

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	NO. 67 C 1632
GENERAL DYNAMICS CORPORATION;	)	
THE UNITED ELECTRIC COAL	)	Equitable Relief Sought
COMPANIES; and FREEMAN COAL	)	
MINING CORPORATION,	)	Filed: September 22, 1967
	)	
Defendants.	)	

COMPLAINT

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

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants of Section 7 of that Act.

2. Each of the defendants is found and transacts business within the Northern District of Illinois, Eastern Division.

## II

### DEFENDANTS

3. General Dynamics Corporation (hereinafter referred to as "GD") is named a defendant herein. GD is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business in New York, New York. GD is engaged in the manufacture and sale of a wide variety of products associated with, among others, the defense, space, nuclear, and electronic industries. GD, through subsidiaries, is also engaged in the mining and sale of coal. For the year ended December 31, 1965, GD had net sales of \$1,472,785,000 and net profit after taxes of \$49,269,000.

4. The United Electric Coal Companies (hereinafter referred to as "UEC") is made a defendant herein. UEC is a corporation organized and existing under the laws of the State of Delaware and maintains its principal office in Chicago, Illinois. UEC, which was incorporated under the laws of the State of Delaware in 1918, was merged into UEC Corporation on November 7, 1966. The name of the surviving corporation, which was incorporated under the laws of the State of Delaware on October 13, 1966, was changed to The United Electric Coal Companies. Any reference to UEC includes the predecessor of UEC. UEC operates four bituminous coal mines, all of which are located in the State of Illinois. For the year ended December 31, 1965, UEC had net sales of \$21,803,576 and net profit after taxes of \$2,467,744.

5. Freeman Coal Mining Corporation (hereinafter referred to as "Freeman") is made a defendant herein. Freeman, an Illinois corporation with its principal office located in Chicago, Illinois, is a wholly owned subsidiary of GD. Freeman operates four bituminous coal mines, all of which are located in the State of Illinois. In 1965 Freeman had net sales of \$31,665,837 and net profit after taxes of \$1,114,220.

### III

#### DEFINITIONS

6. The Eastern Interior Coal Province is defined as the bituminous coal field which blankets sixty-seven per cent of Illinois and much of southwestern Indiana and western Kentucky. This bituminous coal field constitutes a single, large bituminous coal region which is geologically united.

7. The Eastern Interior Coal Province sales area is defined as the area of Illinois, western Indiana, western Kentucky, western Tennessee, eastern Missouri, eastern Iowa, southwestern and central Wisconsin, and southeastern Minnesota.

#### IV

#### TRADE AND COMMERCE

8. Bituminous coal represents one of the most important of the mineral resources in the United States. In the modern industrial economy bituminous coal is of critical importance in providing a dependable and low-cost source of energy. This is particularly true with respect to the electric power utilities which now consume more than half of the total United States consumption of coal. The requirements of the electric utilities for coal are expanding.

9. In the more than two centuries in which coal has been mined in the United States, it is estimated that less than 4 per cent of the nation's known recoverable reserves of coal have been produced and consumed. It is estimated that the United States now has between 830 billion tons and 2,000 billion tons of coal reserves which can be recovered. At the present rate of United States coal production this is enough coal to last more than 1,500 years.

10. Bituminous coal production in the United States in 1965 and 1966 amounted to 512,088,000 tons and approximately 532,000,000 tons, respectively. It is estimated that in 1967, 545,000,000 tons of bituminous coal will be produced in the United States.

11. In 1965 the State of Illinois ranked as the fourth largest bituminous coal producing State in the United States with an output of 58,232,480 tons. However, Illinois is the leading State in bituminous coal reserves with estimated recoverable reserves as of January 1, 1967 of 67,800,000,000 tons.

12. Because of the high cost of transporting bituminous coal, customers endeavor to purchase bituminous coal which is mined as close to the customers' bituminous coal consuming facility as possible. In 1965 approximately 76 per cent of the bituminous coal sold in Illinois was produced in Illinois and approximately 58 per cent of the bituminous coal produced in Illinois was sold in Illinois.

13. The Eastern Interior Coal Province produced a total of 113,247,682 tons of bituminous coal in 1965. It is estimated that approximately 80 per cent of the bituminous coal consumed in the Eastern Interior Coal Province sales area was produced in the Eastern Interior Coal Province.

14. In 1965 Freeman, a wholly owned subsidiary of GD, produced 7,257,856 tons of bituminous coal from its mines which are all located within Illinois and ranked second in the production of bituminous coal in Illinois with 12.46 per cent of total 1965 Illinois bituminous coal production. In 1965 at least 63 per cent of the bituminous coal sales of Freeman were to electric utility customers and at least 18 per cent were to industrial customers. In 1965 approximately 47 per cent of Freeman's total production was sold to customers located in the State of Illinois, accounting for approximately 7.8 per cent of the bituminous coal sold in Illinois in that year. From its mines located in Illinois, Freeman regularly sells and ships bituminous coal to customers located in other States in the United States.

15. In 1965 UEC produced 5,348,641 tons of bituminous coal from its mines which are all located within Illinois and ranked third in the production of bituminous coal in Illinois with 9.18 per cent of total 1965 Illinois bituminous coal production. In 1965, 73 per cent of the bituminous coal sales of UEC were to electric utility customers and 23 per cent were to industrial customers. In 1965 approximately 72 per cent of UEC's production was sold to customers located in the State of Illinois, accounting for approximately 8.5 per cent of the bituminous coal sold in Illinois in that year. From its mines located in Illinois, UEC regularly sells and ships bituminous coal to customers located in other States in the United States.

16. If GD had owned UEC during all of 1965, GD would have ranked second in bituminous coal production in Illinois with 21.64 per cent of the total 1965 Illinois bituminous coal production. The 1965 combined bituminous coal production of GD and UEC in Illinois was more than twice the production of the next largest Illinois bituminous coal producer. The combination of GD and UEC ranks as the second largest seller of bituminous coal in Illinois.

17. In 1965, Freeman, a wholly owned subsidiary of GD, ranked fourth in the production of bituminous coal in the Eastern Interior Coal Province, accounting for approximately 6.41 per cent of total 1965 production. UEC ranked sixth in the production of bituminous coal in this area, accounting for approximately 4.72 per cent of total 1965 production.

18. If GD had owned UEC during all of 1965, GD would have ranked second in production in the Eastern Interior Coal Province with 11.13 per cent of this area's total 1965 coal production. The combination of GD and UEC ranks as the second largest seller of bituminous coal in the Eastern Interior Coal Province sales area.

19. The bituminous coal industry is highly concentrated among the leading producers due in large part to mergers. In Illinois in 1965 the three leading producers of bituminous coal, Peabody Coal Company, Freeman, and UEC, accounted for approximately 50 per cent of total Illinois production. In 1965, these companies accounted for approximately 42 per cent of total bituminous coal production in the Eastern Interior Coal Province.

20. Freeman and UEC have been direct and substantial competitors in the sale of bituminous coal to customers located primarily in the State of Illinois. In 1965 at least 53 per cent of Freeman's dollar sales and approximately 61 per cent of UEC's dollar sales were to the same customers.

V

OFFENSE CHARGED

21. Material Service Corporation, as of December 30, 1959, had acquired approximately 34.27 per cent of UEC's outstanding stock. Freeman at that time was a wholly owned subsidiary of Material Service Corporation.

22. On or about December 31, 1959, GD acquired the Material Service Corporation. As a result of GD's acquisition of Material Service Corporation, GD acquired a stock investment in UEC equal to

approximately 34.27 per cent of UEC's outstanding shares and Freeman became a wholly owned subsidiary of GD. By December 1963 GD had acquired over 50 per cent of the outstanding shares of UEC, and on October 5, 1966 GD offered to purchase the remaining outstanding shares of UEC. By December of 1966 GD had acquired at least 90 per cent of the outstanding shares of UEC and shortly thereafter UEC became a wholly owned subsidiary of GD.

23. The effect of the acquisitions by Material Service Corporation and by its successor, defendant GD, of UEC's stock has been and will be substantially to lessen competition or tend to create a monopoly in the production and sale of bituminous coal in the State of Illinois and in the Eastern Interior Coal Province sales area, and in various other sections of the country, in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Actual and potential competition between GD's wholly owned subsidiary Freeman and UEC has been eliminated;
- (b) Actual and potential competition generally in the production and sale of bituminous coal may be substantially lessened; and
- (c) Concentration in the production and sale of bituminous coal has been and may be further increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition described in paragraph 22 of this complaint be adjudged a violation of Section 7 of the Clayton Act.
2. That a preliminary injunction issue enjoining defendants GD, Freeman, and UEC, their officers, directors, employees, and agents pending adjudication of the merits of this complaint from:
  - (a) Taking any further action to change, directly or indirectly, the operation of the business of UEC or the personnel connected with such operation; and
  - (b) Shifting sales, personnel, or equipment or any assets whatsoever of UEC to any of the mines and facilities of GD and Freeman.
3. That GD be required to divest itself of all the stock and assets of UEC acquired or resulting from the acquisition.
4. That GD and Freeman be enjoined from acquiring stock or assets of any other firm engaged in the production or sale of bituminous coal in the State of Illinois or in the Eastern Interior Coal Province.
5. That the plaintiff have such other and further relief which the Court may deem just and proper.

6. That the plaintiff recover the costs of this suit.

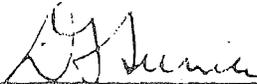
Dated:



RAMSEY CLARK  
Attorney General

JOHN T. CUSACK

Attorney, Department of Justice



DONALD F. TURNER  
Assistant Attorney General

Room 2634 United States Courthouse  
Chicago, Illinois 60604  
353-6975



BADDIA J. RASHID

JOHN E. SARBAUGH

BERTRAM M. LONG

Attorneys, Department of Justice

EDWARD V. HANRAHAN  
United States Attorney

