

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 79-204
v.)	
)	Filed: January 17, 1979
RHEEM MANUFACTURING COMPANY;)	
STATE INDUSTRIES, INC.;)	
BRADFORD-WHITE CORPORATION;)	(15 U.S.C. § 1)
MOR-FLO INDUSTRIES, INC.;)	
A. O. SMITH CORPORATION;)	
AND)	
W. L. JACKSON MANUFACTURING)	
COMPANY,)	
)	
Defendants.)	

COMPLAINT

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

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. § 4), in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. Each of the defendants transacts business or is found within the Eastern District of Pennsylvania.

II

DEFENDANTS

3. The corporations named below are made defendants herein. Each of the named corporations is organized and exists under the laws of the state, and has its principal place of business in the city identified below:

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Rheem Manufacturing Company	Delaware	New York, New York
State Industries, Inc.	Tennessee	Ashland City, Tennessee
Bradford-White Corporation	Tennessee	Philadelphia, Pennsylvania
Mor-Flo Industries, Inc.	Ohio	Cleveland, Ohio
A. O. Smith Corporation	New York	Milwaukee, Wisconsin
W. L. Jackson Manufacturing Company	Tennessee	Chattanooga, Tennessee

III

CO-CONSPIRATORS

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

IV

TRADE AND COMMERCE

5. Automatic water heaters store and provide on demand hot water for use in private residences, commercial establishments, and mobile homes. Such water heaters consist of a steel storage tank which is wrapped with insulation and then covered with a thin metal shell to provide a finished appearance. The

tank contains a porcelain enamel coating on its inner walls to retard corrosion. Water in the tank is typically heated by either a gas burner located beneath the tank or by electric elements inside the tank. A control device automatically activates the gas burner or the electric elements to maintain the desired water temperature.

6. The defendant corporations are the leading manufacturers of mass-produced automatic water heaters in the United States. These water heaters are manufactured in a variety of sizes. Two of the most popular sizes for residential use are the 40-gallon gas and the 52-gallon electric models. The mass-produced commercial water heaters manufactured by the defendant corporations generally have storage capacities up to 120 gallons.

7. The defendant corporations sell water heaters to plumbing wholesalers, to hardware wholesalers, or to large retail stores. In addition, certain defendant corporations sell water heaters directly to manufacturers of mobile homes. Plumbing wholesalers resell to plumbing contractors who provide plumbing services to the consuming public. Hardware wholesalers resell to retail hardware stores. Sales by the defendant corporations to retailers are made either on an individual order basis to mass-merchandising chains, known in the trade as "cash and carry" stores, or are made under contract to other retail chain stores. Retail stores either resell water heaters under their own brand names or under the brand names of the defendant corporations.

8. During the period of time covered by this complaint, all the defendant corporations sold and shipped substantial quantities of water heaters in interstate commerce to customers located in states other than the states in which such water heaters were manufactured.

9. During the period of time covered by this complaint, total sales of mass-produced automatic water heaters by the defendant corporations approximated \$2 billion.

V

VIOLATION ALLEGED

10. Beginning at least as early as 1963 and continuing thereafter at least until sometime in 1977, the exact dates being unknown to plaintiff, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The aforesaid unlawful combination and conspiracy will continue or may be renewed unless the relief hereinafter prayed for is granted.

11. The combination and conspiracy alleged in this complaint has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to raise, fix, and stabilize the prices of water heaters.

12. In formulating and effectuating the combination and conspiracy alleged in this complaint, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, the following:

a) held meetings at which they (i) discussed and agreed upon the published, or "sheet," prices of water heaters, (ii) discussed and agreed upon discounts from the published prices which were to be granted within specific geographic regions in the United States, and (iii) confronted one another with reported deviations from agreed-upon prices and discounts;

b) used meetings arranged by defendant Alton W. Beck to facilitate, conceal, cover-up, or otherwise aid and abet the aforesaid combination and conspiracy;

c) mailed or otherwise transmitted to one another proposed and published prices and price sheets;

d) telephoned or otherwise contacted one another concerning proposed price increases of water heaters; and

e) telephoned or otherwise contacted one another to check or verify reported deviations from agreed-upon prices and discounts.

VI

EFFECTS

13. The combination and conspiracy alleged in this complaint has had the following effects, among others:

a) prices of water heaters were stabilized at non-competitive levels;

b) price competition in the sale of water heaters was restrained; and

c) purchasers of water heaters have been deprived of free and open competition in the sale of such products.

PRAYER

WHEREFORE, the plaintiff prays that:

1. This Court adjudge and decree that the defendants, and each of them, have engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

2. Each defendant, its successors, assignees, subsidiaries, and transferees, and the respective officers, directors, agents, and employees thereof, and all persons acting or claiming to act on behalf thereof, be permanently enjoined and restrained from, directly or indirectly:

(a) continuing, maintaining, or renewing, directly or indirectly, the aforesaid combination and conspiracy and from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect;

(b) entering into any combination, conspiracy, agreement, arrangement, understanding or concert of action to fix, raise, or stabilize prices, discounts, or other terms or conditions of sale of water heaters to any third person; and

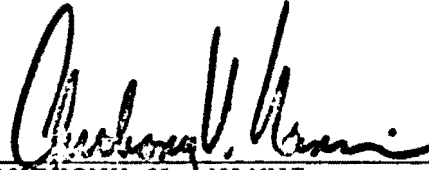
(c) communicating any information concerning prices, discounts or terms or conditions of sale of water heaters to any other person engaged in the manufacture and sale of water heaters except in connection with a bona fide purchase or sales transaction between the parties to such communications.

3. That plaintiff have such other, further and different relief as this Court may deem just and proper.

4. That plaintiff recover the costs of this suit.



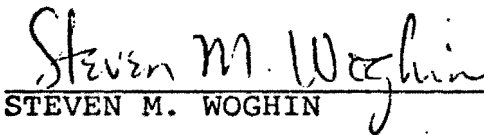
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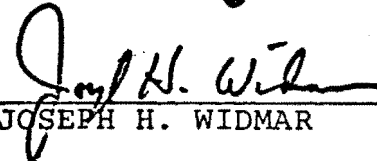
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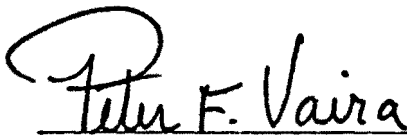
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