

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

ALTON BOX BOARD COMPANY;)

AMERICAN CAN COMPANY;)

BROWN COMPANY;)

BURD & FLETCHER COMPANY;)

F.N. BURT COMPANY, INC.;)

CHAMPION INTERNATIONAL CORPORATION;)

CONSOLIDATED PACKAGING CORPORATION;)

CONTAINER CORPORATION OF AMERICA;)

DIAMOND INTERNATIONAL CORPORATION;)

EASTEX PACKAGING, INC.;)

FEDERAL PAPER BOARD COMPANY, INC.;)

FIBREBOARD CORPORATION;)

THE A.L. GARBER COMPANY, INC.;)

HOERNER WALDORF CORPORATION;)

INTERNATIONAL PAPER COMPANY;)

INTERSTATE FOLDING BOX COMPANY;)

THE MEAD CORPORATION;)

PACKAGING CORPORATION OF AMERICA;)

POTLATCH CORPORATION;)

REXHAM CORPORATION;)

ST. REGIS PAPER COMPANY;)

WEYERHAEUSER COMPANY,)

Defendants.)

Civil Action
No. 76 C 1638

Filed: April. 30, 1976

JURY TRIAL DEMANDED

COMPLAINT

The United States of America, plaintiff herein,
by its attorneys, brings this action against the defen-
dants named herein in two counts. As a first claim,
the United States of America, in its capacity as a

purchaser and consumer of folding cartons for use by federal agencies, brings this suit under Section 4A of the Clayton Act (15 U.S.C. §15A) to recover its actual damages (Count One). As a second claim, the United States of America brings this suit under the False Claims Act (31 U.S.C. §§231-233) for double the amount of damages sustained, plus forfeitures (Count Two).

COUNT ONE

I

JURISDICTION AND VENUE

1. As its first claim, the United States of America, in its capacity as a purchaser and consumer of folding cartons, brings this suit against the defendant under Section 4A of the Clayton Act (15 U.S.C. §15A), to recover damages which it has sustained due to violations by defendants of Section 1 of the Sherman Act (15 U.S.C. §1). The claims alleged in this count are asserted as an alternative to those alleged in Count Two to the extent that any transaction complained of may give rise to liability under both counts.

2. Each of the defendants is found and transacts business within, and each of the defendants with the exception of Burd & Fletcher Company maintains offices and/or plants within, the Northern District of Illinois.

II

THE DEFENDANTS

3. Each of the corporations named below in this paragraphs is made a defendant herein. Each of said defendants is incorporated and exists under the laws of the State listed opposite its name, with its principal place of business at the city listed. During all or part of the period of time covered by this complaint each of said corporations engaged in the business of manufacturing and selling folding cartons in the United States.

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Alton Box Board Company	Delaware	Alton, Illinois
American Can Company	New Jersey	Greenwich, Connecticut
Brown Company	Delaware	Pasadena, California
Burd & Fletcher Company	Missouri	Kansas City, Missouri
F.N. Burt Company, Inc.	New York	Buffalo, New York
Champion International Corporation	New York	Stamford, Connecticut
Consolidated Packaging Corporation	Michigan	Chicago, Illinois
Container Corporation of America	Delaware	Chicago, Illinois

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Diamond International Corporation	Delaware	New York, New York
Eastex Packaging, Inc.	Delaware	Silsbee, Texas
Federal Paper Board Company, Inc.	New York	Montvale, New Jersey
Fibreboard Corporation	Delaware	San Francisco, California
The A.L. Garber Company, Inc.	Delaware	Cleveland, Ohio
Hoerner Waldorf Corporation	Delaware	St. Paul, Minnesota
International Paper Company	New York	New York, New York
Interstate Folding Box Company	Ohio	Middletown, Ohio
The Mead Corporation	Ohio	Dayton, Ohio
Packaging Corporation of America	Delaware	Evanston, Illinois
Potlatch Corporation	Delaware	San Francisco, California
Rexnam Corporation	Delaware	Charlotte, North Carolina
St. Regis Paper Company	New York	New York, New York
Weyerhaeuser Company	Washington	Tacoma, Washington

III

CO-CONSPIRATORS

4. Various corporations and individuals not made defendants in this complaint participated as co-conspirators with the defendants in the violation alleged herein, and performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. Folding cartons are made principally from that category of paperboards referred to as bending box board. It is made both from virgin and reworked cellulose fibers. The chief characteristic of bending box board is its ability to be bent or folded without breaking or serious damage at the crease lines which form the limits of the sides or ends of the carton. Folding cartons are made in a variety of styles according to the needs of the customers. Folding cartons are normally shipped to the user in a flat or knocked down form for easy shipment and then are erected at the user's plant. Most folding cartons have printed cover designs though some are shipped as plain shells to be covered with a printed outerwrap.

6. Folding cartons are used for a wide variety of products. Buyers of folding cartons include, among others, processors of food products, such as cereal,

crackers, candy, flour, baking and other prepared mixes, fresh meats, butter, fruit and vegetables; manufacturers of drugs, cosmetics, household supplies, textiles, toys, sporting goods, hardware and detergents; distillers; breweries; and beverage bottlers.

7. The defendants have accounted for a substantial portion of total domestic sales of folding cartons, with sales among them of approximately \$1,000,000,000 in 1973.

8. During the period of time covered by this complaint, plaintiff purchased substantial quantities of folding cartons directly from defendants and from other manufacturers. During the same period, plaintiff also purchased substantial quantities of products packaged in folding cartons from companies that purchased the folding cartons from defendants and from other manufacturers.

9. During the period of time covered by this complaint:

(a) The defendants sold and shipped substantial quantities of folding cartons in a continuous and uninterrupted flow of interstate commerce to customers located in states other than the states in which said folding cartons were manufactured;

(b) Substantial quantities of the materials used by the defendants in manufacturing folding

cartons were shipped in a continuous and uninterrupted flow of interstate commerce into the states where the folding cartons were manufactured.

V

VIOLATION ALLEGED

10. Beginning at least as early as 1960, the exact date being unknown to the plaintiff, and continuing thereafter at least until November 1974, the defendants and co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act.

11. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of folding cartons.

12. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do including, among other things:

(a) determined from the member of the conspiracy who was then supplying a particular

folding carton to a buyer the price being charged or to be charged to that buyer by that member, and then submitted a non-competitive bid, or no bid on that folding carton to that buyer;

(b) disclosed to other members of the conspiracy the price being charged or to be charged for a particular folding carton to the buyer of that folding carton, with the understanding that the other members of the conspiracy would submit a non-competitive bid, or no bid, on that folding carton to that buyer;

(c) agreed with other members of the conspiracy who were supplying the same folding carton to a buyer on the price to be charged to that buyer; and

(d) agreed with other members of the conspiracy on increases in list prices of certain folding cartons.

VI

EFFECTS

13. The aforesaid combination and conspiracy has had the following effects, among others:

(a) prices of folding cartons have been raised to and maintained and stabilized at artificial and non-competitive levels;

(b) buyers of folding cartons have been deprived of free and open competition in the purchase of folding cartons; and,

(c) competition in the sale of folding cartons among the defendant and co-conspirators has been restrained.

14. Plaintiff had no knowledge of the said combination and conspiracy, or of any facts which might have led to the discovery thereof, until some time within four years of the filing of this complaint, and it first became fully aware of the scope of the unlawful conspiracy during the course of the grand jury proceedings which culminated in the return of an indictment in this District against the defendants. It could not have uncovered the conspiracy at an earlier date by the exercise of due diligence, inasmuch as the unlawful conspiracy had been fraudulently concealed by defendants.

15. As a result of the illegal combination and conspiracy alleged herein, and the defendants' acts in furtherance thereof, the United States of America has been compelled to pay substantially higher prices for

tolding cartons and for products packaged in folding cartons than would have been the case but for the illegal conduct complained of herein, and has been injured and financially damaged by defendants in an amount which is presently undetermined.

PRAYER

16. WHEREFORE, the United States of America:
 - A. Prays that the herein alleged combination and conspiracy among defendants be adjudged and decreed to be in unreasonable restraint of interstate commerce and in violation of Section 1 of the Sherman Act.
 - B. Demands judgment against defendants for the damages suffered by it due to defendants' violation of the antitrust laws, as provided for in Section 4A of the Clayton Act (15 U.S.C. §15A), or some lesser amount to the extent that it has recovery under Count Two hereof, together with such interest thereon as is permitted by law, and the costs of this suit.
 - C. Prays that it recover such other amounts as the Court shall deem just.

COUNT TWO

17. The United States of America, in its capacity as a purchaser of folding cartons for federal agencies, brings this suit under §§ 3490, 3491, 3492 and 5438 of the Revised Statutes (31 U.S.C. §§ 231-233), commonly known as the False Claims Act. The claims alleged in this count are asserted as an alternative to those alleged in Count One to the extent that any transaction complained of may give rise to liability under both counts.

18. The allegations contained in paragraphs 2 through 13 are here realleged with the same force and effect as though set forth in full.

19. Inasmuch as all defendants are corporations, no defendant is in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States.

20. The acts alleged in this complaint to have been done by each of the defendants were authorized, ordered, or done by the officers, agents, employees, or representatives of each defendant while actively engaged in the management, direction, or control of its affairs.

21. Pursuant to said combination and conspiracy, and as a result of the acts done in furtherance thereof, defendants have made sales to plaintiff and have received

payments from plaintiff for folding cartons on the basis of bids and quotations which they submitted and which they falsely or fraudulently represented to be bona fide, independent, competitive, and not the product of any collusion or agreement between the bidders, and the prices of which bids they further falsely or fraudulently represented to be normal, reasonable and competitive whereas, in fact known to the defendants but unknown to plaintiff, the said bids were sham and collusive and not the result of open competition, and prices therefore were unreasonable, arbitrary, and noncompetitive.

22. With respect to each such contract awarded for the supply of folding cartons during the aforesaid period of the conspiracy, the defendant to which such contract was awarded presented and/or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false, fictitious, or fraudulent in that such claims were based on a contract which had been falsely or fraudulently procured by reason of the aforesaid bidding practices.

23. As a result of the presentment to it of the aforesaid false or fraudulent claims, and without knowledge thereof, plaintiff has paid the false or fraudulent claims to defendants.

24. As a result of the illegal combination and conspiracy and the defendants' acts in furtherance thereof, plaintiff has been compelled to pay substantially higher prices for folding cartons than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by defendant, in an amount which is presently undetermined.

PRAYER

25. WHEREFORE, the United States of America:
- A. Prays that the Court adjudge and decree that the defendants, and each of them, have presented and/or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false, fictitious or fraudulent.
 - B. Demands judgment against defendants for Two Thousand dollars (\$2,000) for each false, fictitious, or fraudulent claim against the United States of America, and, in addition, for double the amount of the damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Section 3490, 3491,

3492 and 5438 of the Revised Statutes (31 U.S.C. §§ 231-233) together with interest thereon and the costs of this suit.

C. Prays that it recover such other amounts and have such other and further relief as the Court shall deem just.

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