

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Petitioner,)
)
 v.) Criminal Action No. 1042-73
)
) Filed: December 27, 1973
)
 UNITED STATES GYPSUM COMPANY;)
 NATIONAL GYPSUM COMPANY;)
 THE CELOTEX CORPORATION;)
 GEORGIA-PACIFIC CORPORATION;) Supplemental to Civil
 GRAHAM J. MORGAN;) Action No. 8017
 ANDREW J. WATT;)
 COLON BROWN; and)
 WILLIAM H. HUNT,)
)
 Respondents.)

PETITION BY THE UNITED STATES FOR
AN ORDER TO SHOW CAUSE WHY THE RESPONDENTS
SHOULD NOT BE FOUND IN CRIMINAL CONTEMPT.

The United States of America, petitioner, by its attorneys, acting under the direction of the Acting Attorney General, presents this Petition for an Order to Show Cause why the respondents should not be found in criminal contempt of this Court. The petitioner represents to the Court as follows:

I

DEFINITION

1. "Gypsum products" as hereinafter used shall be defined as in section (3) of Article II of the Final Judgment of this Court, dated May 15, 1951, in Civil Action No. 8017, United States v. United States Gypsum Company et al., which definition includes "gypsum board" as defined in section (2) of Article II of said Final Judgment.

DESCRIPTION OF RESPONDENTS

2. Respondent United States Gypsum Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Chicago, Illinois. Said respondent was previously incorporated pursuant to the laws of the State of Illinois and was a defendant in Civil Action No. 8017 and a party to the Final Judgment of May 15, 1951, in that action. It is engaged in the manufacture and sale of gypsum board.

3. Respondent National Gypsum Company is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Buffalo, New York. Said respondent was a defendant in Civil Action No. 8017 and a party to the Final Judgment of May 15, 1951, in that action. It is engaged in the manufacture and sale of gypsum board.

4. Respondent The Celotex Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Tampa, Florida. Respondent The Celotex Corporation was formed as the result of the merger of Jim Walter Corporation and a corporation also named The Celotex Corporation which was a defendant in Civil Action No. 8017 and a party to the Final Judgment of May 15, 1951, in that action. As a result of that merger all the assets and liabilities of The Celotex Corporation (party to the Final Judgment) were transferred to The Celotex Company, a wholly-owned subsidiary of Jim Walter Corporation. The Celotex Company was then renamed The Celotex Corporation, the present respondent, which is engaged in the manufacture and sale of gypsum board.

5. Respondent Georgia-Pacific Corporation is a corporation organized and existing under the laws of the State of Georgia with its principal place of business at Portland, Oregon. Respondent Georgia-Pacific Corporation merged with Bestwall Gypsum Company, which merger was effectuated on or about April 30, 1965. Bestwall Gypsum Company was created as the result of a corporate spin-off of the gypsum products manufacturing assets of Certain-Teed Products Corporation. Certain-Teed Products Corporation was a defendant in Civil Action No. 8017 and party to the Final Judgment of May 15, 1951, in that action. Georgia-Pacific Corporation is engaged in the manufacture and sale of gypsum board. It has acknowledged actual notice of and obligation to adhere to the Final Judgment of May 15, 1951.

6. Respondent Graham J. Morgan is a resident of Chicago, Illinois. During the period hereinafter mentioned he has served all or part of the time as Chairman of the Board and Chief Executive Officer of United States Gypsum Company.

7. Respondent Andrew J. Watt is a resident of Arlington Heights, Illinois. During the period hereinafter mentioned he has served all or part of the time as Executive Vice President of United States Gypsum Company.

8. Respondent Colon Brown is a resident of Buffalo, New York. During the period hereinafter mentioned he has served all or part of the time as Chairman of the Board and Chief Executive Officer of National Gypsum Company.

9. Respondent William H. Hunt is a resident of Portland, Oregon. Immediately prior to July 23, 1972, he served as President of Georgia-Pacific Corporation.

10. The acts charged in this Petition to have been done by each of the corporate respondents were authorized, ordered or done by the officers, directors, agents, employees or representatives of said corporations, including the individual respondents named herein, while actively engaged in the management, direction and control of the affairs of the corporate respondents.

III

PRIOR JUDGMENT OF THIS COURT

11. On or about August 15, 1940, petitioner filed with this Court Civil Action No. 8017, brought under Section 4 of the Sherman Act, charging that since at least 1930 defendants had been engaged in a combination and conspiracy to restrain and monopolize and had monopolized interstate trade in gypsum products in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. Respondents United States Gypsum Company, National Gypsum Company, The Celotex Corporation, and Certain-Teed Products Corporation, the predecessor in interest of respondent Georgia-Pacific Corporation, were defendants in that action. Respondents Graham J. Morgan, Andrew J. Watt, Colon Brown, and William H. Hunt were not defendants in that action.

12. On May 15, 1951, there was entered in this Court a Final Judgment in Civil Action No. 8017, a copy of which is annexed to this Petition and marked as Exhibit A.

13. Article X of said Final Judgment provides as follows:

Jurisdiction of this cause, and of the parties hereto, is retained by the Court for the purpose of enabling any of the parties to this decree, or any other person, firm or corporation that may hereafter become bound thereby in whole or in part, to apply to this Court at any time for such orders, modifications, vacations or directions as may be necessary or appropriate (1) for the construction or carrying out of this decree, and (2) for the enforcement of compliance therewith.

IV

CHARGED VIOLATIONS OF THE DECREE

14. Each and all of the charges hereinafter made relate to persons and corporations engaged in the manufacture and sale of gypsum board in the United States. During the period of time that violations of the Final Judgment of May 15, 1951, are charged, respondents and certain co-conspirators had total sales of gypsum board amounting to more than \$4 billion.

15. Article V of said Final Judgment reads in relevant part as follows:

The defendant companies, and their respective officers, directors, agents, employees, representatives, subsidiaries, and any person acting or claiming to act under, through or for them, or any of them, be and each of them hereby is enjoined from entering into or performing any agreement or understanding among the defendant companies or other manufacturers of gypsum products to fix, maintain or stabilize, by patent license agreements or other acts or course of action, the prices, or the terms or conditions of sale, of gypsum products sold or offered for sale to other persons, in or affecting interstate commerce; and from engaging in, pursuant to such an agreement or understanding, any of the following acts or practices:

* * *

(4) policing, investigating, checking or inquiring into the prices, quantities, terms or conditions of any offer to sell or sale of gypsum products.

16. Petitioner charges that the respondents, certain co-conspirators, and other persons to the petitioner unknown, with knowledge of and contrary to the provisions of said Final Judgment, have wilfully violated the aforesaid Article V and section (4) thereof by engaging in a combination and conspiracy beginning sometime prior to 1960 and continuing thereafter at least until sometime in 1973, the exact dates being unknown to the petitioner, which combination and conspiracy consisted of a continuing agreement, understanding and concert of action to (a) raise, fix, maintain and stabilize the prices of gypsum board; and (b) fix, maintain and stabilize the terms and conditions of sale thereof; and (c) adopt and maintain uniform methods of packaging, handling and delivery of gypsum board.

17. In formulating and effectuating the aforesaid combination and conspiracy, the respondents wilfully did those things which they combined and conspired to do, with knowledge of and contrary to the aforesaid Final Judgment, Article V and section (4) thereof, including, among other things, the following:

- (a) agreed to increase the prices of gypsum board;
- (b) agreed to the terms and conditions of sale of gypsum board;
- (c) published price lists and terms and conditions of sale in accordance with the agreements reached;
- (d) agreed to maintain published prices and terms and conditions of sale of gypsum board;

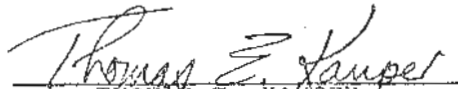
- (e) agreed to maintain job price protection lists and to discuss and exchange data set forth therein in order to insure the maintenance of published prices of gypsum board;
- (f) agreed at meetings of the Gypsum Association, over the telephone and by mail to adopt uniform methods of packaging and handling gypsum board;
- (g) agreed to adopt and maintain uniform methods of delivery of gypsum board;
- (h) telephoned or otherwise contacted one another to exchange and discuss current and future published or market prices and published or standard terms and conditions of sale and to ascertain alleged deviations therefrom;
- (i) telephoned or otherwise contacted one another to ascertain alleged deviations from other uniform practices and policies concerning the sale of gypsum board, including, but not limited to, job price protection, boundaries of price zones, methods of delivery, point of delivery and packaging and handling;
- (j) agreed not to undercut gypsum board prices which were ascertained from one another as the actual selling or offering prices to purchasers of gypsum board;
- (k) agreed not to give a greater cash discount or more generous terms of sale than those ascertained from one another as the discount


or terms being granted or offered to purchasers of gypsum board;


- (l) agreed not to deviate from standard, uniform practices and policies in the sale of gypsum board except to the extent deviations from such practices and policies were ascertained from one another; and
- (m) engaged in predatory practices designed to eliminate or otherwise contain the competition generated from time to time by certain single-plant producers of gypsum board.

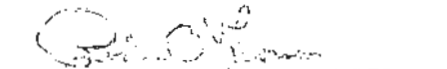
WHEREFORE, the petitioner moves this Court to issue an Order directing each of the foregoing respondents to appear before this Court at a time and place to be fixed in said Order and show cause why they should not be adjudged in criminal contempt of this Court and punished therefor.


Dated:


THOMAS E. KAUPER
Assistant Attorney General


JOHN C. PRICANO



BADDIA J. RASHID


RODNEY O. THORSON


BERNARD M. HOLLANDER


L. JOHN SCHMOLL

Attorneys, Department of Justice


RICHARD J. FAVRETTO

Attorneys, Department of Justice

United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	Criminal Action No. 1042-73
v.)	
)	Filed: December 27, 1973
UNITED STATES GYPSUM COMPANY;)	
NATIONAL GYPSUM COMPANY;)	
THE CELOTEX CORPORATION;)	
GEORGIA-PACIFIC CORPORATION;)	
GRAHAM J. MORGAN;)	Supplemental to Civil
ANDREW J. WATT;)	Action No. 8017
COLON BROWN; and)	
WILLIAM H. HUNT,)	
)	
Respondents.)	

ORDER TO SHOW CAUSE

Attorneys for the United States, acting under the direction of the Acting Attorney General, having filed a petition for an order requiring respondents United States Gypsum Company, National Gypsum Company, The Celotex Corporation, Georgia-Pacific Corporation, Graham J. Morgan, Andrew J. Watt, Colon Brown and William H. Hunt to show cause why they should not be held in criminal contempt of this Court for having violated the Final Judgment of this Court entered on the 15th day of May, 1951, in Civil Action No. 8017 and entitled United States v. United States Gypsum Co., et al.;

It appearing to this Court that said Petition and the Affidavit in Support thereof executed by the attorney for the United States show good cause for such an order;

NOW THEREFORE, IT IS HEREBY ORDERED THAT respondents United States Gypsum Company, National Gypsum Company, The

Celotex Corporation, Georgia-Pacific Corporation, Graham J. Morgan, Andrew J. Watt, Colon Brown and William H. Hunt shall appear in this Court on the ____ day of _____, 19__ at _____ o'clock to show cause, if any there be, why they should not be adjudged to have acted in criminal contempt of this Court by reason of their violation of the Final Judgment of this Court entered on the 15th day of May, 1951, in Civil Action No. 8017 and be punished for said criminal contempt.

Sufficient cause appearing therefore, let service of a copy of this Order, together with a copy of the Petition and Affidavit annexed and filed herein, be made on the respondents herein on or before the ____ day of _____, 19__, in the manner prescribed for the service of a summons by the United States Code, Title 18, Federal Rules of Criminal Procedure, Rule 9 (c)(1).

DATE:

UNITED STATES DISTRICT JUDGE