

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Certain-teed Products Corp. and PPG Industries, Inc., U.S. District Court, E.D. Pennsylvania, 1976-2 Trade Cases ¶61,193, (Dec. 7, 1976)

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United States v. Certain-teed Products Corp. and PPG Industries, Inc.

1976-2 Trade Cases ¶61,193. U.S. District Court, E.D. Pennsylvania. Civil Action No. 74-471. Entered December 7, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 38528). Case No. 2371, Antitrust Division, Department of Justice.

Sherman Act

Acquisitions—Fiberglass Insulation Plant—Divestiture—Consent Decree.—A fiberglass insulation manufacturer was required by a consent decree to divest itself of an acquired fiberglass insulation plant in settlement of government charges that the acquisition had eliminated actual competition in the manufacture and sale of fiberglass and mineral wool insulation products, and that concentration had been increased in violation of [Sec. 7 of the Clayton Act](#).

For plaintiff: Donald I. Baker, Actg. Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John J. Hughes, Raymond D. Cauley, Warren Marcus, and William A. DeStefano, Attys., Dept. of Justice.

For defendants: John G. Harkins, Jr.

Final Judgment

HUYETT, D. J.: Plaintiff, United States of America, having filed its Complaint herein on February 27, 1974, and the defendant Certain-teed Products Corporation (Certain-teed) having appeared and filed its Answer to the Complaint denying the substantive allegations thereof; and the plaintiff and defendant, 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 evidence or admission by any party with respect to any such issue of fact or law herein;

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendant Certain-teed under [Section 7 of the Clayton Act](#) (15 U. S. C. Section 18).

II

[*Definitions*]

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

(B) "Fiberglass insulation products used for other than building insulation purposes" shall mean all thermal and/or acoustical insulation products made wholly or partly of glass fibers with the exception of blankets, batts, and loose wool used as structural insulation in buildings (not including mobile homes or prefabricated metal buildings) for human comfort.

(C) "Subsidiary" shall mean any person 50% or more of whose voting stock is owned by Certain-teed.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant Certain-teed shall apply to such defendant and its officers, directors, agents, employees, subsidiaries, successors, assigns, and to all other persons in active concert with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Divestiture*]

(A) Certain-teed Products Corporation is ordered and directed, subject to the terms and conditions of this Final Judgment, to sell its Shelbyville, Indiana, fiberglass plant ("Shelbyville plant"), consisting of the real estate, buildings and equipment therein, as a going manufacturing operation as set forth in paragraph IV(J).

(B) As soon as practicable after the entry of this Final Judgment, the Court shall appoint a Trustee for the purpose of selling the Shelbyville plant. The Court shall receive nominations from the parties and appoint a Trustee after hearing the parties as to the qualifications of any nominee.

(C) The Trustee shall be entitled to reasonable compensation and actual expenses to be set by the Court and paid by Certain-teed.

(D) The Trustee shall submit a report in writing to the Court every ninety (90) days, the first report to be filed ninety (90) days from the date of its appointment, indicating the efforts made in seeking to dispose of the Shelbyville plant. The Trustee may at any time submit to the Court such additional reports as it may consider warranted. Copies of all reports submitted to the Court shall promptly be furnished by the Trustee to the parties.

(E) If the Trustee has not sold the Shelbyville plant within fifteen (15) months after its appointment the Trustee shall so notify the Court and either the plaintiff or defendant Certain-teed may apply to the Court for further directions regarding the disposition of this property.

(F) The Trustee's primary duty shall be to sell the Shelbyville plant as a going manufacturing operation as described in paragraph IV(A) of this Final Judgment to a purchaser who will commence business operations at the Shelbyville plant in the manufacture and sale of fiberglass insulation products. Certain-teed shall be entitled to the proceeds of the sale.

(G) The Trustee shall have such authority as is necessary to sell the Shelbyville plant. The Trustee is specifically authorized but not limited to the power to:

(1) Compile cost and accounting information relating to the Shelbyville plant such as would permit the Trustee to develop a meaningful pro forma operating statement of sales, material costs, labor costs and other pertinent expenses of the Shelbyville plant to be used by the Trustee solely in connection with the implementation of the Judgment and the sale of the Shelbyville plant;

(2) Have access to the Shelbyville plant for the purpose of conducting any necessary inspections. Such rights of access shall include access in company with its advisers or consultants or with any potential purchaser;

(3) Have access to financial, production, customer and other records related to the Shelbyville plant in the possession or under the control of Certain-teed which the Trustee may deem necessary and which are reasonably related to the Shelbyville plant. Pending confirmation of a sale, the price, terms and other conditions of any offer shall be treated as confidential and not subject to disclosure to a third party without prior approval by the Court. The Trustee shall not disclose financial or production information or the identification of particular Certain-teed customers to persons other than prospective purchasers and shall only disclose such information to prospective purchasers after having entered into a non-disclosure agreement with such prospective purchasers;

(4) Have access to customer lists which Certain-teed received from PPG;

(5) Interview officers and employees of Certain-teed;

(6) Employ independent business appraisers, i. e., persons or firms customarily retained to appraise the value of business entities, to appraise the Shelbyville plant in order to advise the Trustee. The Trustee is further empowered to retain such other consultants, attorneys or other representatives as is reasonable.

(H) Certain-teed shall cooperate with any purchaser pursuant to the Final Judgment in the employment of personnel then employed at the Shelbyville plant whom the purchaser may desire to employ and shall release from employment any such person who, within a reasonable time, not to exceed sixty (60) days after the consummation of the sale, notify Certain-teed of their desire to accept such employment.

(I) For a period of six months from the day of sale, Certain-teed shall, at actual cost, provide said purchaser with such instructions and technical assistance with respect to the operation of the Shelbyville plant as shall enable purchaser's technically competent personnel to operate the plant using the equipment and methods employed by Certain-teed at the Shelbyville plant to produce the fiberglass insulation products produced at the time of sale.

(J) Certain-teed shall remain responsible for the operation and maintenance of the Shelbyville plant during the period of Trusteeship. Certain-teed shall take such steps as are necessary to maintain the plant during this period substantially at the level of operating performance existing at the time of entry of this Final Judgment, except to the extent that changes or reductions in operations are required to conform to pollution control or other laws, regulations or orders; and provided that nothing contained in this Final Judgment shall be deemed to require Certain-teed to make any additional capital investment in the Shelbyville plant to improve, upgrade or change the type of the equipment or methods of operation employed by Certain-teed at the time of entry of such Judgment. Certain-teed shall promptly notify the Trustee and the Plaintiff of any changes in the operating level of the Shelbyville plant and of any conditions in such plant which would substantially affect the operating level of the plant. If Plaintiff so requests, the Court shall afford opportunity to the parties to be heard with respect to such changes or conditions and may make such orders as it deems appropriate to insure fulfillment of Certain-teed's responsibilities as provided in this paragraph IV (J).

(K) The Trustee shall advise the parties of all significant matters arising in the negotiations. Upon the reaching of an understanding in principle on the basic terms and conditions of a prospective sale and at least forty-five (45) days before any proposed consummation date, the Trustee shall advise the Court, with notice to the defendant Certain-teed and the United States, identifying the prospective purchaser or purchasers and describing the terms and conditions of the prospective sale. Within thirty (30) days of said notice to defendant and the United States, any party may file a statement of objections to the proposed sale. Defendant Certain-teed will not be ordered to execute an appropriate and formal agreement of sale by the Court until defendant Certain-teed and the United States have had an opportunity to present views and recommendations on any issue presented and shall have a right to be heard thereon.

(L) The Trustee shall begin to perform its duties from the date of its appointment and shall continue until fifteen (15) months from such date when the trusteeship shall terminate, provided, however, in the event the above termination date occurs prior to a final sale but the Trustee is then engaged in serious negotiations which it believes may result in divestiture, the Trustee shall so notify the parties and the Court. The Court may extend the Trusteeship for a reasonable length of time to permit the Trustee to complete such negotiations. Should the Trustee or the plaintiff establish to the Court that the Trustee's duties under this Order were impeded by delay caused by Certain-teed, the Trusteeship may be extended for a period of any such established delay.

V

[*Acquisitions Ban*]

For a period of ten (10) years from the date of the Final Judgment, Certain-teed is enjoined and restrained from acquiring all of any part of the stock or assets, other than goods or services in the normal course of business, of any person engaged in the United States or its territories or possessions in the manufacture of fiberglass insulation products used for other than building insulation purposes except with the prior written consent of the plaintiff, or if such consent is refused, then upon approval by this Court. Certain-teed is not, however, enjoined

from (1) the acquisition of all or part of the securities or assets of any of its subsidiaries and (2) the formation of subsidiaries by the transfer thereto of assets of Certain-teeed or of other subsidiaries.

VI

[*Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, Certain-teeed shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Certain-teeed at its principal office, subject to any legally recognized privilege:

(1) Access during the office hours of Certain-teeed to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Certain-teeed which relate to any matters contained in this Final Judgment;

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

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Certain-teeed shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section VI of this Final Judgment 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 plaintiff except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment or as otherwise required by law.

VII

[*Retention of Jurisdiction*]

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 and directions as may be necessary or appropriate for the construction or modification of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

[*Public Interest*]

Entry of this Final Judgment is in the public interest.