

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

| | | |
|-------------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | Civil No. C79-11 |
| THE CLEVELAND BUILDERS SUPPLY |) | |
| COMPANY; |) | Judge Thomas D. Lambros |
| THE COLLINWOOD SHALE BRICK & |) | |
| SUPPLY CO.; |) | Filed: July 22, 1980 |
| CARR BROS., INC.; |) | |
| MEDINA SUPPLY COMPANY; |) | Entered: November 5, 1980 |
| OSBORNE, INC.; |) | |
| ALPHA CONCRETE CORPORATION |) | |
| (formerly SOUTH EUCLID |) | |
| CONCRETE COMPANY); |) | |
| and |) | |
| WESTVIEW CONCRETE CORP., |) | |
| |) | |
| Defendants. |) | |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on January 3, 1979 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any 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 herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment, the term:

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

(B) "Ready-mix concrete" means a mixture of cement and other materials, such as sand, stone, water, and, at times, additives.

III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any person to determine, establish, fix, raise, stabilize, maintain, or adhere to prices or other terms or conditions for the sale of ready-mix concrete to any third person.

V

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

(A) Communicating to any producer, distributor, or seller of ready-mix concrete any information concerning prices at which, or terms or conditions upon which, ready-mix concrete is then being sold or offered for sale by said defendant;

(B) Communicating to any producer, distributor, or seller of ready-mix concrete any information concerning:

(1) Future prices at which, or terms or conditions upon which, ready-mix concrete will be sold or offered for sale by said defendant;

(2) Consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell ready-mix concrete;

(C) Requesting from any person any information which said defendant could not communicate without violating subparagraphs (A) or (B) hereof;

(D) Urging, influencing, or suggesting to any other seller of ready-mix concrete that he quote or charge a specified price or a price within a specified range or that he adopt any specified term or condition of sale for ready-mix concrete.

VI

Nothing in Sections IV or V of this Final Judgment shall prohibit any defendant from:

(A) Communicating information to any person in the course of, and related to, negotiation for, entering into, or carrying out a bona fide purchase or sale transaction with such other person;

(B) Advertising to the public or trade generally present or future prices at which, or terms or conditions upon which ready-mix concrete is being or will be sold or offered for sale.

VII

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment

to affix to every written bid or quotation for ready-mix concrete a written certification, in substantially the form set forth in Appendix A attached hereto, signed by an officer or employee of such defendant having authority to determine the price bid or quoted and responsible for the preparation of bids or quotations, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other person, which is prohibited by the provisions of this Final Judgment.

VIII

Each defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment within thirty (30) days after the date of its entry to each of its officers and other persons having any responsibility for the pricing or sale of ready-mix concrete;

(B) Furnish a copy of this Final Judgment to each new person who succeeds one of the persons described in subparagraph (A) hereof within thirty (30) days after each such person assumes such position;

(C) Obtain from each person furnished a copy of this Final Judgment pursuant to subparagraphs (A) and (B) hereof a signed receipt therefor, which receipt shall be retained in the defendants' files;

(D) Attach to each copy of this Final Judgment furnished pursuant to subparagraphs (A) and (B) hereof a statement, in substantially the form set forth in Appendix B

attached hereto, advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the penalties which may be imposed upon him and upon such defendant for violation of this Final Judgment;

(E) Hold, within forty (40) days after the date of entry of this Final Judgment, a meeting of the persons described in subparagraph (A) at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. For a period of ten (10) years from the date of entry of this Final Judgment, similar meetings shall be held at least once a year, which shall also be attended by persons described in subparagraph (B) hereof; at the meetings held in the first and tenth year after the entry of this Final Judgment, the instructions concerning the obligations under this Final Judgment shall be given by defendant's counsel;

(F) Provide the plaintiff, each year, before the anniversary of the entry of this Final Judgment, an affidavit as to the fact of its compliance with subparagraphs (B), (C), (D), and (E) hereof;

(G) Establish and implement a plan for monitoring compliance by the persons described in subparagraph (A) of this Section with the terms of the Final Judgment; and

(H) File with this Court and serve upon the plaintiff, within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact of its compliance with subparagraphs (A), (C), and (D) hereof.

IX

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all,

of the assets of its ready-mix concrete business that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment.

X

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

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

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

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

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

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

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XI

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

of the assets of its ready-mix concrete business that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment.

X

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

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

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

XII

This Final Judgment shall terminate ten (10) years from the date of its entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated: November 5, 1980

Thomas D. Lambros
UNITED STATES DISTRICT JUDGE

APPENDIX A

The undersigned hereby certifies that to his best knowledge and belief the attached bid has not been prepared in collusion with any other seller of ready-mix concrete, and that the prices and other terms and conditions thereof have not been and will not be communicated by or on behalf of the bidder to any other seller of ready-mix concrete prior to any official opening of said bid.

Dated: _____

Signature of Employee Having
Authority to Determine the Price
Bid or Quoted

APPENDIX B

Notice

Re: U.S. v. The Cleveland Builders Supply Company, et al.

Attached hereto is a copy of a Final Judgment entered _____, 1980 in the captioned case. We are required to provide this to you, and you should read it carefully. The provisions of the Final Judgment contained in Sections IV, V and VII apply to you, and violation of these provisions by you may subject the Company to a fine and may subject you to a fine and imprisonment.