XIII, unless it requires, as a condition of such disposition, that the purchaser, transferee, assignee or licensee, as the case may be, shall observe the requirements of Section XIII hereof and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this judgment.

B. Instituting, threatening to institute or maintaining any suit or counterclaim for infringement of, or for collection of damages or other compensation for infringement under or for the use of, any patent for acts alleged to have occurred prior to the date of entry of this Final Judgment; provided, however, that this subsection B shall not apply to any such suit or proceeding instituted by any defendant prior to, and still pending on, September 20, 1954.

XV

A. Defendants Kann affiliates and American Wheelabrator & Equipment Corporation, and each of them, are ordered and directed, upon written application therefor within five years from the date of the entry of this Final Judgment to furnish to each licensee who has been licensed by them pursuant to Section XIII of this Final Judgment, and who has made a written application therefor during the term of its license:

(1) A written manual describing the methods, processes and techniques known to and used by such defendant on the date of this Final Judgment in its manufacture of metal abrasives under the patent or patents under which such applicant is licensed;

(2) Annual supplements to said manual during a period of five (5) years after the date of this Final Judgment describing any change in such methods, processes and techniques applicable to the patent or patents required to be licensed pursuant to Section XIII of this Final Judgment.

B. In the furnishing of technical information pursuant to subsection A of this Section XV defendants Kann affiliates and American Wheelabrator & Equipment Corporation, and each of them, are enjoined and restrained from charging the applicant therefor any amount exceeding the separate cost to such defendant directly allocable to preparing the same without any administrative or overhead expense.

XVI

The defendant Kann affiliates, American Wheelabrator & Equipment Corporation and Pangborn Corporation, and each of them are jointly and severally enjoined and restrained:

A. From conditioning the sale or lease of any machinery or equipment to any person on any agreement or undertaking to repair or service any such machinery or equipment, upon any agreement or understanding that the purchaser or lessee thereof shall purchase metal abrasives from any designated manufacturer or distributor thereof.

B. From furnishing or offering to furnish repairs to, inspection of, or servicing for, any equipment or machinery, either free or

at a discriminatory rate upon any agreement or understanding that the user of such equipment or machinery shall purchase metal abrasives from any designated manufacturer or distributor thereof.

XVII

A. Nothing contained in Sections VI, VII or VIII of this Final Judgment shall prohibit the exchange of necessary information or negotiations between a prospective seller and a prospective buyer, or the furnishing of prices, terms and conditions of sale by a seller to his agent or the making of agreements relative thereto in bona fide transactions not otherwise prohibited by this Final Judgment involving (a) the purchase or sale of metal abrasives, or (b) the purchase or sale of a plant for the manufacture or processing of metal abrasives.

B. The provisions of Section VII, subsection F, and Section X, subsection D of this Final Judgment, shall not be construed to prohibit reasonable provisions in employment contracts designed solely to secure the confidential nature of technical information and customer lists disclosed to an employee by virtue of his employment; provided, that the term of any agreement or covenant not to engage in the business of manufacturing, selling or distributing metal abrasives contained in any such employment contract shall not extend for a period longer than one (1) year after the termination of employment of such person by such defendant.

C. The provisions of Section X, subsection A of this Final Judgment, shall not prohibit the bona fide sale to, or purchase by, any of the Kann affiliates, of an individual item of machinery or equipment for the manufacture of metal abrasives by or from another manufacturer; provided (a) that such individual item of machinery or equipment represents an insignificant portion of the total machinery, equipment or facilities of the seller and (b) that none of the other terms or conditions of such sale or purchase are otherwise prohibited by any of the provisions of this Final Judgment.

D. Nothing contained in this Final Judgment shall be construed to prevent any defendant from availing itself of any rights it may have, if any, under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

E. Nothing contained in this Final Judgment shall be construed to prohibit a defendant from appointing and using any person as the sole distributor for any designated territory of metal abrasives manufactured or sold by such defendant.

XVIII

For the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant be permitted:

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

B. Subject to the reasonable convenience of defendants and without restraint or interference from them to interview officers or employees of defendants, who may have counsel present, regarding any such matters; and upon such request such defendant 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. No information obtained by the means provided in this Section XVIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XIX

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

Dated: November 13, 1954

81 /s/ Freed
United States District Judge

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

For the Plaintiff:

/s/ Stanley N. Barnes
Stanley N. Barnes
Assistant Attorney General

/s/ Marcus A. Hollabaugh
Marcus A. Hollabaugh

/s/ Robert B. Hummel
Robert B. Hummel
Special Assistants to the
Attorney General

/s/ William D. Kilgore, Jr.
William D. Kilgore, Jr.

/s/ Harry N. Burgess
Harry N. Burgess

/s/ Vincent A. Gorman
Vincent A. Gorman

/s/ Miles F. Ryan
Miles F. Ryan

/s/ Robert M. Dixon
Robert M. Dixon

Attorneys for Plaintiff

For the Defendants:

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/s/ Hugh McNamee
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/s/ Harold Brown
Harold Brown
Attorney for Philadelphia Metal
Abrasive Co.

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/s/ Arthur C. Connolly
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Robert H. McCauley
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Attorneys for Pangborn Corp.

/s/ Hugh McNamee
Hugh McNamee
Attorney for Western Metal
Abrasives Co.

United States v. Am. MonoRail Co.

Civil Action No. 31799

Year Judgment Entered: 1955

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The American MonoRail Company., U.S. District Court, N.D. Ohio, 1955 Trade Cases ¶68,041, (May 5, 1955)

United States v. The American MonoRail Company.

1955 Trade Cases ¶68,041. U.S. District Court, N.D. Ohio, Eastern Division Civil Action No. 31799. Filed May 5, 1955. Case No. 1231 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Patent Practices—Overhead Handling Equipment and Cleaning Equipment.—A manufacturer of overhead handling equipment and cleaning equipment was enjoined by a consent decree from entering into any agreement to (1) refuse to grant to any person a license under any patent relating to such equipment, (2) refuse to furnish to any person any technological data used by the manufacturer in the manufacture of such equipment, and (3) grant to any person a license under any patent relating to such equipment upon terms which are preferential or discriminatory for or against any other licensee under the same patent.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets.—A manufacturer of overhead handling equipment and cleaning equipment was enjoined by a consent decree from entering into any agreement to (1) allocate markets for the manufacture, sale, or distribution of such equipment, (2) refrain from manufacturing, selling, or distributing such equipment in any market, and (3) refrain from competition in the manufacture, sale, or distribution of such equipment.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Acquisitions of Stock.—Under the terms of a consent decree, a domestic manufacturer of overhead handling equipment and cleaning equipment was enjoined from acquiring any financial interest in, or capital stock of, a British company which would increase the proportion of its equity or participation in the British company beyond that existing on February 1, 1955.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control.—A manufacturer of overhead handling equipment and cleaning equipment was enjoined by a consent decree from restricting or preventing any person from exporting from, or importing into, the United States any such equipment.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Interlocking Personnel.—A manufacturer of overhead handling equipment and cleaning equipment was enjoined by a consent decree from knowingly permitting any of its officers, directors, agents, or employees to serve at the same time as an officer, director, agent, or employee of any other person engaged in the manufacture, sale, or distribution of overhead handling equipment or cleaning equipment, except a person of whose stock 51 per cent or more is owned by the defendant manufacturer.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Robert B. Hummel, Trial Attorney; Baddia J. Rashid, Special Assistant to the Attorney General; Sumner Canary, United States Attorney; William D. Kilgore, Jr., Harry N. Burgess, Alfred Karsted and Bernard Manning, Attorneys.

For the defendant: James A. Farrell.

Final Judgment

CHARLES J. MCNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on the fifth day of May, 1955, and defendant, The American MonoRail Company, by its attorneys, having appeared herein, and plaintiff and said 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 and 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

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against defendant The American MonoRail 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," as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Overhead handling equipment" means any mechanical apparatus used in industrial or other plants to convey materials above working floor areas, and to perform the accompanying hoisting and lowering operations;

(B) "Cleaning equipment" means any mechanical apparatus used to prevent the accumulation of lint in textile mills, particularly on spinning frames or looms;

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

(D) "Manufacturer" means any person engaged in the manufacture of overhead handling equipment or cleaning equipment;

(E) "Defendant" means the defendant The American MonoRail Company.

III

[*Applicability of Judgment*]

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

IV

[*Termination of Agreements— Compliance*]

(A) Defendant is ordered and directed, forthwith, to take such steps as may be necessary to cancel its agreements with Dodds Investments, Limited, dated March 9, 1951 and with British MonoRail Company, dated August 7, 1951, and all amendments and modifications thereof, and all supplements thereto;

(B) Defendant is enjoined and restrained from, directly or indirectly, renewing, maintaining, adhering to, or enforcing either of said contracts, or any amendment or modification thereof, or supplement thereto;

(C) Defendant is ordered and directed to file with this Court within ninety (90) days after the date of the entry of this Final Judgment a report setting forth the fact and manner of its compliance with subsection (A) of this Section, and to serve a copy of such report upon the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

V

[*Agreements Prohibited*]

Defendant is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any other person, to:

(A) Allocate or divide territories or markets for the manufacture, sale or distribution of overhead handling equipment or cleaning equipment;

(B) Refrain from manufacturing, selling or distributing overhead handling equipment or cleaning equipment in any territory or market;

(C) Refrain from competition or leave any other person free from competition in the manufacture, sale or distribution of overhead handling equipment or cleaning equipment;

(D) Refuse to grant to any person a license under any United States Letters Patent owned or controlled by defendant relating to the manufacture, sale or distribution of overhead handling equipment or cleaning equipment;

(E) Refuse to furnish to any person any technological data or information, or copies of any plans, specifications or drawings, used by defendant in the manufacture of overhead handling equipment or cleaning equipment;

(F) Hinder, restrict, limit or prevent the importation into, or exportation from, the United States of any overhead handling equipment or cleaning equipment;

(G) Grant to any person a license or licenses under any United States Letters Patent relating to overhead handling equipment or cleaning equipment upon terms or conditions which are preferential or discriminatory for or against any other licensee or applicant for a license under the same patent or patents.

VI

[*Exports, Imports, Acquisitions, and Interlocking Personnel*]

Defendant is enjoined and restrained from:

(A) Hindering, restricting, or preventing, or attempting to hinder, restrict, or prevent any person from exporting from, or importing into, the United States any overhead handling-equipment, or cleaning equipment;

(B) Acquiring, by purchase, lease or otherwise, any financial interest in, or any of the capital stock of, British MonoRail Company, or any successor or assignee thereof which would increase the proportion of its equity or participation in such company beyond that existing on February 1, 1955. Nothing in this Final Judgment shall be construed so as to require defendant to divest itself of any of the shares of stock of British MonoRail Company owned or controlled by it on February 1, 1955;

(C) Knowingly permitting any of its officers, directors, agents, servants or employees to serve, at the same time as an officer,, director, agent, servant or employee of any other person engaged in the manufacture, sale or distribution of overhead handling equipment or cleaning equipment, except a person 51% or more of whose stock is owned by defendant The American MonoRail Company.

VII

[*Permissive Provision*]

The provisions of the foregoing Sections V or VI of this Final Judgment shall not be construed so as to prohibit the defendant from appointing any person except a manufacturer as its agent in any territory for the sale or distribution of overhead handling equipment or cleaning equipment.

VIII

[*Inspection and Compliance*]

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 made to its principal office, be permitted (1) 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 of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of the defendant and without restraint or interference from it to interview officers or employees of the defendant who may have counsel present, regarding any such matters; and upon such request the defendant 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. 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 Department 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.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or 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. Am. Steel Foundries

Civil Action No. 32140

Year Judgment Entered: 1955

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs.- AMERICAN STEEL FOUNDRIES, THE BUCKEYE STEEL CASTINGS COMPANY, THE SYMINGTON-GOULD CORPORATION, SCULLIN STEEL CO., and FOUNDRIES EXPORT COMPANY, INC., Defendants.	Civil No. 32140 Filed: September 30, 1955

FINAL JUDGMENT

The plaintiff, UNITED STATES OF AMERICA, having filed its complaint herein on September 30, , 1955; and the defendants having appeared and filed their several answers to said complaint denying the substantive allegations thereof; 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 issues of fact or law and without admission by any party in respect of any issue; and the Court having considered the matter and being fully advised;

NOW, THEREFORE, upon such consents and without admission or adjudication as to any issue of fact or law, it is

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states a claim for relief against the defendants, and each of them, 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", as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Side frame" means the cast steel outside portion of a four-wheel railway freight car truck. It extends parallel to the track from one wheel axle to the other and transmits the load, either directly or through separate journal boxes, to journal bearings on the ends of the two axles;

(B) "Bolster" means the cast steel load carrying cross member in the center of a four-wheel railway freight car truck which transmits the load of the car to the side frames on either side of the truck;

(C) "Patents" means patents relating to, but only insofar as they relate to, side frames and bolsters, including reissues, divisions, continuations and extensions thereof; the term "U.S. patents" means patents (as hereinbefore defined) issued under the patent laws of the United States; and the term "foreign patents" means patents (as hereinbefore defined) issued under the patent laws of any country constituting a part of foreign territory (as hereinafter defined);

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

(E) "ASF" means the defendant American Steel Foundries; "Buckeye" means the defendant The Buckeye Steel Castings Company; "Symington" means the defendant the Symington-Gould Corporation; and the term "defendant manufacturers" means ASF, Buckeye, Symington, and the defendant Scullin Steel Co.;

(F) "United States" means the United States of America, its territories and possessions;

(G) "Foreign market or territory" means a market or territory outside the United States (as hereinbefore defined);

(H) "Manufacturer" means any person engaged in the domestic or foreign manufacture of side frames of bolsters;

(I) "A.A.R." means the Association of American Railroads, an unincorporated association of various railroads, including any similar or successor association or organization;

(J) "License" includes a "sublicense" and "licensee" includes a "sublicensee"; and

(K) "Attorney General" means the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice of the United States.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to each of its subsidiaries, officers, directors, employees, agents, successors and assigns, and to all other persons acting under, through or for such defendant, who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The defendants are jointly and severally enjoined and restrained from entering into, maintaining, adhering to or furthering, directly or indirectly, any contract, combination, conspiracy, agreement, understanding, plan or program with any manufacturer having as its purpose or effect:

(A) Fixing, determining, establishing, maintaining or stabilizing prices, discounts, differentials or charges, including freight rate factors, or any other terms or conditions of sale to be quoted or charged in the sale of side frames or bolsters to any third person;

(B) Establishing or maintaining any basing point or delivered price system, program or practice in the sale of side frames or bolsters;

(C) Dividing, allocating or assinging customers or territories for the sale of side frames or bolsters;

(D) Circulating, exchanging, providing or using any list of freight charges, rates, factors or differentials in the sale of side frames or bolsters;

(E) Limiting the sale of side frames and bolsters to truck sets of two side frames and one bolster or any other combination of said products;

(F) Allocating, distributing or fixing quotas or percentages of business for the manufacture or sale of side frames or bolsters;

(G) Limiting, restricting, regulating or excluding any person in the manufacture or sale of side frames or bolsters;

(H) Limiting, restricting, regulating or preventing the importation into or exportation from the United States of side frames or bolsters;

(I) Refraining from competition or leaving any person free from competition in any territory, field or market in the manufacture, sale or other distribution of side frames or bolsters;

(J) Disclosing or furnishing to each other or any central agency of or for manufacturers information relating to sales or shipments of side frames or bolsters by any defendant; provided, however, that the provisions neither of this paragraph nor of paragraph (C) of Section V. shall be deemed to apply to or prohibit the disclosure or furnishing of such information as reasonably may be required to permit the uniform manufacture of products which will fit or be interchangeable with each other (regardless of by whom manufactured), or the scheduling or rescheduling of deliveries in order to meet the delivery requirements of a customer.

V

Each defendant is enjoined and restrained from:

(A) Communicating in any manner to any other defendant or to any other manufacturer or to any central agency of or for manufacturers, its prices, discounts, differentials, charges, including freight rate factors, or other terms or conditions of sale for side frames or bolsters, in advance of the same being made generally available to the customers of such defendant manufacturer;

(B) Limiting the sale of side frames and bolsters to truck sets of two side frames and one bolster or any other combination of said products;

(C) Disclosing or furnishing to each other or any central agency of or for manufacturers information relating to sales or shipments of side frames or bolsters by any defendant.

VI

Each defendant manufacturer is ordered and directed to grant, to the extent that it has the power so to do, to any

applicant making written request therefor, in connection with the manufacture by such applicant of side frames or bolsters in the United States, a non-exclusive license to make, use and vend side frames or bolsters, for the full unexpired terms thereof, under any, some or all U.S. patents owned or controlled by such defendant manufacturer at the date of the entry of this Final Judgment, including but not limited to those listed in Appendix A attached to this Final Judgment. Licenses granted pursuant to this Section VI shall not contain any restriction or condition whatsoever, and shall be royalty-free, except that each such license may contain any, some or all of the provisions mentioned under subparagraphs (2) and (5) of paragraph (A) of Section VIII, and shall in any event provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving not less than thirty days' written notice to the licensor. Patents subject to licensing under this Section VI shall be subject to the provisions of paragraph (F) of Section VIII.

VII

Each of the defendant manufacturers which grants a license or licenses under the provisions of Section VI of this Final Judgment is ordered and directed, upon written request of any of its licensees, to furnish to such licensee manufacturing drawings of side frames or bolsters, and of gauges therefor, which have been approved for use in interchange by the A.A.R. where such drawings are in the possession or under the control of such defendant manufacturer and are reasonably necessary to enable such licensee to practice the invention or inventions covered by the licensed patent or patents, the furnishing of such drawings to be subject to payment to such defendant manufacturer of its actual costs (exclusive of administrative or

general overhead expense) in furnishing the same. Any defendant manufacturer may require as a condition of the furnishing of such drawings that the licensee:

(a) Maintain such drawings in confidence and use them only in connection with its own manufacturing operations; and

(b) Agree upon termination (other than by expiration) or cancellation of the license to return to such defendant manufacturer such drawings and any reproductions thereof.

VIII

(A) Any of the following defendant manufacturers, namely, ASF, Buckeye, and Symington, which grants a license or licenses pursuant to Section VI is ordered and directed, to the extent it has the power to do so, upon the written request of any of such licensees, to grant to such licensee a non-exclusive license, under any, some or all of the foreign patents owned or controlled by such defendant manufacturer corresponding to the patents subject to licensing under Section VI, to sell, in the area in foreign territory covered by the licensed foreign patents, the side frames or bolsters licensed to such licensee pursuant to Section VI. Licenses granted pursuant to this Section VIII shall not contain any restriction or condition whatsoever except that each such license may contain any, some or all of the following:

(1) Provisions for the payment to the licensor of a reasonable non-discriminatory royalty;

(2) Provisions, as to any patents under which a defendant manufacturer is subject to certain obligations, imposing upon the licensee the same obligations insofar as such imposition is required of the defendant manufacturer;

(3) Reasonable provisions for the determination of any royalty due by periodic inspection of the books and records of the licensee by an independent auditor, or by any other person acceptable to the licensee and the licensor, who shall report to the licensor only the amount of royalty due and payable and no other information;

(4) Reasonable provisions for the cancellation or the license upon failure of the licensee to pay the royalty or to permit the inspection of its books or records as hereinbefore provided, or in the event licensee shall be adjudged a bankrupt;

(5) Provisions making the license indivisible and non-transferable by operation of law or otherwise;

(6) Provisions to the effect that in the event of any action or threatened action by any governmental agency in any country in foreign territory seeking restriction or revocation of any of the foreign patent rights of such defendant manufacturer by reason of importation by its licensees into such country, or by reason of anything done or omitted to be done by such licensees, the licenses granted by such defendant manufacturer in such country under this paragraph (A) shall be subject to modification or termination to the extent required in order to avoid such restriction or revocation;

(7) Such other terms and provisions as this Court shall approve if application for such approval is made after reasonable notice to the Attorney General.

(B) Each license issued pursuant to this Section VIII shall provide that:

(1) The licensee may cancel the license at any time after one year from the initial date thereof by giving thirty (30) days' written notice to the licensor; and

(2) The licensor shall notify each licensee of the issuance and terms of each license granted pursuant to this Section VIII, and each licensee shall have the right, upon written request, to exchange its license for any other such license granted by the licensor involving the same patent or patents, in the event such other license be upon more favorable terms than the license theretofore granted to such licensee.

(C) Upon receipt by any defendant manufacturer named in paragraph (A) of this Section VIII of a written request for a license of any foreign patent or patents under this Section VIII, such defendant manufacturer shall advise the applicant, in writing, of the royalty which such defendant manufacturer deems reasonable for such patent or patents to which the request pertains. If the applicant and such defendant manufacturer are

unable to agree upon a reasonable royalty within sixty (60) days after the date upon which such request was received by such defendant manufacturer, the applicant may forthwith apply to this Court for the determination of a reasonable royalty; and such defendant manufacturer shall, upon receipt of written notice of the filing of such application, promptly give written notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon the defendant to whom the application is made to establish a reasonable royalty. Pending the completion of the proceeding on said application, the applicant shall have the right requested under Section VIII to vend side frames or bolsters under the foreign patent or patents (required to be licensed hereunder) to which its application pertains without payment of royalty but subject to paragraphs (D) and (E) of this Section VIII.

(D) Where any applicant has the right to vend under the foreign patent or patents of any defendant manufacturer pursuant to paragraph (C) of this Section VIII, such applicant or such defendant manufacturer may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court shall fix such interim royalty rate, such defendant manufacturer shall then issue, and the applicant shall accept, a license providing for the periodic payment of royalty at such interim rate for any sale under such patent or patents from the date of the filing of such application for the determination of a reasonable royalty. If the applicant shall fail to accept such license, or shall fail to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application, and his rights under this Section VIII shall terminate as

to each patent which was the subject of such application.

(E) Irrespective of whether an interim license has been issued pursuant to paragraph (D) of this Section VIII, reasonable royalty rates, once finally determined by this Court, shall apply to the applicant and to all subsequent royalty-paying licensees under the same foreign patent or patents with respect to any sale from the date the applicant files its application with this Court.

(F) Each defendant manufacturer is enjoined and restrained from making any disposition of any of its U.S. patents subject to licensing under Section VI, and each defendant manufacturer named in paragraph (A) of this Section VIII is enjoined and restrained from making any disposition of any of its foreign patents corresponding to its U.S. patents subject to licensing under Section VI, which in either case shall deprive it of the power or authority to grant the licenses thereunder as hereinbefore provided for in Section VI and in paragraph (A) of this Section VIII, unless such defendant manufacturer requires as a condition of such disposition that the purchaser, transferee, assignee or licensee shall observe the requirements of Section VI, or of paragraph (A) of this Section VIII, as the case may be, and of this paragraph (F), with respect to the patents so acquired, and such purchaser, transferee, assignee or licensee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of Section VI, or of paragraph (A) of this Section VIII, as the case may be, and of this paragraph (F), with respect to the patents so acquired.

(G) The defendant manufacturers named in paragraph (A) of this Section VIII are jointly and severally enjoined and restrained from entering into, maintaining, adhering to or furthering,

directly or indirectly, any contract, combination, conspiracy, understanding, plan or program with each other or with any other manufacturer:

(1) to appoint, designate, employ or use any central agency (including the defendant Foundries Export Company, Inc.) for the licensing of foreign patents, or the furnishing of technical or engineering information or services, to any other manufacturer for the manufacture or sale or distribution of side frames or bolsters in any foreign market or territory; or

(2) to give to any defendant the right to regulate or control the licensing, assignment, sale, transfer or disposition by any other defendant of any of the foreign patents of such other defendant; or

(3) to grant to any third manufacturer an exclusive license under any foreign patents; or

(4) to determine what person may be disignated, appointed or used as agent, representative or distributor of any one or more of them for the sale or distribution of side frames or bolsters in any foreign market or territory.

IX

The defendant manufacturers named in paragraph (A) of Section VIII are jointly and severally enjoined and restrained for and during a period of five years from and after the date of entry of this Final Judgment from:

(A) referring any orders to any foreign manufacturer for side frames or bolsters;

(B) appointing, designating or employing, or continuing the appointment, designation or employment of, any foreign manufacturer as agent, representative or distributor for the sale or distribution of side frames or bolsters in any market or territory;

(C) acting for or representing any foreign manufacturer as agent, representative or distributor for the sale or distribution of side frames or bolsters;

(D) offering or paying to, or receiving or accepting from, any foreign manufacturer any rebate, commission or payment (other than payments under patent licenses or for technical or engineering services furnished or to be furnished) in connection with the sale or distribution of side frames or bolsters to any third person; and

(E) designating, appointing or using as sole agent, representative or distributor for the sale or distribution of side frames or bolsters in any foreign market or territory a person who is at the same time acting in such territory or market as agent, representative or distributor for the sale or distribution of side frames or bolsters of any other said defendants or of any other manufacturer except in any foreign market or territory where no other qualified person can be found to act as such agent, representative or distributor, and then only so long as no such qualified person can be found.

X

Each defendant manufacturer which owns, or hereafter acquires, equipment designed for use in subjecting side frames to dynamic tests and is now or hereafter designated an A.A.R. test station for side frames shall, so long as it is so designated, make said equipment available, on a first priority basis, for such tests as may from time to time be required by the A.A.R. and, subject to such A.A.R. tests, to any applicants for the dynamic testing of side frames on a first come, first served basis and at a reasonable non-discriminatory charge to such applicants. All such A.A.R. tests shall be conducted under the supervision of such personnel, including representatives of the A.A.R., as shall from time to time be determined by the A.A.R. Any applicant presenting side frames to any such station for testing may, upon timely request, have such tests conducted by and under the supervision of personnel of its own selection, including its own employees, provided it shall first be demonstrated that such personnel are competent properly to operate the testing equipment, and provided further that such applicant shall pay (in addition to the reasonable non-discriminatory charges hereinbefore provided for) any and all additional costs and charges reasonably incurred or imposed by reason of the use of such personnel, and shall further indemnify the defendant

manufacturer owning such testing station against any and all liabilities and damages to persons or property which may result therefrom. Provisions shall be made by each defendant manufacturer owning such a testing station reasonably designed to prevent any information relating to any side frames submitted by any applicant for testing (other than A.A.R. tests), including the results of such tests, from becoming known to any other manufacturer of side frames.

XI

Each person who shall become a licensee under any patent of any defendant manufacturer pursuant to the provisions of Section VI or shall be, or in good faith shall propose to become, a manufacturer shall be entitled to have representation on the manufacturers' technical committee known as the "Truck Manufacturers Engineers Committee" or any equivalent or successor committee; to receive notice of any meetings of any such committee, as well as and including any joint meetings of any such committee with any committee of the A.A.R.; to participate in any such meetings; and through its representation to receive information with respect to the work done and the results obtained by any such committee; all in the same manner and to the same extent as any of the defendant manufacturers. To the end that the foregoing provisions of this Final Judgment may be carried into effect, each defendant manufacturer which has representation on any such committee shall notify the A.A.R., or such other person as the Court may from time to time specify, of the existence of such committee; and each defendant manufacturer shall take such action as necessary and appropriate to secure compliance with the provisions of this Section XI.

XII

The defendants who are parties to any of the agreements listed in Appendix B are hereby ordered and directed to

cancel said agreements within ninety (90) days after the date of entry of this Final Judgment; and said defendants shall file a report with the Court, and deliver a copy thereof to the Attorney General, within thirty (30) days after the expiration of said ninety(90) days setting forth the steps taken for the cancellation of said agreements. Said defendants who are parties to any of said agreements, and each of them, are hereby further jointly and severally enjoined and restrained (i) from enforcing, from and after the date of entry of this Final Judgment, any of the provisions of any of said agreements to which they, respectively, are parties against any of the other parties thereto, (ii) from the further performance, after the date of cancellation thereof, of any of the provisions of said agreements to which they, respectively, were parties, and (iii) from entering into or performing any contract, agreement, arrangement, understanding, plan or program for the purpose of or with the effect of continuing, reviving or renewing any of said agreements, or any of the provisions thereof inconsistent with this Final Judgment; provided, however, that nothing herein contained shall be construed to prohibit or limit the collection or receipt of any amounts which shall be or become due by reason of activities pursuant to any of said agreements prior to the cancellation thereof.

XIII

Nothing in this Final Judgment shall be deemed to apply (a) to acts and operations of any defendant outside of the United States not covered by the antitrust laws of the United States, or (b) to prevent any defendant from availing itself of the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or of any present or future Act of Congress,

including, except as provided in Sections VI and VIII hereof, the Patent Laws of the United States.

XIV

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice, upon the written request of the Attorney General, and on reasonable notice to any defendant made to its principal office, shall be permitted, subject to any legally recognized privilege,

(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; and

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

For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General made to its principal office, 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 XIV 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.

XV

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

This 30th day of September, 1955.

/s/ Paul Jones
United States District Judge

We hereby consent to the entry of the foregoing Judgment:

For the Plaintiff

/s/ Robert B. Hummel

/s/ Lester P. Kauffman

/s/ Robert M. Dixon

/s/ Edward J. Masek

/s/ Norman J. Futor
Attorneys for Plaintiff

/s/ Stanley N. Barnes
Assistant Attorney General

/s/ W. D. Kilgore, Jr.

/s/ Worth Rowley

/s/ Vincent A. Gorman

For the Defendant
AMERICAN STEEL FOUNDRIES

Dallstream Schiff Hardin Waite & Dorschel

/s/ Louis S. Hardin

For the Defendant
THE BUCKEYE STEEL CASTINGS CO.

Vorys, Sater, Seymour & Pease

/s/ Webb I Vorys & James A. Gorrell

For the Defendant
THE SYMINGTON-GOULD CORPORATION

/s/ Wilmer Mechlin

For the Defendant
SCULLIN STEEL CO.

Carter, Bull & Baer

/s/ Emmet T. Carter

/s/ Gerald K. Presberg

For the Defendant
FOUNDRIES EXPORT COMPANY, INC.

/s/ Wilmer Mechlin

Vorys, Sater, Seymour & Pease

/s/ Webb I. Vorys & James A. Gorrell

Dallstream Schiff Hardin Waite &

Dorschel

/s/ Louis S. Hardin

APPENDIX A

To Final Judgment in the Case of United States of America, Plaintiff, v. American Steel Foundries, et al., Defendants, Civil No.

List of United States Patents owned or controlled by the defendant manufacturers referred to under paragraph A of Section VI of the above-mentioned Final Judgment.

United States Patents Owned or Controlled by The Symington-Gould Corporation

Patent Number	Date of Issue	Patentee
2,108,653	2-15-38	Glenn F. Couch
2,116,496	5-10-38	H. T. Casey
2,118,006	5-17-38	Glenn F. Couch
2,132,381	10-11-38	D. S. Barrows
2,132,382	10-11-38	D. S. Barrows
2,132,383	10-11-38	D. S. Barrows
2,132,384	10-11-38	D. S. Barrows
2,132,385	10-11-38	D. S. Barrows
2,132,386	10-11-38	D. S. Barrows
2,132,387	10-11-38	D. S. Barrows
2,139,434	12- 6-38	D. S. Barrows
2,146,200	2- 7-39	D. S. Barrows
2,180,933	11-21-39	D. S. Barrows
2,200,571	5-14-40	D. S. Barrows
2,205,369	6-18-40	D. S. Barrows
2,207,848	7-16-40	D. S. Barrows
2,239,494	4-22-41	D. S. Barrows
2,243,493	5-27-41	D. S. Barrows
2,255,960	9-16-41	D. S. Barrows
2,268,997	1- 6-42	D. S. Barrows
2,277,812	3-31-42	D. S. Barrows
2,297,863	10- 6-42	D. S. Barrows
2,335,940	12- 7-43	P. J. Hogan
2,347,463	4-25-44	Glenn F. Couch
2,348,453	5- 9-44	Glenn F. Couch
2,421,317	5-27-47	Glenn F. Couch
2,429,576	10-21-47	D. S. Barrows
2,436,738	2-24-48	D. S. Barrows
2,447,458	8-17-48	D. S. Barrows
2,465,966	3-29-49	Glenn F. Couch
2,467,255	4-12-49	Glenn F. Couch
2,479,054	8-16-49	D. S. Barrows
2,480,073	8-23-49	D. S. Barrows
2,483,858	10- 4-49	William Van Der Sluys
2,590,360	3-25-52	D. S. Barrows
2,608,937	9- 2-52	D. S. Barrows et al.
2,621,611	12-16-52	D. S. Barrows
2,625,117	1-13-53	William Van Der Sluys
2,675,278	4-13-54	E. H. Blattner

United States Patents Owned or Controlled by
The Buckeye Steel Castings Company

Patent Number	Date of Issue	Patentee
2,108,378	2-15-38	J. C. Larsen
2,180,900	11-21-39	E. G. Goodwin
2,225,793	12-24-40	C. L. Orr
2,234,413	3-11-41	C. L. Orr
2,234,414	3-11-41	C. L. Orr
2,312,383	3- 2-43	J. G. Bower
2,406,862	9- 3-46	H. W. Stertzbach
2,420,337	5-13-47	C. L. Orr and H. W. Stertzbach
2,457,182	12-28-48	E. B. Schrock
2,460,696	2- 1-49	G. T. Johnson
2,552,019	5- 8-51	H. W. Stertzbach
2,558,150	6-26-51	C. L. Orr and J. C. Settles
2,573,165	10-30-51	J. C. Settles
2,574,348	11- 6-51	C. L. Orr and J. C. Settles
2,575,137	11-13-51	J. C. Settles and C. L. Orr
2,594,079	4-22-52	J. C. Settles and L. E. Furniss
2,612,240	9-30-52	H. A. Moeller and C. L. Orr
2,615,403	10-28-52	C. L. Orr and J. C. Settles
2,624,291	1- 6-53	J. C. Settles
2,626,572	1-27-53	C. L. Orr
2,633,936	4- 7-53	J. C. Settles
2,642,008	6-16-53	J. C. Settles and L. E. Furniss
2,674,204	4- 6-54	J. C. Settles

United States Patents Owned or Controlled by
Scullin Steel Co.

2,236,566	4- 1-41	F. H. Spenner
2,277,963	3-31-42	F. H. Spenner
2,322,599	6-22-43	F. H. Spenner
2,551,064	5- 1-51	F. H. Spenner
2,669,943	2-23-54	F. H. Spenner
2,669,944	2-23-54	F. H. Spenner

United States Patents Owned or Controlled by
American Steel Foundries

Patent Number	Date of Issue	Patentee
2,116,789	5-10-38	W. C. Hedgecock
2,116,964	5-10-38	F. E. Bachman
2,135,728	11- 8-38	A. H. Oelkers
2,188,641	1-30-40	R. B. Cottrell
2,199,360	4-30-40	D. M. Light
2,220,218	11- 5-40	R. B. Cottrell
2,222,484	11-19-40	D. M. Light
2,235,799	3-18-41	R. B. Cottrell
2,268,744	1- 6-42	J. E. Flesch
2,282,166	5- 5-42	R. B. Cottrell
2,283,332	5-19-42	D. M. Light
2,295,550	9-15-42	R. B. Cottrell
2,295,936	9-15-42	R. B. Cottrell
2,297,748	10- 6-42	R. B. Cottrell
2,297,749	10- 6-42	R. B. Cottrell
2,303,259	11-24-42	R. B. Cottrell
2,305,027	12-15-42	A. H. Oelkers
2,310,989	2-16-43	A. H. Oelkers
2,311,313	2-16-43	A. H. Oelkers
2,327,955	8-24-43	W. H. Baselt
2,330,784	9-28-43	A. H. Oelkers
2,334,073	11- 9-43	R. B. Cottrell
2,338,684	1- 4-44	R. B. Cottrell
2,338,856	1-11-44	D. M. Light
2,338,857	1-11-44	D. M. Light
2,346,614	4-11-44	C. N. Rydin
2,348,694	5- 9-44	A. H. Oelkers
2,360,649	10-17-44	R. B. Cottrell
2,365,198	12-19-44	L. A. Lehrman
2,365,199	12-19-44	D. M. Light
2,366,691	1- 9-45	W. H. Baselt and John E. Flesch
2,367,510	1-16-45	D. M. Light
2,370,106	2-20-45	C. A. Edstrom
2,375,206	5- 8-45	W. H. Baselt and John E. Flesch
2,377,178	5-29-45	R. C. Pierce
2,378,414	6-19-45	D. M. Light
2,378,415	6-19-45	D. M. Light
2,380,902	7-31-45	R. C. Pierce
2,392,597	1- 8-46	L. A. Lehrman
2,394,232	2- 5-46	R. B. Cottrell
2,402,502	6-18-46	D. M. Light
2,406,199	8-20-46	C. J. W. Clasen
2,419,188	4-15-47	B. J. Milleville
2,420,229	5- 6-47	R. B. Cottrell
2,424,936	7-29-47	D. M. Light
2,429,399	10-21-47	R. B. Cottrell
2,434,838	1-20-48	R. B. Cottrell
2,437,359	3- 9-48	R. C. Pierce
2,444,009	6-22-48	C. E. Grigsby

Patent Number	Date of Issue	Patentee
2,444,011	6-22-48	L. A. Lehrman
2,465,823	3-29-49	C. E. Tack
2,466,654	4- 5-49	R. B. Cottrell
2,473,010	6-14-49	C. J. W. Clasen
2,485,013	10-18-49	R. C. Pierce
2,508,020	5-16-50	J. E. Flesch and E. G. Opsable
2,512,829	6-27-50	R. B. Cottrell
2,520,845	8-29-50	L. A. Lehrman and H. J. Schmid
2,528,473	10-31-50	J. J. Kowalik
2,536,975	1- 2-51	R. B. Cottrell
2,564,091	8-14-51	W. H. Baselt
2,572,634	10-23-51	L. A. Lehrman
2,587,512	2-26-52	O. W. Naumann and G. D. O'Neil
2,637,280	5- 5-53	R. T. Leisk
2,638,059	5-12-53	R. B. Cottrell
2,650,550	9 -1-53	R. C. Pierce
2,652,002	9-15-53	C. J. W. Clasen
2,652,786	9-22-53	J. J. Kowalik
2,661,702	12- 8-53	J. J. Kowalik
2,667,845	2- 2-54	E. J. Maatman and L. A. Lehrman
2,706,953	4-26-55	R. B. Cottrell

APPENDIX B

To Final Judgment in the Case of United States of America, Plaintiff, v. American Steel Foundries, et al., Defendants
Civil No.

Definitions: The definitions contained in Section 2 of the above-mentioned Final Judgment shall be applicable to this Appendix B; and, in addition, as used in this Appendix B, the following terms shall have the following meanings, namely:

"Scullin" means the defendant Scullin Steel Co., a Missouri corporation; "National" means National Malleable and Steel Castings Company, an Ohio corporation; "Birdsboro" means Birdsboro Steel Foundry & Machine Company, a Pennsylvania corporation; "Pittsburgh" means Pittsburgh Steel Foundry Corporation, a Pennsylvania corporation; "Gould" means The Gould Coupler Company, a Maryland corporation (predecessor to Symington); "Foundries Export" means Foundries Export Company, Inc., a Delaware corporation; "Davis & Lloyd" means Davis and Lloyd, Limited, a company organized and existing under the British Companies Act; "Adanac means Adanac Supplies Limited, a corporation organized and existing under the laws of Canada; "International" means International Equipment Company, Ltd., a corporation organized and existing under the laws of Canada; "Esco means English Steel Corporation, Limited, a corporation organized and existing under the British Companies Act; "Dominion" means Dominion Foundries & Steel, Limited, a corporation organized and existing under the laws of Canada; "Cancar" means Canadian Car & Foundry Co., Ltd., a corporation organized and existing under the laws of Canada.

The following contracts, and any and all amendments, extensions and supplementa thereto, are to be cancelled pursuant to the provisions of Section XII of the above-mentioned Final Judgment:

A.

Cross License Agreements under U. S. Patents Relating to Side Frames and Bolsters

1. Cross License Agreement between Buckeye and Symington, dated April 11, 1949, as extended, presently expiring September 11, 1955.

2. Cross License Agreement between Buckeye and Scullin dated April 16, 1951, as extended, presently expiring April 16, 1956.

3. Cross License Agreement between Symington and Scullin, dated July 14, 1949, as extended, presently expiring July 14, 1956.

4. Cross License Agreement between ASF and Buckeye, dated April 16, 1955, expiring April 16, 1956.

5. Cross License Agreement between ASF and Scullin, dated December 30, 1954, expiring December 30, 1955.

6. Cross License Agreement between ASF and Symington, dated May 14, 1955, expiring May 14, 1956.

7. Cross License Agreement between Buckeye and Birdsboro, dated April 19, 1955, expiring April 16, 1956.

8. Cross License Agreement between Symington and Birdsboro, dated July 14, 1949, as extended, expiring July 14, 1956.

9. Cross License Agreement between Scullin and Birdsboro, dated September 3, 1947, as extended, expiring September 3, 1955.

10. Cross License Agreement between ASF and Birdsboro, dated April 28, 1955, expiring April 28, 1956.

11. Cross License Agreement between ASF and Pittsburgh, dated January 15, 1955, expiring January 15, 1956.

12. Cross License Agreement between ASF and National, dated June 19, 1955, expiring June 19, 1956.

B.

Foundries Export Agreements Relating to Side Frames and Bolsters

1. Agreement dated September 16, 1931, between ASF, Gould, Buckeye, Foundries Export and Esco; this agreement, however, to be cancelled in so far, but only in so far, as it relates to side frames and bolsters.

2. Agreement dated December 2, 1932, between ASF, Buckeye, C. Schuyler Davis and Charles J. Symington, as ancillary receivers of Gould, and Foundries Export and Esco; this agreement, however, to be cancelled in so far, but only in so far, as it relates to side frames and bolsters.

3. Agreement dated February 12, 1935, between Foundries Export and a co-partnership of Ernest E. Lloyd and Fred Mason, co-partners, said partnership being the predecessor of Davis & Lloyd, and all amendments, extensions and supplements thereto.

C.

Agreements Relating to the Manufacture and Sale of Side Frames and Bolsters in Canada

1. Agreement dated November 25, 1936, between ASF, Symington, Adanac, International, Dominion and Cancar.

2. Agreement dated September 23, 1929, between Symington and Adanac and Supplement thereto, dated November 19, 1936.

3. Agreement dated July 29, 1927, between ASF and Canadian Steel Foundries, Ltd., a corporation organized and existing under the laws of Canada; and Amendment and Supplement thereto dated February 11, 1937, between ASF and Cancar; and Amendment and Supplement thereto dated January 2, 1940, between ASF, International and Cancar.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

SEP 7 1955 10 24

UNITED STATES OF AMERICA)
)
v.) Civil No. 32140
)
AMERICAN STEEL FOUNDRIES, ET AL.)

ORDER BASED ON STIPULATION

The above cause coming on to be heard upon the stipulation filed herein on behalf of the United States of America and the defendant American Steel Foundries, by their respective attorneys of record, IT IS HEREBY ORDERED,

1. That the Final Judgment entered by the Court in this proceeding on September 30, 1955, be, and the same hereby is, modified so as to permit defendant, American Steel Foundries, from time to time, to furnish to the Steel Founders' Society of America for transmittal to the Bureau of Labor Statistics, United States Department of Labor, at the request of said Bureau, information regarding the prices currently being charged by said defendant American Steel Foundries for conventional AAR Grade B 5-1/2"x10" journal side frames.

2. That in all other respects said Final Judgment shall remain in full force and effect.

ENTER:

(s) Jones
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
-v.-	)	Civil No. 32140
	)	
AMERICAN STEEL FOUNDRIES, et al.	)	

S T I P U L A T I O N

IT IS HEREBY STIPULATED by and between the UNITED STATES OF AMERICA and the defendant AMERICAN STEEL FOUNDRIES, by their respective attorneys of record, as follows:

1. That the furnishing from time to time by the defendant AMERICAN STEEL FOUNDRIES to the Steel Founders' Society of America for transmittal to the Bureau of Labor Statistics, U. S. Department of Labor, at the request of said Bureau, of the price currently being charged by American Steel Foundries for conventional AAR Grade B 5½" x 10" journal side frames shall not be deemed to be in violation of any provisions of the Final Judgment entered by the Court in this proceeding on September 30, 1955; and

2. That this stipulation may be filed in Court as the basis for an order to be entered by the Court modifying said Final Judgment to the extent required in order that the furnishing by the defendant AMERICAN STEEL FOUNDRIES of said price data to the Steel Founders' Society of America, for transmittal to the Bureau of Labor Statistics, U. S. Department of Labor, at its request as aforesaid, will not be in violation of any of the provisions of said Final Judgment.

UNITED STATES OF AMERICA

By Robert B Hummel

AMERICAN STEEL FOUNDRIES

By William Slifkin Herbert Warton Counsel
Irma D Warden

United States v. Ohio Crankshaft Co.

Civil Action No. 28299

Year Judgment Entered: 1956

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Ohio Crankshaft Company and Muskegon Motor Specialties Company., U.S. District Court, N.D. Ohio, 1956 Trade Cases ¶68,329, (Apr. 18, 1956)

United States v. The Ohio Crankshaft Company and Muskegon Motor Specialties Company.

1956 Trade Cases ¶68,329. U.S. District Court, N.D. Ohio, Eastern Division, Civil Action No. 28299. Filed April 18, 1956. Case No. 1100 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Crankshafts.—A manufacturer of crankshafts was prohibited by a consent decree from entering into any understanding to fix or maintain prices or conditions for manufacturing or for sale of induction hardened crankshafts to or for third persons.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exchange of Customer Names or Lists.—A manufacturer of crankshafts was prohibited by a consent decree from entering into any understanding to exchange names or lists or otherwise disclose the identity of customers or potential customers for induction hardened crankshafts or for manufacturing such crankshafts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets.—A manufacturer of crankshafts was prohibited by a consent decree from entering into any understanding to allocate or divide fields or markets for the manufacture or sale of induction hardened crankshafts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Refusal to Deal.—A manufacturer of crankshafts was prohibited by a consent decree from entering into any understanding to refrain from manufacturing or selling any induction hardened crankshafts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Tie-in Sales.—A manufacturer of induction hardened crankshafts was prohibited by a consent decree from conditioning the sale of induction hardening services upon the understanding that the manufacturer shall provide some or all of the machining service in connection with manufacturing such crankshafts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Production and Sale Control.—A manufacturer of crankshafts was prohibited by a consent decree from limiting or restricting (1) any person in the use which may be made of any induction hardened crankshaft or of machines or equipment for induction hardening of crankshafts, or (2) the sale, lease, or other disposition of machines or equipment for induction hardening of crankshafts, except pursuant to any valid and lawful patent right.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Patents—Control of Licensing.—A manufacturer of crankshafts was prohibited by a consent decree from granting or receiving (1) any non-exclusive patent rights under any license, contract, agreement, or understanding which gives any licensee control over the number or scope of licenses issued or to be issued, or (2) any exclusive patent license which gives any licensee control over the granting of rights not possessed by the licensee, where any such patent rights or licenses relate to induction hardening of crankshafts or related machines or equipment.

Combinations and Conspiracies — Consent Decree —Practices Enjoined — Discriminatory Charges.—A manufacturer of crankshafts was prohibited by a consent decree from discriminating in charges for the induction hardening service on crankshafts as between customers for induction hardening only and customers for finished induction hardened crankshafts.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Manufacturing and Hardening of Crankshafts Ordered.—A manufacturer of crankshafts was ordered by a consent decree (1) to harden for any person crankshafts by inductive heat treatment which in the regular course of business it is capable of hardening, on a per piece, term, or fixed quantity basis, and (2) to manufacture for any person

finished induction hardened crankshafts within the capability of its plant facilities and personnel, without discrimination as to the filling of orders and at such prices and terms as it may from time to time lawfully establish.

Department of Justice Enforcement and Procedure—Consent Decrees—Limitations on Acceptance by the Government.—A consent decree provided that neither the entry nor the terms of the decree should in any manner be deemed to approve of a license agreement entered into between the defendants in the action, or to estop the Government from asserting disapproval of the license agreement or from initiating any action or seeking relief in connection with the agreement.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, W. D. Kilgore, Jr., Marcus A. Hollabaugh, Robert B. Hummel, Frank B. Moore, Jr., and Lewis Bernstein.

For the defendant: Warren Daane for Muskegon Motor Specialties Co.

Final Judgment

JAMES C. CONNELL, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 22, 1951; defendant Muskegon Motor Specialties Company, having appeared and filed its answer denying the substantive allegations hereof and plaintiff and defendant Muskegon Motor Specialties Company, by their 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 defendant Muskegon Motor Specialties Company of any wrongful act;

Now, therefore, before any testimony has been taken herein, 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

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties signatory hereto. The complaint states a claim against the defendant Muskegon Motor Specialties Company under Sections 1 and 2 of the Act of Congress dated July 2, 1890, entitled “An act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Defendant” shall mean Muskegon Motor Specialties Company, a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Jackson, Michigan;

(B) “Crankshafts” shall mean steel shafts used in engines to convert the power of the piston strokes to a rotary motion and to transfer this motion and power to the transmissions;

(C) “Induction hardened crankshafts” shall mean Crankshafts manufactured by rough machining, hardening by inductive heat treatment and precision machining;

(D) “Manufacturing” shall mean the rough machining, hardening or precision machining of Crankshafts;

(E) “Person” shall mean any individual, partnership, corporation, association, firm or any other business or legal entity.

III

[*Applicability of Decree*]

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors, assigns, officers, agents, servants, employees and attorneys, and upon those Persons in action concert or participation with said defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Practices Prohibited*]

Defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any combination, conspiracy, contract, agreement, understanding, plan or program with any other Person to:

(A) Refrain from Manufacturing or selling any Induction Hardened Crankshafts;

(B) Determine, fix, maintain or adhere to the prices or other terms or conditions for Manufacturing, or for sale of Induction Hardened Crankshafts to or for third persons;

(C) Exchange names or lists or otherwise disclose the identity of customers or potential customers for Induction Hardened Crankshafts or for Manufacturing thereof;

(D) Allocate or divide fields, customers or markets for the sale of Induction Hardened Crankshafts or Manufacturing.

V

Defendant is enjoined and restrained from:

(A) Conditioning the sale of induction hardening services upon the agreement or understanding that the defendant shall pro vide some or all of the machining service in connection with Manufacturing;

(B) Limiting, hindering or restricting:

(1) any Person in the use which may be made of any Induction Hardened Crankshaft or of machines or equipment for induction hardening of Crankshafts, or

(2) the sale, lease or other disposition of machines or equipment for induction hardening of Crankshafts,

except pursuant to any valid and lawful patent right;

(C) Granting or receiving:

(1) any non-exclusive patent rights under any license, contract, agreement or understanding which gives any licensee control over the number or scope of licenses issued or to be issued, or

(2) any exclusive patent license which gives any licensee control over the granting of rights not possessed by the licensee,

where any such patent rights or licenses relate to induction hardening of Crankshafts or machines or equipment therefor.

VI

[*Hardening of Crankshafts Ordered*]

(A) Defendant is ordered and directed:

(1)To harden for any Person Crankshafts by inductive heat treatment which in the regular course of business it is capable of hardening, on a per piece, term or fixed quantity basis, and without discrimination as to the filling of orders and at such prices, terms and conditions as it may from time to time lawfully establish;

(2)To manufacture for any Person finished Induction Hardened Crankshafts within the capability of its plant facilities and personnel, and without discrimination as to the filling of orders and at such prices, terms and conditions as it may from time to time lawfully establish;

(B) Defendant is enjoined and restrained from discriminating in charges for the induction hardening service on Crankshafts as between customers for induction hardening only and customers for finished Induction Hardened Crankshafts.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, 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 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) Subject to the reasonable, convenience of the defendant and without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

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

No information obtained by the means permitted 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 Department of Justice 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.

VIII

[*Jurisdiction Retained*]

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

IX

[*Disapproval of License Agreement Not Barred*]

Neither the entry nor the terms of this Final Judgment shall in any manner be deemed:

(A) To approve of the license agreement dated January 16, 1956 entered into between the defendant and the Ohio Crankshaft Company;

(B) To stop the plaintiff from hereafter asserting disapproval of said agreement or from initiating any action or seeking relief in connection therewith.

United States v. Commercial Elec. Co.

Civil Action No. 8107

Year Judgment Entered: 1959

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Commercial Electric Company; Frank Rogers Furniture City, Inc.; S & K Appliances, Inc.; The Gross Electric Fixture Company; Woodville Appliances, Inc.; Lusk Furniture and Appliances, Inc.; Phillips Appliance and Air Conditioning; Superior Refrigeration Sales & Service; Edgar I,. Bauerfeld, and Alban C. Clark., U.S. District Court, N.D. Ohio, 1959 Trade Cases ¶69,505, (Oct. 23, 1959)

United States v. The Commercial Electric Company; Frank Rogers Furniture City, Inc.; S & K Appliances, Inc.; The Gross Electric Fixture Company; Woodville Appliances, Inc.; Lusk Furniture and Appliances, Inc.; Phillips Appliance and Air Conditioning; Superior Refrigeration Sales & Service; Edgar I,. Bauerfeld, and Alban C. Clark.

1959 Trade Cases ¶69,505. U.S. District Court, N.D. Ohio, Western Division. Civil No. 8107. Dated October 23, 1959. Case No. 1420 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Prohibited—Price Fixing—Appliances.—A wholesale distributor of a manufacturer's major appliances and several retailers were prohibited by a consent decree from entering into any contract or program having the purpose or effect of (a) fixing or stabilizing prices, profit margins, pricing systems, markups, discounts, or other terms and conditions of sale for the sale of such appliances or (b) collecting or disseminating prices or price lists among themselves for such appliances.
Combinations and Conspiracies—Consent Decree—Practices Prohibited—Boycotts.—A wholesale distributor of a manufacturer's major appliances and several retailers were prohibited by a consent decree from entering into any contract or program having the purpose or effect of (a) boycotting or refusing to deal with any dealer or other person in connection with the sale or distribution of such appliances or (b) hindering or preventing any dealer or other person from purchasing or selling such appliances.
Resale Price Fixing—Consent Decree—Practices Prohibited—Permissive Provisions—Fair Trade—Selection of Customers.—Although a consent decree permitted a wholesale distributor of a manufacturer's major appliances to exercise its right to choose and select its dealers and to offer suggested resale prices for such appliances, regardless of whether such prices were determined by the manufacturer or the distributor, and to terminate the franchises of such dealers, it prohibited the distributor from terminating the franchise of any dealer or refusing to deal with any dealer who did not observe or agree to observe the prices suggested by the distributor or any other person and from exercising any form of coercion on any of its franchised dealers through the threat of loss of franchise for failure to adhere to the distributor's suggested prices. The decree did not prevent the distributor or defendant retailers from exercising any rights they may have under the Miller-Tydings Act or the McGuire Act, or from unilaterally exercising their rights to select distributors, dealers, consumers, or other persons with whom they will deal.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; Russell E. Ake, U. S. Attorney; Richard M. Colasurd, Assistant U. S. Attorney; and Baddia J. Rashid, W. D. Kilgore, Jr., Max Freeman, Robert B. Hummel, Frank B. Moore, and Dwight B. Moore, Attorneys, Department of Justice.

For the defendants: Gerald P. Openlander for Commercial Electric Co. and Phillips Appliance and Air Conditioning; Smith, Klein & Blumberg, by William P. Klein, for Gross Electric Fixture Co.; Theodore Markwood for Lusk Furniture and Appliance, Inc.; C. F. Wasserman for Frank Roger Furniture City, Inc.; Jas. Slater Gibson and William M. Thomas for Superior Refrigeration Sales & Service; Marshall, Melhorn, Bloch & Belt, by John B. Spitzer, for S & K Appliances, Inc.; John W. Potter for Woodville Appliances, Inc.; Joseph A. Siegal for Edgar L. Bauerfeld; and Winchester & Winchester, by Bruce Winchester, for Alban C. Clark.

Final Judgment

FRANK L. KLOEB, District, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 20, 1958, and the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof, and all parties hereto by their attorneys herein having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

Now, Therefore, before any testimony has been taken and without adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby:

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto, and the complaint states a claim upon which relief may be granted against the 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.

II

[*Definitions*]

As used in this Final Judgment:

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

(B) "GE major appliances" shall mean refrigerators, freezers, ranges and ovens, water heaters, dishwashers, disposalls, washers, dryers, combination washer-dryers, air conditioners, and television receivers manufactured by the General Electric Company (herein referred to as GE);

(C) "Commercial" shall mean the defendant The Commercial Electric Company.

III

[*Applicability*]

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

IV

[*Price Fixing—Boycotts*]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program with any other person having the purpose or effect of:

(A) Fixing, determining, establishing, maintaining or stabilizing prices, profit margins, pricing systems, markups, discounts or other terms and conditions of sale for the sale of GE major appliances to any third person;

(B) Collecting, preparing, publishing, distributing or disseminating prices or price lists among themselves for GE major appliances;

(C) Boycotting or threatening to boycott, or otherwise refusing or threatening to refuse to deal with any dealer or other person in connection with the sale or distribution of GE major appliances;

(D) Hindering, restricting, limiting or preventing any dealer or other person from purchasing or selling GE major appliances.

V

[*Permissive Provisions—Selection of Customers*]

(A) Subject to the provisions of Section IV, Commercial may exercise its right to choose and select its dealers and to offer suggested resale prices for GE major appliances to its dealers, regardless of whether such prices are originally determined by General Electric or Commercial, and to terminate the franchise of such dealers, and such choosing, selecting, or termination, standing alone, shall not be considered a violation of Section IV. Provided, however, that Commercial is enjoined and restrained from terminating the franchise of any dealer-or refusing to sell GE major appliances to any dealer or other person who does not observe or agree to observe or adhere to or who has failed to adhere to prices suggested by Commercial or by any other person for the sale of GE major appliances, and Commercial is further enjoined and restrained from exercising any form of coercion of any of its franchise dealers through the threat, expressed or implied, of loss of franchise for failure to adhere to or abide by prices suggested by Commercial.

(B) Nothing in this Final Judgment shall be construed:

(1) To prevent any defendant from exercising any rights 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;

(2) To prevent any defendant dealer from unilaterally exercising his or its right to select distributors, dealers, consumers, or other persons with whom he or it will deal.

VI

[*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 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, minutes, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment, and (B), subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. Upon such written request the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section 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 in which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

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

United States v. Ins. Bd. of Cleveland

Civil Action No. 28042

Year Judgment Entered: 1961

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

UNITED STATES OF AMERICA, Plaintiff	)	
v	)	Civil No. 28042
INSURANCE BOARD OF CLEVELAND, Defendant	)	Filed 2-28-61 2:02 P.M.

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein; the defendant, Insurance Board of Cleveland, having appeared and filed its answer to such complaint; certain issues having been determined, on motions for summary judgment, by opinion of the Court on August 14, 1956, and an order pursuant to such opinion having been entered on July 2, 1957; the remaining issues having been tried from March 7 to March 14, 1960 and briefs having been submitted by both parties; and the Court having filed its opinion on October 7, 1960 and said opinion constituting findings of fact and conclusions of law; it is hereby ORDERED ADJUDGED AND DECREED:

I.

The Court has jurisdiction of the subject matter hereof and of the parties herein. The defendant, Insurance Board of Cleveland, has combined and conspired with its members to unreasonably restrain trade and commerce in fire, casualty and surety insurance, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this final judgment:

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

(B) "Board" shall mean the defendant Insurance Board of Cleveland, 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 owned by an insurance company in which proprietorship rights are vested in the policyholders rather than in the stockholders;

(E) "Direct writing company" shall mean any insurance company which solicits business from the assured for its own account either directly or through any of its own employees, and any insurance company which is affiliated with, managed by, or owned by an insurance company which solicits business from the assured for its own account either directly or through any of its own employees.

III.

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.

(A) The defendant Board is ordered and directed:

(1) To terminate and cancel those portions of the following by-laws, rules and regulations of the defendant Board, in effect in March, 1960, which prohibit members from representing or otherwise doing business with any mutual company or any direct writing company:

Article III - Section 4c, page 2

Article III - Section 5c, page 4

Article III - Section 6c, page 6;

(2) To terminate and cancel in their entirety the following by-laws, rules and regulations of the defendant Board in effect in March, 1960:

Article III - Section 8b, page 9

Article III - Section 8e, page 9

Article IV - Section 8, page 19.

(B) 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.

V.

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;

(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;

(C) Boycotting or otherwise refusing to do business with any direct writing company.

VI.

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 direct writing company;

(B) Refusing to admit to membership any person for the reason that such person represents or does business with any mutual company or direct writing company.

VII.

The defendant Board is ordered and directed to:

(A) Mail an exact copy of this final judgment to each of its agent members;

(B) For a period of five years from the date that this judgment becomes final, furnish to each agent applying for membership in said Board a copy of this final judgment upon acceptance of his application for membership; and

(C) File within 60 days from the date that this judgment becomes final an affidavit with the Clerk of this Court certifying:

(1) That copies of the final judgment have been mailed in accordance with the provisions of sub-section (A) of this Section VII; and

(2) That the by-laws, rules and regulations specified in sub-sections (A) (1) and (A) (2) of Section IV of this judgment have been terminated and cancelled as required by said sub-sections.

VIII.

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 defendant Board 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 defendant Board, relating 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 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.

X.

Judgment is entered against the defendant Board for all costs to be taxed in this proceeding.

/s/ Charles J. McNamee
District Judge

Approved as to form:

/ s/ Dwight B. Moore
Attorney, Dept. of Justice

Approved as to form:

/s/ Michael R. Gallagher
Hauxhurst, Sharp, Cull & Kellogg
Attorneys for Defendant

United States v. White Motor Co.

Civil Action No. 34593

Year Judgment Entered: 1961

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA Plaintiff v. THE WHITE MOTOR COMPANY Defendant	CIVIL ACTION NO. 34593 Filed 9/5/61 FINAL JUDGMENT

This cause having come on to be considered upon a motion by the plaintiff for a summary judgment against the defendant, The White Motor Company, the Court having determined, upon consideration of the record and the briefs filed by the plaintiff and defendant, that there is no genuine issue between the parties as to any material fact, and the Court having filed its memorandum herein on the 21st day of April, 1961.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I.

The Court has jurisdiction of the subject matter hereof and of the parties hereto and plaintiff's motion for summary judgment is sustained.

II.

As used in this Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and asisting under the laws of the State of Ohio, with its principel place of business at Cleveland, Ohio;

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

(C) "Distributor" means any person engaged, in whole or in part, in the purchase from the defendant of trucks and parts and in the sale thereof at wholesale or at retail in the United States of America, including those persons heretofore designated by the defendant as

"distributor" or "franchised distributor."

(D) "Dealer" means any person engaged, in whole or in part, in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as "key dealer," "metropolitan dealer," "dealer," "direct key dealer," "direct metropolitan dealer," and "direct dealer."

III.

The defendant has entered into contracts and combinations with its dealers and distributors which unreasonably restrain trade and commerce in the distribution and sale of trucks and parts among the several states of the United States and the District of Columbia, in violation of sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, 15 U.S.C.A., 1,3.

IV.

The provisions in the contracts between and among the defendant and its distributors and dealers,

(A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and

(B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant,

are hereby adjudged unlawful, illegal, null and void.

V.

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

in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer, or any other person:

(A) To limit, allocate or restrict the territories in which, or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks;

(B) To fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of trucks or parts to any third person.

VII.

(A) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistant with any provision of this Final Judgment.

(B) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to mail a copy of this Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45) days after the effective date of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section VII.

VIII.

For the purpose of securing or determining 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 made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable 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; and

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

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 in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

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

X.

Jurisdiction 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 construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XI.

The injunctions provided for hereinabove and all executory

action under this Final Judgment shall not become effective or operative until sixty (60) days after the date of the entry of this Final Judgment, and, in the event an appeal is prosecuted by the defendant, all injunctive and executory actions provided for herein shall be stayed and suspended pending the final dispositions of such appeal, conditioned upon the defendant's entering into an appeal and supersedeas bond in the amount of Two Hundred and Fifty Dollars ($250.00).

Girard E. Kalbfleisch

United States District Judge

Date September 5, 1961

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The White Motor Company., U.S. District Court, N.D. Ohio, 1964 Trade Cases ¶71,195, (Sept. 8, 1964)

United States v. The White Motor Company.

1964 Trade Cases ¶71,195. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 34593. Entered September 8, 1964. Case No. 1399 in the Antitrust Division of the Department of Justice.

Sherman Act

Exclusive Dealing—Vertical Territorial Limitations and Customer Restrictions—* Trucks and Truck Parts —Consent Judgment.—A manufacturer of trucks was required under the terms of a consent judgment to cancel its dealer and distributor contracts containing vertical territorial limitations and customer restrictions and prevented from enforcing or claiming any rights under such contracts.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, Norman H. Seidler, Frank B. Moore, and Paul Y. Shapiro, Attorneys, Department of Justice.

For the defendant: Rufus S. Day, Jr., McAfee, Hanning, Newcomer, Hazlett & Wheeler, Cleveland, Ohio, and Gerhard A, Gesell, by N. S. Foley, Covington & Burling, Washington, D. C.

Supplemental Final Judgment

KALBFLEISCH, District Judge: Plaintiff, United States of America, having filed its amended complaint herein on March 28, 1960; defendant The White Motor Company, having appeared and filed its answer denying the substantive allegations thereof; a Final Judgment herein, having been filed on September 5, 1961, and the defendant having appealed from Sections IV(A) and VI(A) and certain related portions of said Judgment, and the Supreme Court having remanded for further proceedings as to issues raised by the aforesaid provisions, and this Court, by Order dated June 4, 1963, having delayed compliance as to certain provisions of said Judgment;

Now the plaintiff and the defendant, by their attorneys, having consented to the entry of this Supplemental Final Judgment without trial or adjudication of any issue of fact or law to which this Supplemental Final Judgment is directed, and without admission by either party 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 to which this Supplemental Final Judgment is directed, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Amended Complaint having been found to state claims against the defendant upon which relief was granted under Sections 1 and 3 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended, this Supplemental Final Judgment is entered to terminate remaining issues in the litigation.

II

[*Definitions*]

As used in this Supplemental Final Judgment:

(A) “Defendant” means The White Motor Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio;

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

(C) “Distributor” means any person engaged, in whole or in part, in the purchase from the defendant of trucks and parts and in the sale thereof at wholesale, or at wholesale and at retail, in the United States of America, including those persons heretofore designated by the defendant as “distributor” or “franchised distributor”;

(D) “Dealer” means any person engaged, in whole or in part, in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as “key dealer,” “dealer,” “direct key dealer,” “direct metropolitan dealer,” and “direct dealer.”

III

[*Applicability*]

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

IV

[*Territorial and Customer Restrictions*]

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

V

[*Cancellation of Contracts*]

(A) Defendant is ordered and directed, before January 1, 1965, to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Supplemental Final Judgment.

(B) Defendant is ordered and directed, before January 1, 1965, to mail a copy of this Supplemental Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, before January 15, 1965, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section V.

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Supplemental Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted (1) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Supplemental Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters. 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 Supplemental Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Supplemental 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 Supplemental Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

United States v. Sherwin-Williams Co.

Civil Action No. 34728

Year Judgment Entered: 1962

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Sherwin-Williams Co., The Martin-Senour Co., John Lucas & Co., Inc., W. W. Lawrence & Co., The Lowe Brothers Co., Acme Quality Paints, Inc., and Rogers Paint Products, Inc., U.S. District Court, N.D. Ohio, 1961 Trade Cases ¶70,179, (Jan. 8, 1962)

United States v. The Sherwin-Williams Co., The Martin-Senour Co., John Lucas & Co., Inc., W. W. Lawrence & Co., The Lowe Brothers Co., Acme Quality Paints, Inc., and Rogers Paint Products, Inc.

1961 Trade Cases ¶70,179. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 34728. Entered January 8, 1962. Case No. 1410 in the Antitrust Division of the Department of Justice.

Sherman Act

Resale Price Fixing—Coercing Jobbers or Retailers to Maintain Prices—Price Lists— Consent Judgment.—A paint manufacturer and six affiliated companies have been prohibited by a consent judgment from coercing or inducing jobbers or retailers to charge specified prices in the sale of any "Kem" paint products, and from distributing to jobbers or retailers suggested prices at which such products should be sold to any third person. However, they could distribute to jobbers and retailers the prices at which they sell the products at wholesale or retail, so long as they state that the prices are those which they charge and are not suggested prices to be charged by others.

Resale Price Fixing—Enforcement Policies—Refusal to Deal—Consent Judgment—A paint manufacturer and six affiliated companies have been prohibited by a consent judgment from refusing to sell to any person because of the prices at which such person sold any "Kem" paint product, inducing jobbers to refuse to sell to any retailer because of the prices at which such retailer sold these products, refusing to sell to any jobber because he sold these products to any particular retailer or class of retailer, and designating to jobbers the retailers who should not be sold these products. However, the manufacturers could recommend that retailers should be of a type which normally handles paint products and should be capable of rendering adequate service.

Final Judgment

McNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 13, 1958; defendants having filed an answer to such complaint denying the substantive allegations thereof; and plaintiff and defendants having by their respective attorneys 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 plaintiff or said defendants in respect to any such 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 signatory hereto 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 the parties hereto. The complaint states a claim upon which relief against the defendants may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Kem Products" means a latex base interior paint called Super Kern-Tone, an alkyd interior enamel called Kem-Glo, a clear gloss varnish called Lin-X, and products used in their application, such as brushes, rollers, trays, and tinting colors bearing the designation "Kern," and including similar products sold for the above uses which incorporate the word "Kem." in the trade name or trademarks.

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

(C) "Prices" means prices, discounts, and terms and conditions of sale.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to each defendant and to each of their subsidiaries, successors, assigns, officers, directors, employees, and agents, and to those persons in active concert or participation with the defendants who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between any such defendants or solely between any such defendant and its subsidiaries and the officers, directors, agents, or employees of such subsidiaries. The term "subsidiary" as used in this paragraph means a company in which one or more of the defendants owns the controlling interest.

IV.

[*Resale Prices*]

Each of the defendants is enjoined from:

(A) Compelling, persuading, coercing, or inducing jobbers, or retailers to charge specified prices in the sale of any Kem Products;

(B) Distributing to jobbers or retailers suggested prices at which Kem Products should be sold to any third person, provided that: this subsection (B) shall not prohibit any defendant from distributing to jobbers and retailers the prices at which said defendant sells Kem Products at wholesale or retail, and bearing on the face thereof a clear statement that such prices are the prices charged by said defendant and are not intended to suggest prices to be charged by others;

(C) Refusing to sell to any person, be cause of the prices at which such person has sold or advertised any Kem Products, or proposes to sell or advertise any Kem Products;

(D) Compelling, persuading, coercing, or inducing jobbers to refuse to sell to any retailer, because of the prices at which such retailer proposes to sell or advertise, or has sold or advertised, any Kem Products;

(E) Refusing to sell to any jobber be cause such jobber has sold or proposes to sell any Kem Products to any particular retailer or class or type of retailer;

(F) Designating to jobbers the retailers who should not be sold Kem Products, whether by publishing or circulating lists or descriptions of eligible or ineligible dealers, or by any other means, provided that this subsection (F) shall not prohibit any defendant from merely advising and recommending that retailers should be of a type which ordinarily handles paint products and should be capable of rendering adequate service to the public.

V.

[*Notice of Judgment*]

Within sixty (60) days of the entry of this Final Judgment, the defendants shall mail a copy of this Final Judgment, together with a letter in the form annexed hereto as Exhibit A or Exhibit B (as may be appropriate) to each person who is a retailer or jobber customer of any of the defendants, to each person formerly a retailer or jobber (as identified upon a list to be furnished by the plaintiff to the defendants) and will furnish sufficient copies to each jobber for the retailer customers of such jobber together with a request that a copy be mailed to each customer and within thirty (30) days after such mailing, to file with this Court, with a copy to the plaintiff herein, a report of compliance with this Section V.

VI.

[*Inspection and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant to its principal offices, 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 the defendant relating to any matters contained in this Final Judgment;

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

(B) Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such records in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment;

(C) No information obtained by the means provided in 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 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.

VII.

[*Jurisdiction Retained*]

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

Exhibit A (Retailer Letter)

Enclosed is a copy of a Federal Court injunction which terminated the above entitled case on January 8, 1962. As a retailer who is selling or has sold Kem Products, you are entitled to receive the enclosed copy of this decree and this explanatory letter. In particular, your attention is called to Paragraph IV of the Court's order.

Among other things, this decree prohibits Sherwin-Williams Co. and each of its subsidiaries from telling you, or any other Kem Products retailer, the price at which you should sell any Kem Products. Accordingly, you are advised that you are free to set your own prices for these products, free of control from us.

Sincerely yours,

Exhibit B (Jobber Letter)

Enclosed is a copy of a Federal Court injunction which terminated the above entitled case on January 8, 1962. As a jobber who is selling or has sold Kem Products, you are entitled to receive the enclosed copy of this decree and this explanatory letter. In particular, your attention is called to Paragraph IV of the Court's order.

Among other things, this decree prohibits Sherwin-Williams Co. and each of its subsidiaries from telling you, or any other Kem Products jobber the price at which you should sell any Kem Products, or the persons to whom you should sell any Kem Products. Accordingly, you are advised that you are free to select your own customers and set your own prices for these products, free of control from us. We do, however, advise and recommend that retailers should be of a type which ordinarily handles paint products and should be capable of rendering adequate service to the public.

Sincerely yours,

United States v. Owens-Illinois Glass Co.

Civil Action No. 7686

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Owens-Illinois Glass Co., U.S. District Court, N.D. Ohio, 1963 Trade Cases ¶70,808, (Jul. 8, 1963)

United States v. Owens-Illinois Glass Co.

1963 Trade Cases ¶70,808. U.S. District Court, N.D. Ohio, Western Division. Civil No. 7686. Entered July 8, 1963. Case No. 1310 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Acquisition of Box Manufacturer by Glass Container Manufacturer—Divestiture—Consent Judgment.—A manufacturer of glass containers was required under the terms of a consent judgment to divest itself of an acquired fiber box manufacturer as a going concern.

For the plaintiff: Lee Leovinger, Assistant Attorney General, Donald F. Melchior, Harry N. Burgess, John M. O'Donnell and Marvin Spaeth, Attorneys, Department of Justice.

For the defendant: Fred E. Fuller, Leslie Henry, James A. Sprunk of Fuller, Seney, Henry & Hodge, Ross W. Shumaker, Robert B. Gosline of Shumaker, Loop & Kendrick, Richard W. McLaren of Chadwell, Keck, Kayser, Ruggles & McLaren, Jesse Climenko, and Leo Schwartz.

Final Judgment

KLOEB, District Judge [*In full text*]: Plaintiff, United States of America, havint, Owens-Illinois Glass Company by its attorneys, having appeared and filed its answer to the complaint, denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the entry of this Final Judgment herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without any admission by any party in respect to any such issue and upon the consent of the parties hereto, the Court being advised and having considered the matter, it is hereby

Ordered, adjudged and decreed as follows :

I

[***Clayton Act***]

This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled “An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes”, commonly known as the Clayton Act. The complaint states claims upon which relief may be granted under Section 7 of said Act.

II

[***Definitions***]

As used in this Final Judgment:

(A) “Owens-Illinois” means defendant, Owens-Illinois Glass Company, a corporation organized and existing under the laws of the State of Ohio with its principal office at Toledo, Ohio, and its subsidiaries.

(B) “National” means the former National Container Corporation, a Delaware corporation, which was merged into OwensIllinois on October 4, 1956, and the corporations which were subsidiaries of National at the time of the merger.

(C) “Subsidiary” of any corporation means a second corporation of which over 50% of the voting power is held directly or indirectly by such first corporation.

(D) “Containerboard” means paperboard classified as linerboard, corrugating medium, and chip and filler board, made principally from woodpulp, waste paper or paperboard, straw, or a combination thereof, and primarily for use in the manufacture of fibre boxes.

(E) “Fibre boxes” means corrugated and solid fibre boxes used for packaging and shipment of various packaged and bulk products, interior packing for such boxes and related corrugated fibre products, made from containerboard.

(F) “Person” means any individual, partnership, corporation, association or other legal entity.

(G) “Eligible Purchaser” means any person approved by plaintiff, or the Court after notice to the plaintiff and opportunity to be heard.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Owens-Illinois shall apply to each of its subsidiaries, successors and assigns, and to each of its directors, officers, agents, employees or any other person acting under, through or for such defendant, when acting in any such capacity. The provisions of this Final Judgment shall not apply or relate to the activities or operations of Owens-Illinois outside of the continental limits of the United States. None of the provisions of this Final Judgment shall apply to any person or persons who acquire from Owens-Illinois any of the properties disposed of pursuant to this Final Judgment.

IV

[*Divestiture Required*]

Owens-Illinois is hereby ordered and directed, subject to the terms and conditions of this Final Judgment:

(A) To dispose of as a unit to an Eligible Purchaser the following properties, which are properties acquired from National with additions and modifications since such acquisition:

1. Its Jacksonville paperboard mill, located at Jacksonville,. Florida, including real estate, buildings, machinery, tools and equipment.

2. Five certain fibre box manufacturing plants having an aggregate minimum capacity of approximately 235,000 M sq. ft. per month, on the basis of Owens-Illinois operating experience, and a 120-hour week or equivalent thereof. The identity of and pertinent information as to said plants shall be disclosed to any bona fide prospective purchaser, under the conditions provided in Paragraph (I) of this Section.

3. Inventories at the properties to be disposed of on hand at the time of disposition.

4. At the option of the purchaser, approximately 209,000 acres of woodlands and associated buildings and equipment as described in Appendix A to this Final Judgment.

(B) Disposal of the properties described in Paragraph (A.) of this Section shall be of such properties in full operating condition as they now are, subject to changes and additions and betterments made up to the time of disposal in the normal course of business or in the interest of improved operating conditions or new business opportunities. Owens-Illinois shall use its best efforts to maintain each of such properties at not less than the standards of operational performance in effect on the date of this Final Judgment.

(C) Owens-Illinois shall reasonably cooperate with the purchaser in the employment of personnel associated with the operation and management of the properties described in Paragraph (A) of this Section whom the purchaser may desire to employ and shall release from any employment contract any persons who, within a reasonable

time, not to exceed 60 days after the consummation of the disposal, notify Owens-Illinois of their desire to accept such employment.

(D) Owens-Illinois shall dispose of the properties described in Paragraph (A.) of this Section to any Eligible Purchaser who offers to pay the fair market value of such properties determined as herein provided, adjusted for additions and retirements subsequent to the date as of which the determination of fair market value was made as shown by the books of account of Owens-Illinois, plus included inventories at Owens-Illinois book value at time of disposal. Forthwith upon the entry of this Final Judgment, Owens-Illinois shall employ a person or persons acceptable to plaintiff and Owens-Illinois as an appraiser to make, within one year from the date of the entry of this Final Judgment, a determination of the fair market value as a unit of the properties described in Paragraph (A) 1, 2 and 4, and as a unit of the properties described in Paragraph (A) 1 and 2. Fair market value of each of said two units so determined shall be that of each unit as a going enterprise for the manufacture and sale of paperboard and fibre boxes, but not less than replacement cost new less depreciation of the various properties for the purposes to which they are now devoted. Promptly upon completion Owens-Illinois shall file copies of such determination with the Anti Trust Division of the Department of Justice. In the event more than one Eligible Purchaser makes an offer of purchase which conforms to the provisions of this Final Judgment at substantially the same time, disposal shall be made to the one making the better offer, as determined by Owens-Illinois.

(E) If the purchaser does not elect to acquire the woodlands described in Paragraph (A) 4 of this Section, Owens-Illinois shall offer the purchaser a contract, effective at the time of disposal of the other properties described in said Paragraph (A), for the purchase of pulpwood from Owens-Illinois in a level annual amount not less than 5500 cords nor more than 55,000 cords, for a period of up to ten years, on terms substantially as set forth in the draft of pulpwood contract filed with the Department of Justice.

(F) The purchaser, as a part of the acquisition, shall assume and perform. the contract for supply of pulpwood to the Jacksonville mill between Owens-Illinois and its subsidiary, Owens-Illinois of the Bahamas, Ltd., and, as a part of the acquisition, shall have the option to assume and agree to perform the contract between Owens-Illinois and J. M. Carter, et al., as such contracts are in effect on the date of this Final Judgment or as modified by the parties thereto prior to the time of disposal, provided that such modifications do not materially change the provisions of such contracts, except that the term[s] of the Carter contract may be extended up to five years.

(G) The purchaser, as a part of the acquisition, shall also enter into a contract covering the transportation of pulpwood supplied under the Owens-Illinois of the Bahamas contract, in substantially the form filed with the Department of Justice.

(H) Owens-Illinois shall offer to transfer to any purchaser, together with the properties referred to in Paragraph (A) of this Section, its rights under handling and warehouse arrangements at Edgewater, New Jersey, and any other locations on the Atlantic seaboard, then used by it in connection with the sale to others of containerboard produced at the Jacksonville mill, which transfer shall include inventory at such locations.

(I) Owens-Illinois shall make known the availability of the properties ordered to be disposed of by ordinary and usual means for the sale of a business or plant. Owens-Illinois shall furnish to bona fide prospective purchasers copies of the papers referred to in Paragraphs (D), (E), (F) and (G), of this Section, and shall furnish to bona fide prospective purchasers such other information regarding such properties, and shall permit them to have access to, and to make such inspection of, the properties as are reasonably appropriate; provided that such need not be done when in the judgment of Owens-Illinois any pending negotiation with another bona fide prospective purchaser hereunder would be prejudiced.

(J) The disposal ordered and directed by this Section IV shall be made in good faith and shall be absolute, unqualified and unconditional; none of the properties so ordered to be disposed of shall be directly or indirectly disposed of to any person acting for or under the control of Owens-Illinois or to anyone who will after the disposal be an officer, director, agent or employee of Owens-Illinois; provided that the properties may, at the election of Owens-Illinois, be disposed of to a subsidiary if the voting shares of such subsidiary so received by Owens-Illinois shall be promptly distributed pro rata to its common shareholders, and it does not have a director, officer or employee in common with Owens-Illinois, and no such director, officer or employee together with any affiliate

or associate of such director, officer or employee as those terms are presently defined in Rule 405 of Regulation C of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933, shall receive as a result of such distribution the beneficial interest in more than five per cent of the voting shares so distributed; and provided further that Owens-Illinois may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on said properties given for the purpose of securing to Owens-Illinois full payment of any unpaid purchase price.

(K) Within 30 days after the completion of the disposal herein directed, Owens-Illinois shall file with the Court and serve upon Assistant Attorney General in charge of the Anti-Trust Division a report showing the final consummation of such disposal and the nature thereof.

V

[*Failure to Accomplish Divestiture*]

If defendant Owens-Illinois has not divested itself of all of said properties pursuant to Section IV of this Final Judgment as therein provided for, within four years after the expiration of the one-year period provided by Section IV (D) in which to complete the appraisal therein referred to, plaintiff may, at any time thereafter, and upon reasonable notice to defendant Owens-Illinois, move this Court for an order requiring defendant Owens-Illinois to divest itself of any or all of such properties in any manner and upon any terms and conditions as the Court determines to be (a) fair and reasonable to defendant Owens-Illinois, and (b) necessary and appropriate to effectuate the primary objective of this Final Judgment, to accomplish such divestiture,.

VI

[*Reports*]

Following the entry of this Final Judgment, Owens-Illinois shall upon request of the Assistant Attorney-General in charge of the Anti-Trust Division, made not oftener than quarter-annually, render reports to said Assistant Attorney General, outlining in reasonable detail the efforts made by Owens-Illinois to dispose of properties as required by this Final Judgment. Such reports shall be deemed confidential and shall not be disclosed to others than members of the staff of the Department of Justice concerned with this matter, except upon. order of this Court.

VII

[*Inspection*]

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 of the Assistant Attorney General in charge of the Anti-Trust Division, and on reasonable notice to Owens-Illinois at its principal office, be permitted (1) reasonable access, during the office hours of Owens-Illinois, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Owens-Illinois relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of Owens-Illinois and without restraint or interference from it, to interview officers or employees of Owens-Illinois, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, Owens-Illinois, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Anti-Trust Division, and upon reasonable notice made to its principal office, shall submit such reasonable 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. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of court proceedings to which the United States of

America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by Law.

VIII

[*Jurisdiction Retained*]

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

Appendix A

Woodlands referred to in Paragraph (A)4 of Section IV

Approximately 209,000 acres of woodlands owned by or leased to Owens-Illinois Glass Company. Under conditions existing at the date of the entry of the Final Judgment to which this is Appendix A, such woodlands would be all of those owned by or leased to Owens-Illinois Glass Company situated in the following areas in the State of Florida, with approximate acreage as follows:

> Levy County (4,166 acres owned, 40,194 acres leased); Dixie County (37,231 acres owned) ; Flagler County (20,716 acres owned); St. Johns County (29,323 acres leased); Marion and Putman Counties and Townships 9, 10, 11 and 12 South, Range 21 East, and Townships 9, 10, 11 and 12 South, Range 22 East, in Alachua County (77,487 acres owned).

In the event that, prior to disposition pursuant to said Judgment, additional small tracts of woodlands are purchased or leased by Owens-Illinois in the immediate vicinity of the areas above described, such tracts shall, at the request of Owens-Illinois, be added to the woodlands above described. If prior to such disposition Owens-Illinois purchases or leases substantial additional acreage of woodlands in the areas above described or in areas from which pulpwood can in the opinion of Owens-Illinois be more practically supplied to the Jacksonville mill of Owens-Illinois than to its Valdosta (IClyattville), Georgia mill, Owens-Illinois may make substitutions for any parts of the lands above described so as to provide for the disposition of approximately 209,000 acres of woodlands which when considered as a whole are, in the opinion of Owens-Illinois, fairly allocable to the Jacksonville mill.

Said owned and leased lands are to be transferred together with land improvements, buildings, structures and equipment used in operation, maintenance, planting and protection, owned by or leased to Owens-Illinois at time of disposition; subject to any then existing defects in title, to provisions of and assumption of leases without future liability of Owens-Illinois, to reimbursement of advances and prepayments, and to reservation by Owens-Illinois of all oil and gas and other minerals and rights relating thereto held by Owens-Illinois.

United States v. A P Parts Corp.

Civil Action No. 8541

Year Judgment Entered: 1964