

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Smelting and Refining Co., General Cable Corp., and Revere Copper and Brass Inc., U.S. District Court, S.D. New York, 1967 Trade Cases ¶72,003, (Mar. 14, 1967)**

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United States v. American Smelting and Refining Co., General Cable Corp., and Revere Copper and Brass Inc. 1967 Trade Cases ¶72,003. U.S. District Court, S.D. New York. Civ. No. 61 Civ. 241. Entered March 14, 1967. Case No. 1587 in the Antitrust Division of the Department of Justice.

### **Clayton Act**

#### **Acquisitions—Voting Rights—Officers in Common—Terms of Sale of Products—Consent Judgment.**

—Under the terms of a consent judgment in a Clayton Act antimerger suit, a copper producer alleged to have acquired stock in two copper fabricators since 1927 was barred from having officials in common with the two firms and required to deliver proxies for the stock it owned to the two firms boards of directors for the boards to use as they wish. So long as the producer owns stock in the fabricators, the decree prevents it from selling refined copper to them on terms more favorable than those given to competitors of the two companies. The government may within five years have the proceeding reopened to determine whether the continued holding of the stock violates [Sec. 7 of the Clayton Act](#); however, if it does not, the producer will be entitled to an order terminating the judgment.

For the plaintiff: Donald F. Turner, Assistant Attorney General, and William D. Kilgore, Jr., Charles L. Whittinghill, Harry N. Burgess, and Donald A. Kinkaid, Attorneys, Department of Justice.

For the defendants: Hugh B. Cox and Daniel M. Gribbon for American Smelting Refining Co.; Albert C. Bickford for General Cable Corp.; and Jerome Doyle for Revere Copper and Brass Inc.

### **Final Judgment**

RYAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on January 19, 1961, and the defendants, American Smelting and Refining Company, General Cable Corporation, and Revere Copper and Brass Incorporated, each having appeared by its attorneys and each having filed its answer to such complaint denying the substantive allegations thereof; and plaintiff and defendants each having consented to the entry of this Final Judgment herein, without trial or adjudication of or finding on any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by any party with respect to any such issue;

Now, Therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issue of fact or law herein, and on consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed:

I

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted under Section 7 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.

II

[ *Definitions* ]

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As used in this Final Judgment:

- (A) "Asarco" means the defendant, American Smelting and Refining Company, a New Jersey corporation;
- (B) "General Cable" means the defendant, General Cable Corporation, a New Jersey corporation;
- (C) "Revere" means the defendant, Revere Copper and Brass Incorporated, a Maryland corporation;
- (D) "General Cable stock" means shares of General Cable preferred or common stock;
- (E) "Revere stock" means shares of Revere preferred or common stock;
- (F) "Fabricated copper products" means wire, cable, sheet, strip, rod pipe, and tube fabricated from refined copper.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, and employees, when acting on behalf of the defendant, and to its successors and assigns, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

#### [ *Proxies* ]

(A) Asarco is ordered and directed:

(1) In advance of each annual or special meeting of the stockholders of General Cable stock or other occasion on which owners of such stock are entitled to vote, to execute and deliver to persons designated by the Board of Directors of General Cable a valid proxy authorizing such persons to vote the General Cable stock then owned by Asarco and entitled to vote, for or against the nominees to be elected at such meeting, for or against any proposition to be voted on at such meeting, and in all other respects at such meeting, in the manner recommended by such Board of Directors.

(2) In advance of each annual or special meeting of the stockholders of Revere stock or other occasion which owners of such stock are entitled to vote, to execute and deliver to persons designated by the Board of Directors of Revere a valid proxy authorizing such persons to vote the Revere stock then owned by Asarco and entitled to vote, for or against the nominees to be elected at such meeting, for or against any proposition to be voted on at such meeting, and in all other respects at such meeting, in the manner recommended by such Board of Directors.

(B) Notwithstanding any other provision of this Final Judgment, Asarco may, with the consent of the Antitrust Division of the Department of Justice, or with the approval of the Court, freely vote or refrain from voting on any issue before the stockholders of General Cable or Revere, the resolution of which in accordance with the recommendation of the Board of Directors of such company may significantly affect the value of Asarco's investment in the stock of such company.

### V

#### [ *Officers in Common* ]

(A) Asarco is hereby enjoined and restrained from having as a director or officer any person who is at the same time a director, officer, or employee of General Cable.

(B) General Cable is hereby enjoined and restrained from having as a director or officer any person who is at the same time a director, officer, or employee of Asarco.

### VI

(A) Asarco is hereby enjoined and restrained from having as a director or officer any person who is at the same time a director, officer, or employee of Revere.

(B) Revere is hereby enjoined and restrained from having as a director or officer any person who is at the same time a director, officer, or employee of Asarco.

## VII

### [ *Voting Rights*]

Asarco is hereby enjoined and restrained from influencing and from attempting to influence, directly or indirectly, any person in any manner with respect to the exercise of voting rights in General Cable or Revere, or the nomination or selection of persons to serve as directors or officers of General Cable or Revere, and from participating in the determination of the business policies or practices of General Cable or Revere; provided, however, that if Asarco shall be permitted, pursuant to the provisions of Paragraph (B) of Article IV of this Final Judgment, to vote or to refrain from voting with respect to a particular issue before the stockholders of General Cable or Revere, Asarco may also communicate in any lawful way with other stockholders entitled to vote upon the issue involved.

## VIII

### [ *Terms of Copper Sales*]

(A) So long as Asarco owns stock in General Cable, Asarco is hereby enjoined and restrained from selling refined copper to General Cable on terms or conditions more favorable than those on which it is willing to deal with competitors of General Cable.

(B) So long as Asarco owns stock in Revere, Asarco is hereby enjoined and restrained from selling refined copper to Revere on terms or conditions *more favorable* than those on which it is willing to deal with competitors of Revere.

## IX

### [ *Future Acquisitions*]

Asarco is hereby enjoined and restrained from acquiring, directly or indirectly,

(A) any General Cable or Revere stock except such stock as may be distributed by General Cable or Revere with respect to General Cable or Revere stock held by Asarco or as may be acquired by the exercise of rights issued with respect to such stock, provided that any stock so acquired shall be subject to all of the provisions of this Final Judgment in the same manner and to the same extent as if Asarco had owned such stock on the effective date of this Final Judgment, and

(B) so long as it owns stock in General Cable or Revere, the stock or business of any other corporation engaged in the production and sale of fabricated copper products in the United States.

## X

### [ *Transfer of Stock*]

(A) In effecting any sale or disposition of all or any part of the General Cable or Revere stock that it owns, Asarco shall notify the Assistant Attorney General in charge of the Antitrust Division at least ten (10) calendar days in advance of any disposition, except a disposition that is the subject of a registration statement filed with the Securities and Exchange Commission, or that is made by sale on any registered stock exchange, or that is effected by distribution to or exchange with stockholders of Asarco. Such notice shall include, to the extent then known by Asarco, the terms and conditions of the disposition and the identity of the prospective purchaser or transferee. In the event that the Assistant Attorney General in charge of the Antitrust Division interposes written

objection within ten (10) days of actual receipt of Asarco's notification, such disposition shall not be made unless first approved by the Court on motion of Asarco with notice to plaintiff.

(B) No information as to any disposition supplied to the Assistant Attorney General in charge of the Antitrust Division pursuant to this Article shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in connection with legal proceedings resulting from an objection by the Assistant Attorney General in charge of the Antitrust Division to such disposition, or as otherwise required by law.

## XI

[ *Five-Year Period* ]

(A) At any time before the fifth anniversary of the effective date of this Final Judgment plaintiff may move this Court to reopen this proceeding for the purpose of determining whether Asarco's holdings of General Cable or Revere stock, or both, may violate [Section 7 of the Clayton Act](#), and, if so, the nature of any relief that may then be necessary or appropriate with respect thereto.

(B) At any time on or after the fifth anniversary of the effective date of this Final Judgment if no motion has been made by the United States as provided for in subparagraph (A) of this paragraph XI, Asarco may apply to this Court for and shall be entitled to the entry of an order terminating the force and effect of this Final Judgment and dismissing this action without prejudice.

## XII

[ *Inspection and Compliance* ]

(A) For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, 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 such defendant's principal office, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of such defendant to 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 subject 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 or employees 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, such defendant shall submit such written reports with respect to the matters covered in this Final Judgment as from time to time may be reasonably necessary for the enforcement of this Final Judgment.

(C) No information obtained by the means provided for in this Article XII 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 Government of the United States of America, 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.

## XIII

[ *Jurisdiction Retained* ]

Jurisdiction is retained in order to enable any party hereto or any person enjoined or restrained hereby, to apply to this Court at any time for such further orders, findings, and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment; for the modification or termination of this Final Judgment or any of the provisions thereof; or for the enforcement of compliance therewith and punishment of any violation thereof.