

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) CIVIL ACTION NO. 79 C 3626
)
 v.) Filed: August 31, 1979
)
 MARTIN MARIETTA CORPORATION;) Equitable Relief Sought
 TWENTIETH CENTURY-FOX FILM)
 CORPORATION; and)
 WEDRON SILICA COMPANY,) Judge Crowley
)
 Defendants.)

COMPLAINT

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

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

2. Each of the named defendants transacts business and is found within the Northern District of Illinois.

II

DEFENDANTS

3. Martin Marietta Corporation (hereinafter referred to as "Martin Marietta") is made a defendant herein. Martin Marietta is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Bethesda, Maryland.

4. Twentieth Century-Fox Film Corporation (hereinafter referred to as "Fox") is made a defendant herein. Fox is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

5. Wedron Silica Company (hereinafter referred to as "Wedron") is made a defendant herein. Wedron is a wholly-owned subsidiary of Fox and is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Park Ridge, Illinois.

6. The defendants Martin Marietta and Wedron are engaged in the production and sale of industrial sand.

III

TRADE AND COMMERCE

7. Industrial sand, unlike common or construction sand, is an industrial mineral and is the basic ingredient of glass. It is also used extensively in the ferrous and nonferrous foundry industries for molds and castings. To a lesser extent it is used for many other industrial applications.

8. Martin Marietta produces industrial sand from its plants in Oregon, Illinois; Portage, Wisconsin; Michigan City, Indiana; Bridgeman, Michigan; Festus, Missouri; and Clayton, Idaho. In 1978, Martin Marietta had total sales in industrial sand from these plants in the amount of \$15,112,400 and from the Oregon, Illinois plant in the amount of \$3,926,000. A substantial portion of the industrial sand produced at each of Martin Marietta's plants is shipped in interstate commerce to customers in states other than where the plant is located.

9. Wedron produces industrial sand at plants in Wedron and Troy Grove, Illinois. Wedron also produces industrial sand at plants in Cleburne, Texas; Lugoff, South Carolina; Emmett, Idaho; and Byron, California. In 1978, Wedron had total sales in industrial sand from these plants in the amount of \$20,603,000 and from the Wedron and Troy Grove, Illinois plants in the amount of \$12,995,152. A substantial portion of the industrial sand produced at each of Wedron's plants is shipped in interstate commerce to customers in states other than where the plant is located.

10. Delivery costs comprise a substantial part of the total price of industrial sand due to its weight and density. Approximately 88 percent of the customers that purchase industrial sand from Wedron's Troy Grove plant are located within the five-state area of Illinois, Indiana, Wisconsin, Ohio and Michigan (hereinafter "five-state area"). Approximately 62 percent of the customers that purchase industrial sand from the Wedron,

Illinois plant, and approximately 80 percent of the customers of Martin Marietta's Oregon, Illinois plant, are located in the five-state area.

11. The principal purchasers of industrial sand are producers of glass and metal castings. There is a large concentration of glass container and metal casting producers in the five-state area.

12. In 1977, Martin Marietta's plants in the five-state area produced approximately 2,350,000 tons of industrial sand, which was approximately 18.4 percent of the total production of 12,740,000 tons in that area. Production of industrial sand by Wedron in that area in 1977 amounted to approximately 1,446,540 tons, which was approximately 11.4 percent of the total production in those states. The combined production shares of the two firms in that area thus amounted to about 29.8 percent.

13. Production of industrial sand by Martin Marietta in Illinois in 1977 amounted to approximately 840,000 tons, which was approximately 19.3 percent of the total production of 4,347,000 tons in that state. Production of industrial sand by Wedron in Illinois in the same year amounted to approximately 1,446,540 tons, which was approximately 33.3 percent of total Illinois production. Their combined production shares in Illinois thus amounted to about 52.6 percent.

14. There are six producers of industrial sand in Illinois that mine sand from that portion of the "St. Peter's" geological

sandstone stratum located in Illinois. One of these producers, Owens-Illinois, consumes virtually all of the sand it produces. The industrial sand mined from this stratum is a high quality silica sand suitable for use in both the glass and foundry industries and, to a lesser extent, in a variety of other industries. While there are customers outside of this area who may require this type of sand because of its unique qualities, most of the customers of these producers are located in Illinois or in the five-state area. A significant number of these customers have no economical alternative source of supply. If this acquisition is consummated, there would be only four producers selling industrial sand in the open market from the Illinois "St. Peter's" stratum area.

15. There are significant barriers to entry into the production of industrial sand. Most commercially exploitable reserves are controlled by existing producers. These producers are operating at or close to full capacity and demand for industrial sand is expected to increase in the future.

IV

VIOLATION ALLEGED

16. On or about August 6, 1979, Martin Marietta agreed to acquire all the assets of Wedron for \$33,000,000.

17. The effect of the aforesaid acquisition may be substantially to lessen competition or tend to create a monopoly in the sale of industrial sand produced in the five-state area and in Illinois

in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between Martin Marietta and Wedron in the production and sale of industrial sand would be eliminated;
- (b) actual and potential competition generally in the production and sale of industrial sand would be substantially lessened;
- (c) Wedron would be eliminated as an independent competitive factor in the production and sale of industrial sand; and
- (d) concentration in the production and sale of industrial sand would be unduly increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the proposed acquisition of the assets of Wedron by Martin Marietta be adjudged a violation of Section 7 of the Clayton Act.
2. That a preliminary injunction be issued against the defendants enjoining and restraining each of them from taking any further action to consummate the aforesaid agreement or understanding or any similar agreement or understanding relating to the acquisition of any of the stock, share capital or assets of Wedron by Martin Marietta.
3. That the plaintiff have such other and further relief as the court may deem just and proper.

4. That the plaintiff recover the costs of this action.

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