

U.S. vs. AQUA SYSTEMS INCORPORATED, ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action No. 19-516.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

AQUA SYSTEMS, INCORPORATED, FLOTATION SYSTEMS,
INC., ROLLO K. BLANCHARD, ALBERT C. KAESTNER,
WILLIAM J. PETER, HERBERT W. BALLANTINE, JAMES
Q. HENRY, FRED E. KALTE AND HENRY D. DARGERT,
DEFENDANTS.

FINAL JUDGMENT.

The complainant, United States of America, having filed its complaint herein on November 10, 1942; the defendants Flotation Systems, Inc., James Q. Henry, Fred E. Kalte and Henry D. Dargert having appeared and severally waived their answers to such complaint, hereby denying the substantive allegations thereof; the said defendants Flotation Systems, Inc., James Q. Henry, Fred E. Kalte and Henry D. Dargert by their respective attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudicat-

ion 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 herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED AND DECREED as follows:

I

That the Court has jurisdiction of the subject matter hereof and of all parties hereto, and that the complaint states a cause of action against the defendants and each of them for violation of Sections 1 and 2 of the Sherman Act and the acts amendatory thereof, and supplemental thereto.

II

As used in this decree, the phrase "hydraulic gasoline storage system" includes methods and facilities for storing and dispensing gasoline by floating it on water, including any and all products, materials, devices and structures used in combination for the construction, installation or operation of such a system, and the term "person" includes individuals, partnerships, corporations, associations, and other business firms as well as the federal, state, and local governments and agencies thereof.

III

The agreement dated January 12, 1940, between the defendant Aqua Systems, Inc. (hereinafter sometimes referred to as "Aqua"), and the defendant Flotation System, Inc. (hereinafter sometimes referred to as "Flotation"), and any and all agreements amendatory or supplemental to such agreement of January 12, 1940, including patent licensing agreements therein, are hereby cancelled, and each of the defendants and each of their directors, officers, agents, employees, successors, and all persons acting or claiming to act under, through or for

them or any of them are hereby enjoined and restrained from the further performance of any of the provisions of said agreement of January 12, 1940, and of any agreements amendatory thereof or supplemental thereto, including patent licensing agreements therein.

IV

Each of the defendants and each of their directors, officers, agents, employees, and successors and all persons acting or claiming to act under, through or for them or any of them are hereby enjoined and restrained:

(A) from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program (other than those which are intra-company) among themselves or with any person:

1. To determine, fix, establish, maintain or adhere to prices, quotations, bids, terms or conditions which are to be charged, submitted to or required of others, for the sale, construction, operation or installation of hydraulic gasoline storage systems, or any part thereof, or for any service in connection with such a sale, construction, operation or installation;

2. To determine, fix, establish, maintain or adhere to prices, or other terms or conditions, which are to be charged, submitted to or required of others, for the granting of any license or sub-license to any patent or patents;

3. To divide sales territories or to allocate customers or markets or to refrain from competing in any territory for any customer or job;

(B) from conditioning in any manner, directly or indirectly, the use of, or the express or implied licensing or sublicensing to use, manufacture, or sell any process, method, service, or combination in connection with the construction, operation, or installation of any hydraulic gasoline storage system on the purchase or use of any product, material or service sold or distributed by any defendant or by any other designated or particular person;

(C) from directly or indirectly discriminating in the sale or distribution of any product, material or service used in the installation of any hydraulic gasoline storage system in favor of or against any person on the basis of whether or not such person is licensed to manufacture, use or sell under any patent;

(D) from directly or indirectly discriminating in the sale or distribution of any material, product, or service used in the installation of any hydraulic gasoline storage system in favor of or against any person on the basis of whether such person purchases or uses other materials, services, or products sold or distributed by any defendant or any designated or particular person;

(E) from granting licenses or sublicenses, expressed or implied, for any patent or patents relating to any hydraulic gasoline storage system only to persons who purchase or use products, services, or materials secured from or through any defendant or any other designated or particular person;

(F) from directly or indirectly forcing, coercing, or compelling any installer, seller, or user of any hydraulic gasoline storage system to buy or use or to refrain from buying or using any patented or unpatented product or material manufactured, distributed, or sold by any defendant or any other designated or particular person;

(G) from preventing or restricting, directly or indirectly, bidding or the furnishing of quotations by others, for the construction, installation, or operation of any hydraulic gasoline storage system, or any part thereof, or for any service in connection with the installation, construction or operation of such a system;

(H) from representing that any United States Letters Patent which the defendants or any of them now own or control cover hydraulic gasoline storage systems or special parts for the construction thereof.

V

Each of the defendants and each of their directors, officers, agents, employees, and successors be and they are hereby ordered:

(A) to divest themselves of all right, title, and interest in and to the following United States Letters Patent and Patent Applications, and forthwith to take such steps as may be necessary to dedicate, transfer, and assign said Letters Patent and all rights thereunder to the public (including said defendants), without payment of royalties or other compensation whatever therefore:

Kalte Patent Application, Serial No. 281383; Farr Patent No. 1,612,424; Peter Patent No. 1,909,071; Peter Patent No. 1,582,855; Peter Patent No. 1,759,708; Farr Patent No. 1,561,066; Peter Patent No. 1,582,857; Farr Patent No. 1,598,071; Farr Patent No. 1,657,532; Peter Patent No. 1,710,006; Reed-Hill Patent No. 1,759,644; Peter Patent No. 1,759,663; Peter Patent No. 1,907,001; Beckwith Patent No. 1,906,834; Beckwith Patent No. 1,810,067; Peter Patent No. 1,582,856; Peter Patent No. 1,582,302; Wignall Patent No. 1,831,898; Bennett Patent No. 2,084,548;

(B) To grant to any applicant therefor, to the extent to which the defendants or any of them possess the power to do so, an absolutely unrestricted, whether as to duration or otherwise, and royalty-free license or sublicense to use, manufacture, and sell under any patent or patents which may be issued subsequent to the date of this decree pursuant to an application on file or in existence at the time of this decree or any application which may hereafter be filed, upon combinations or sub-combinations relating to elements employed in the sale and installation of hydraulic gasoline storage and fueling systems.

VI

For the purpose of securing compliance with this decree duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General be permitted (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any

matters contained in this decree, (2) without restraint or interference from the defendants, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) the defendants, on such request shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree: *Provided, however,* That information obtained by the means permitted in this paragraph 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 decree 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 decree 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 decree, for the modification or termination of any of the provisions thereof or the enforcement of compliance therewith and for the punishment of violations thereof.

VIII

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"),¹ or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National Defense Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or

cancelled with respect thereto, or in compliance with
Section 12 of the Act of June 11, 1942 (Public law 603,
77th Congress).

Approved

W. N. BONDY

United States District Judge

Dated November 10, 1942.

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,

*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the anti-trust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.