

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)
)
 UNITED STATES GYPSUM COMPANY;)
 NATIONAL GYPSUM COMPANY;)
 GEORGIA-PACIFIC CORPORATION;)
 KAISER GYPSUM COMPANY, INC.;) Criminal No. 73-347
 THE CELOTEX CORPORATION;)
 THE FLINTKOTE COMPANY;)
 GRAHAM J. MORGAN;) Filed: December 27, 1973
 ANDREW J. WATT;)
 COLON BROWN;)
 J. P. NICELY;)
 WILLIAM H. HUNT;)
 CLAUDE E. HARPER;)
 ROBERT A. COSTA;) (15 U.S.C. § 1)
 WILLIAM D. HERBERT;)
 GEORGE J. PECARO; and)
 JAMES D. MORAN,)
)
 Defendants.)

I N D I C T M E N T

The Grand Jury charges:

I

DEFINITION

1. As used herein the term "gypsum board" means the gypsum board machine products manufactured and sold by the defendant corporations, including, but not limited to, wallboard, sheathing and lath.

II

THE DEFENDANTS

2. The corporations named below are hereby indicted and made defendants herein. Each of said corporations is organized and exists under the laws of the state, and

has its principal place of business in the city, indicated below:

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
United States Gypsum Company	Delaware	Chicago, Illinois
National Gypsum Company	Delaware	Buffalo, New York
Georgia-Pacific Corporation	Georgia	Portland, Oregon
Kaiser Gypsum Company, Inc.	Washington	Oakland, California
The Celotex Corporation	Delaware	Tampa, Florida
The Flintkote Company	Massachusetts	White Plains, New York

During all or part of the period of time covered by this indictment, and within five years preceding the return hereof, said defendants engaged in the business of manufacturing and selling gypsum board in various states of the United States.

3. The individuals named below are hereby indicted and made defendants herein. During all or part of the period of time covered by this indictment, and within five years preceding the return hereof, each was associated with one of the defendant corporations in the capacity indicated below:

<u>Individual</u>	<u>Capacity</u>	<u>Corporation</u>
Graham J. Morgan	Chairman of the Board and Chief Executive Officer	United States Gypsum Company
Andrew J. Watt	Executive Vice President	United States Gypsum Company

<u>Individual</u>	<u>Capacity</u>	<u>Corporation</u>
Colon Brown	Chairman of the Board and Chief Executive Officer	National Gypsum Company
J. P. Nicely	Vice President, Sales	National Gypsum Company
William H. Hunt	President	Georgia-Pacific Corporation
Claude E. Harper	President	Kaiser Gypsum Company, Inc.
Robert A. Costa	Vice President and General Manager	Kaiser Gypsum Company, Inc.
William D. Herbert	President	The Celotex Corporation
George J. Pecaro	Chairman of the Board	The Flintkote Company
James D. Moran	President and Chief Executive Officer	The Flintkote Company

III

CO-CONSPIRATORS

4. The Gypsum Association, a trade association of gypsum board manufacturers, has participated as a co-conspirator with the defendants in the offense charged herein and has performed acts and made statements in furtherance thereof. During all or part of the period of time covered by this indictment, all of the defendant corporations were members of the Gypsum Association and representatives of said defendant corporations attended Gypsum Association meetings.

5. Various other firms and individuals, not made defendants in this indictment, have participated as co-conspirators with the defendants in the offense charged

herein and have performed acts and made statements in furtherance thereof. Included among these co-conspirators are Johns-Manville Corporation and Fibreboard Corporation.

IV

TRADE AND COMMERCE

6. Gypsum board is a common building material which is most often used in the construction of walls and ceilings. It is manufactured in standard thicknesses, lengths and widths, and while the various kinds of gypsum board are sold under different trade names by different manufacturers, the composition and quality of different brands are essentially the same, and customers switch brands because of slight price differentials or other inducements, such as more favorable terms and conditions of sale, methods of packaging and handling and job price protection.

7. The manufacture of gypsum board involves mixing water, accelerators and fillers with calcined gypsum ore to form a gypsum plaster "slurry" which is sandwiched between surface layers of paper or other materials by machinery which also cuts the board to size. When the gypsum slurry dries, the gypsum in the core reverts to rock form, resulting in a rigid sheet of building material. There are different kinds of gypsum board, such as regular and fire-rated wallboard, lath, sheathing, formboard and backing board. The different kinds of board are produced by the addition of certain ingredients to the gypsum core, by the use of different surface materials or by altering the basic form of the board by means such as lamination or perforation.

8. There is a substantial and continuous movement of gypsum board in interstate commerce from plants where it is manufactured to customers in states other than those where the plants are located. In addition, substantial quantities of the ingredients used in the manufacture of gypsum board regularly move in interstate commerce from their source to states where gypsum board manufacturing plants are located. During all or part of the period of time covered by this indictment, the defendant corporations, along with Fibreboard Corporation and Johns-Manville Corporation have participated in this interstate movement of gypsum board and its ingredients. Within this period, these firms have sold and shipped substantial quantities of gypsum board to customers in states other than the states in which their plants were located and have obtained substantial quantities of ingredients for use in manufacturing gypsum board from states other than those where their plants were located.

9. During the period of time covered by this indictment, the defendant corporations, along with Fibreboard Corporation and Johns-Manville Corporation had total sales of more than \$4 billion and accounted for more than 90 percent of the total sales of gypsum board in the United States.

V

OFFENSE CHARGED

10. Beginning sometime prior to 1960 and continuing thereafter at least until sometime in 1973, the exact dates to the grand jurors being unknown, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid

interstate trade and commerce in the manufacture and sale of gypsum board, 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 has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to (a) raise, fix, maintain and stabilize the prices of gypsum board; (b) fix, maintain and stabilize the terms and conditions of sale thereof; and (c) adopt and maintain uniform methods of packaging and handling such gypsum board.

12. In formulating and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, 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 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 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.

EFFECTS

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

- (a) prices of gypsum board sold by the defendant corporations and co-conspirators were raised, fixed, maintained and stabilized at non-competitive levels;
- (b) terms and conditions of sale of gypsum board offered by the defendants and co-conspirators were fixed, maintained and stabilized at non-competitive levels;
- (c) competition was eliminated in the packaging, handling and delivery methods of gypsum board sold by the defendants and co-conspirators; and
- (d) customers of the defendant corporations and co-conspirators have been deprived of free and open competition in the sale of gypsum board.

VII

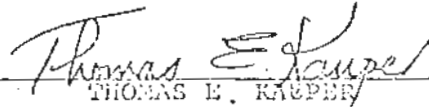
JURISDICTION AND VENUE

14. The aforesaid combination and conspiracy was carried out in part within the Western District of Pennsylvania and within the jurisdiction of this Court, within five years next preceding the return of this indictment.

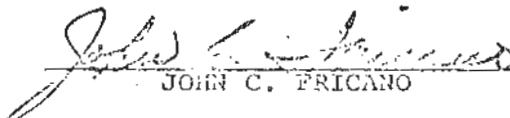
Dated:

A TRUE BILL

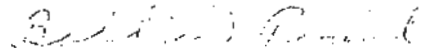
Foreman



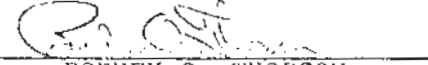
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