

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
C/O Antitrust Division,)
U. S. Department of)
Justice, Washington,)
D. C. 20530)
202/633-2540)

CIVIL ACTION NO. 80-2346

v.)

WHEELABRATOR-FRYE, INC.,)
Liberty Lane, Hampton,)
New Hampshire 03842; and)

FILED: September 15, 1980

PULLMAN INCORPORATED)
200 South Michigan)
Avenue, Chicago,)
Illinois 60604)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of said Act, as amended (15 U.S.C. § 18).

2. Wheelabrator-Frye, Inc., transacts business and is found within the District of Columbia.

3. Pullman, Incorporated transacts business and is found within the District of Columbia.

II

DEFENDANTS

4. Wheelabrator-Frye, Inc., (hereinafter referred to as "Wheelabrator") is made a defendant herein. Wheelabrator is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Hampton, New Hampshire.

5. Wheelabrator is engaged, inter alia, in the business of designing, manufacturing and selling a wide range of electric arc furnaces through its wholly-owned subsidiary Whiting Corporation, and in designing, engineering and constructing industrial and power plant chimneys through the Rust Chimney Division of its wholly-owned subsidiary, the Rust Engineering Company.

6. Wheelabrator ships substantial quantities of arc furnaces and provides substantial chimney design, engineering and construction services to customers located throughout the United States. Wheelabrator has been and is engaged in interstate commerce.

7. Pullman, Incorporated, (hereinafter referred to as "Pullman") is made a defendant herein. Pullman is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

8. Pullman is engaged, inter alia, in the design, engineering and sale of a wide range of electric arc furnaces through the Industrial Furnace Group of its Pullman Swindell Division, and in designing, engineering and constructing industrial and power plant chimneys through the Chimney Operations group of its Pullman Power Products Division.

9. Pullman subcontracts the manufacture of electric arc furnaces in several states and regularly sells these furnaces to customers located throughout the United States. Pullman provides substantial chimney design, engineering and construction services to customers located throughout the United States. Pullman has been and is engaged in interstate commerce.

10. On or about August 20, 1980, Wheelabrator and Pullman entered into agreements whereby Wheelabrator will acquire over 26 percent of the capital stock of Pullman and thereafter merge with Pullman or, in the alternative, whereby Wheelabrator will acquire the engineering and construction business of Pullman. The first step of this acquisition plan, the stock acquisition, is scheduled to be consummated on or about September 19, 1980.

COUNT ONE

III

TRADE AND COMMERCE

11. Electric arc furnaces are used by primary steel makers and by iron and steel foundries as a melting device. Electric arc furnaces are used in integrated primary steel mills to supplement the basic steel-making capacity normally provided by open-hearth furnaces and basic oxygen furnaces. Electric arc furnaces are used in "mini" and "midi" steel mills as the primary steel making furnace. Electric arcs are also used by specialty steel alloy makers and iron and steel foundries and others. There is no alternative to an electric arc furnace in a mini or midi steel mill.

12. Wheelabrator's Whiting Metallurgical Division and Pullman's Pullman Swindell Industrial Furnace Group are two of the four firms that have dominated the market for electric arc furnaces in the United States over the last ten years.

13. The Whiting Metallurgical Division of Wheelabrator is the third largest electric arc furnace firm in the United States, and it accounted for approximately 16 percent of the dollar value of electric arc furnace sales made from 1972 to 1977. The Pullman Swindell Industrial Furnace Group of Pullman is the second largest electric arc furnace firm, and it accounted for approximately 24 percent of the value of sales of electric arc furnaces made during the same period.

14. The market for electric arc furnaces is highly concentrated. From 1972 to 1977, the top two firms in the industry accounted for approximately 78 percent of the value of all electric arc furnaces sold in the United States.

15. The market for electric arc furnaces in the United States is estimated to be approximately \$30 million per year at the present time.

IV

VIOLATION ALLEGED

16. The effect of the proposed acquisition of Pullman by Wheelabrator may be substantially to lessen competition or to tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Pullman will be eliminated as a significant competitor in the design, engineering and sale of electric arc furnaces;

- (b) Concentration in the design, engineering, and sale of electric arc furnaces may be substantially increased; and,
- (c) Competition generally in the design, engineering, and sale of electric arc furnaces may be substantially lessened.

COUNT TWO

17. Plaintiff here repeats and realleges the allegations of paragraphs 1 through 10 with the same force and effect as though set forth in full.

V

TRADE AND COMMERCE

18. Industrial and power plant chimneys are made primarily from three types of materials: steel, brick or reinforced concrete. Tall industrial and power plant chimneys are more than 250 to 300 feet tall and are built with reinforced concrete for economic reasons. Some of these tall chimneys are over 1,000 feet in height.

19. Most new tall chimneys are designed, engineered, and constructed for electric power generating stations. Only about 10 percent of new tall chimney constructions are for industrial plants.

20. The construction of tall industrial and power plant chimneys requires specialized equipment and specially skilled personnel. A small number of companies have regularly competed for such chimney work in the last two years.

21. The United States market for tall industrial and power plant chimneys is highly concentrated. In 1979, the top four firms won 90 percent of the tall chimney contracts let (by dollar value) and the top two firms won approximately 60 percent of the tall chimney contracts let.

22. Pullman ranked first in 1979 contract awards with approximately 37 percent of the contracts awarded (by dollar value) and Wheelabrator's Rust Chimney Division ranked fourth with approximately 10 percent of the contracts awarded (by dollar value).

23. The annual market for new tall chimneys has ranged from approximately \$60 to \$100 million per year over the last five years.

VI

VIOLATION ALLEGED

24. The effect of the proposed acquisition of Pullman by Wheelabrator may be substantially to lessen competition or to tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Pullman will be eliminated as a significant competitor in the design, engineering and construction of tall industrial and power plant chimneys;
- (b) Concentration in the design, engineering and construction of tall industrial and power plant chimneys may be substantially increased; and,
- (c) Competition generally in the design, engineering and construction of tall industrial and power plant chimneys may be substantially lessened.

VII

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

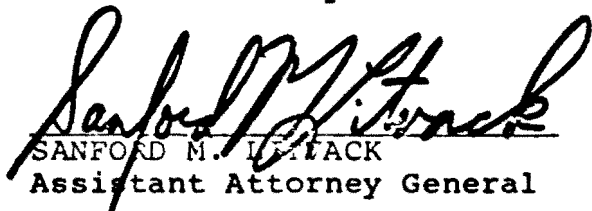
1. Adjudge and decree that the August 20, 1980 Merger Agreement between Wheelabrator and Pullman is in violation of Section 7 of the Clayton Act.

2. Adjudge and decree that the September 3, 1980 Engineering and Construction Business Purchase Agreement between Wheelabrator and Pullman is in violation of Section 7 of the Clayton Act.

3. Issue an injunction against defendants and all persons acting on their behalf preventing and restraining them from taking any further action to carry out the afore-said Merger Agreement and Engineering and Construction Business Purchase Agreement or any similar agreement the effect of which would be to consolidate the industrial and power plant chimney business and the electric arc furnace business of Wheelabrator and Pullman.

4. Grant such other, further and different relief as this Court may deem just and proper.

5. Award plaintiff its costs of suit.

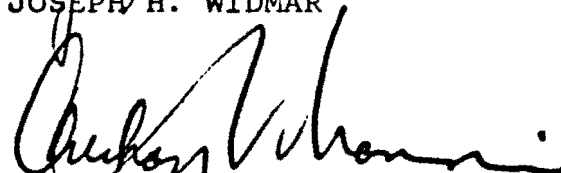

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