UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MM STEEL, LP, *et al.*,	§	
	§	
Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. 4:12-cv-01227
	§	
RELIANCE STEEL & ALUMINUM CO., *et al.*,	§	
	§	
	§	
Defendants.	§	

INSTRUCTIONS TO THE JURY

The following instructions were presented to the jury on the 24th day of March, 2014.

Signed this 24th day of March, 2014.

Kenneth M. Hoyt
United States District Court

I. GENERAL INSTRUCTIONS

MEMBERS OF THE JURY:

1.

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist you in understanding the evidence and the parties' contentions. Answer each question from the facts as you find them. Your answers and your verdict must be unanimous.

2.

You must answer all questions from a "preponderance of the evidence." By this is meant the greater weight and degree of credible evidence before you. In other words, a preponderance of the evidence just means the amount of evidence that persuades you that a claim is more likely so than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

You will recall that during the course of this trial I may have instructed you that certain testimony and certain exhibits were admitted into evidence for a limited purpose. In that event, you may consider such evidence only for the specific limited purposes for which it was admitted.

3.

I remind you that it is your job to decide whether the plaintiff has proved any of its claims by a preponderance of the evidence. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the plaintiff or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? Has the witnesses' testimony given at trial been impeached? That is, is there evidence that at some other time the witness said or did something or failed to say or do something that was different from the testimony he or she gave at trial? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more

witnesses testifying for one side on that point. You are free to reject part or all of the testimony of any witness in your evaluation.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

4.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence—such as testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

5.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field—he is called an expert witness—is permitted to state his opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that he testifies regularly as an expert witness and his income from such testimony represents a significant portion of his income.

6.

Concerning notes, any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. Your notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

II. SPECIFIC INSTRUCTIONS

You should disregard any questioning or testimony that concerned whether certain conduct would be ethical, proper, appropriate, suspicious, legal, or lawful, or that concerned similar characterizations. Any such questioning or testimony is irrelevant. The question to you is whether you find, under the facts presented, that the defendants' conduct was illegal under the instructions on the law I am about to give you.

The Sherman Act

The purposes of the antitrust laws are to preserve and advance the system of free and open competition, and to secure to everyone an equal opportunity to engage in business, trade, and commerce. This policy is the primary feature of the private free enterprise system. The law promotes the concept that free competition produces the best allocation of economic resources. The law also recognizes that in the natural operation of the economic system, some competitors are going to lose business while others prosper. In general, the law protects competition, not competitors. Hence, an act is unlawful when it constitutes an unreasonable restraint on interstate commerce.

Sherman Act Section 1

The plaintiff challenges the conduct of the defendants under Section 1 of the Sherman Act. Section 1 prohibits agreements or conspiracies that unreasonably restrain trade.

To prevail on this claim against any defendant, the plaintiff must prove, as to that defendant, each of the following elements by a preponderance of the evidence:

First, that the defendant entered into an agreement with one or more other persons to prevent the plaintiff from buying steel plate;

Second, that the defendant refused to deal with the plaintiff because of the agreement between that defendant and at least one other person or business;

Third, the defendant made the agreement knowing that at least two of the parties to the agreement are "direct competitors" with each other;

Fourth, that the refusal to deal unreasonably restrained trade by denying the plaintiff access to a supply of steel plate necessary for the plaintiff to compete effectively;

Fifth, that the refusal to deal occurred in or affected "interstate commerce"; and

Sixth, that the plaintiff suffered injury that was materially caused by the alleged refusal to deal.

"Direct competitors" are companies that function at the same level of the distribution chain. It is undisputed that American Alloy and Reliance/Chapel are direct competitors.

"Interstate commerce" means commerce or travel between one state, territory or possession of the United States and another state, territory or possession of the United States. It is undisputed that the events giving rise to this suit occurred in interstate commerce.

Boycott/Conspiracy

The plaintiff alleges that the defendants participated in a conspiracy to engage in a "group boycott" by depriving the plaintiff of the ability to purchase steel plate. A group boycott refers to an agreed-upon refusal by competitors to deal with another business unless it refrains from dealing with a potential competitor trying to enter the market. It is a form of refusal to deal. It can be a method of shutting a competitor out of a market, or preventing entry of a new firm into a market.

A single competitor's refusal to deal with another does not constitute a group boycott. A business has the right to deal, or refuse to deal, with whomever it likes, as long as it makes that

decision independently. The antitrust laws prohibit two or more persons or businesses from agreeing with each other not to sell a product to another in violation of Section 1 of the Act, or to engage in a conspiracy to deprive a company or individual of the ability to purchase a product, like steel plate. A person or business cannot participate in a conspiracy to refuse to sell to another business to exclude the other business from the market even if they do so in response to what they believe is the wrongful conduct of the other business, its owners, or employees.

A "conspiracy" is a kind of partnership in which each person found to be a member of the conspiracy is liable for all acts and statements of the other members made during the existence of and in furtherance of the conspiracy. To create such a relationship, two or more persons must enter into an agreement that they will act together for some unlawful purpose or to achieve a lawful purpose by unlawful means.

To establish the existence of a conspiracy, the evidence need not show that the members entered into any formal or written agreement; that they met together; or that they directly stated what their object or purpose was, or the details of it, or the means by which they would accomplish their purpose. The agreement itself may have been entirely unspoken. What the evidence must show to prove that a conspiracy exists is that the alleged members of the conspiracy in some way came to an agreement to accomplish a common purpose. It is the agreement to act together that constitutes the conspiracy. Whether the agreement succeeds or fails does not matter.

A conspiracy may be formed without all parties coming to an agreement at the same time or agreeing to all of the details. It is not essential that all persons acted exactly alike, nor is it necessary that they all possessed the same motive for entering the agreement. Moreover, it is not necessary that the evidence show that all of the means or methods claimed by the plaintiff were

agreed upon to carry out the alleged conspiracy; nor that all of the means or methods that were agreed upon were actually used or put into operation; nor that all the persons businesses alleged to be members of the conspiracy actually were members. What the evidence must show is that an alleged conspiracy consisting of two or more persons or businesses existed, that one or more of the means or methods alleged was used to carry out its purpose, and that each defendant knowingly became a member of the conspiracy.

Direct proof of a conspiracy may not be available. A conspiracy may be disclosed by the circumstances and/or the acts of the members. Therefore, you may infer the existence of a conspiracy from what you find the alleged members actually did, as well as from the words they used. Mere similarity of conduct among various persons, however, or the fact that they may have associated with one another and may have met or assembled together and discussed common aims and interests, does not establish the existence of a conspiracy, unless the evidence tends to exclude the possibility that the persons or businesses were acting independently. If they acted similarly, but independently of one another, without any agreement among them, there would not be a conspiracy.

Moreover, a supplier who receives a complaint or information from a distributor, and decides on its own and entirely for its own business reasons how it is going to act in response to that complaint or information, is not acting pursuant to a conspiracy. The plaintiff must present evidence that tends to show that the defendants reached an agreement to deprive the plaintiff of the ability to purchase steel plate.

You will note that the defendants are corporations. A corporation acts through its employees, officers and directors. Therefore a corporation is responsible for the acts of its employees, officers and directors within the scope of their authority and/or employment.

To prove its conspiracy claim, the plaintiff must prove the following elements by a preponderance of the evidence:

First, that the alleged conspiracy existed; and

Second, that the defendant knowingly became a member of that conspiracy.

"Knowingly" means voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Causation

The plaintiff must also offer evidence establishing as a matter of fact and with a fair degree of certainty that the defendants' alleged illegal conduct was a material cause of the plaintiff's injury. This means that the plaintiff must prove that some damage occurred to it as a result of the defendants' alleged antitrust violation, and not some other cause. The plaintiff is not required to prove that the defendants' alleged antitrust violation was the sole cause of its injury; nor does the plaintiff need to eliminate all other possible causes of injury. It is enough if the plaintiff has proved that the alleged antitrust violation was a material cause of its injury. However, if you find that the plaintiff's injury was caused primarily by something other than the alleged antitrust violation, then you must find that the plaintiff has failed to prove that it is entitled to recover damages from the defendants.

Instruction on Damages

I am now going to instruct you on the issue of damages. The fact that I am giving you instructions concerning the issue of the plaintiff's damages does not mean that I believe that the plaintiff should, or should not, prevail in this case. Instructions as to the measure of damages are given for your guidance in the event you should find in favor of the plaintiff based on a preponderance of the evidence in accordance with the other instructions I have given you.

You should only consider calculating damages if you first find that the defendants violated antitrust or contract laws and that the violation(s) caused injury to the plaintiff. In this regard, you are to be guided only by the instructions contained in Interrogatory No. 6 and Interrogatory No. 10.

III. INTERROGATORIES ON ANTITRUST CLAIM

INTERROGATORY NO. 1: Did American Alloy and Reliance/Chapel conspire to persuade, induce, or coerce any steel mill not to sell steel plate to MM Steel?

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 1, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 2: Did Arthur Moore personally approve, authorize, ratify, or participate in the American Alloy -- Reliance/Chapel conspiracy?

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 1, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 3: Did JSW or Nucor knowingly join the conspiracy you found in INTERROGATORY NO. 1?

Answer "Yes" or "No" as to each defendant:

Nucor: yes

JSW: yes

If you answered "Yes" to INTERROGATORY NO. 1 or any part of INTERROGATORY NO. 3, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 4: Did one or more steel mills refuse to sell steel plate to MM Steel as a result of the conspiracy thereby denying it access to a supply of steel plate necessary for it to compete effectively?

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 4, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 5: Was the conspiracy found by you above a material cause of injury to MM's business?

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 5, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 6: What sum of money, if any, if paid now in cash, would fairly and reasonably compensate MM Steel for the injury to its business that you have found was materially caused by the conspiracy?

Consider the following elements of damages, if any, and none other:

MM Steel's lost net profits.

"Net profits" are the amount by which the plaintiff's gross revenues would have exceeded all of the costs and expenses that would have been necessary to produce those revenues.

The plaintiff has proposed to calculate the net profits it would have earned if there had been no antitrust violation by showing evidence of another business that was not affected by the antitrust violation. If you find that the other business whose performance is compared to the plaintiff's business is a reliable guide to estimate what the plaintiff's actual net profits would have been in the absence of the antitrust violation, then you may calculate the plaintiff's lost profits by comparing (a) the actual and estimated future profit performance of plaintiff with (b) the profit performance of the comparable business. You may find, however, that the business proposed by the plaintiff as a yardstick for its performance is not representative of what the plaintiff's profits would have been in the absence of the antitrust violation, such as if the plaintiff's profits were impacted by different economic conditions, mismanagement, different

levels of competition, or other factors. The two businesses do not have to be identical; they need only be sufficiently similar that a conclusion as to the plaintiff's profits may be drawn within the bounds of reasonableness.

Damages must be for injuries which have actually been suffered or are reasonably likely to be suffered in the future. While the amount of damages may not be determined by mere speculation or guess, it is sufficient that the amount can be justly and reasonably inferred, even if the result is only approximate. The evidence of damages may be indirect and it may include estimates based on assumptions, as long as the assumptions rest on adequate data. The fact that the amount may be uncertain does not preclude you from finding damages if the uncertainty is due to the conduct you found in INTERROGATORY NOs. 1, 3 and 4. A new business may recover damages even if it did not have a substantial profit record.

Antitrust damages are compensatory only. The law does not permit you to award damages to punish a wrongdoer or to deter a wrongdoer from particular conduct in the future, or to provide a windfall to someone who has been the victim of an antitrust violation.

The plaintiff may not recover damages for any portion of its injuries that it could have avoided through the exercise of reasonable care and prudence. The plaintiff is not entitled to increase any damages through inaction. The law requires an injured party to take all reasonable steps it can to avoid further injury and thereby reduce its loss. If the plaintiff failed to take reasonable steps available to it, and the failure to take those steps results in greater harm to the plaintiff then it would have suffered had it taken those steps, then the plaintiff may not recover any damages for that part of the injury it could have avoided. The defendants must prove by a preponderance of the evidence that the plaintiff acted unreasonably in failing to take specific steps to minimize or limit its losses, that the failure to take those specific steps resulted in its losses being greater than they would have been had it taken such steps, and the amount by which the plaintiff's loss would have been reduced had the plaintiff taken those steps.

In determining whether the plaintiff failed to take reasonable measures to limit its damages, you must remember that the law does not require the plaintiff to have taken every conceivable step that might have reduced its damages. The evidence must show that the plaintiff failed to take commercially reasonable measures that were open to it. Commercially reasonable measures mean those measures that a prudent business person in the plaintiff's position would likely have adopted, given the circumstances as they appeared at the time. The plaintiff should be given a wide latitude in deciding how to handle the situation, so long as what the plaintiff did was not unreasonable in light of the existing circumstances.

If you find that the plaintiff's alleged injuries were caused in part by the alleged antitrust violation and in part by other factors, then you may award damages only for that part of the plaintiff's alleged injuries that were caused by the alleged antitrust violation.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

ANSWER: $52,000,000

INTERROGATORY NO. 7: What portion of the damages, if any, awarded in INTERROGATORY NO. 6 were incurred by the plaintiff before October 14, 2011?

Answer in dollars and cents for damages, if any.

Reliance/Chapel has the burden to prove by a preponderance of the evidence what damages MM Steel suffered before October 14, 2011.

ANSWER: $ 241,000

IV. INTERROGATORIES ON BREACH OF CONTRACT

INTERROGATORY NO. 8: Did JSW fail to comply with its August 2, 2011, contract with MM Steel?

JSW committed to supply certain quantities and types of steel plate products to MM Steel at prices to be agreed at the time of order placement.

In addition to the language of the agreement, the law imposes on a party to a contract a duty to perform the contract in good faith. In that connection, good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 8, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 9: Was MM Steel's business injured because of JSW's failure to comply?

Answer "Yes" or "No":

ANSWER: yes

If you answered "Yes" to INTERROGATORY NO. 9, then answer the following Interrogatory. Otherwise, do not answer the following Interrogatory.

INTERROGATORY NO. 10: What sum of money, if any, if paid now in cash, would fairly and reasonably compensate MM Steel for its damages, if any, that resulted from such failure to comply?

Consider the following element of damages, if any, and none other.

The net profits that MM Steel would have earned from selling steel that it would have bought from JSW from October 20, 2011 through August 1, 2012.

In determining whether the plaintiff failed to take reasonable measures to limit its damages, you must remember that the law does not require the plaintiff to have taken every conceivable step that might have reduced its damages. The evidence must show that the plaintiff failed to take commercially reasonable measures that were open to it. Commercially reasonable measures mean those measures that a prudent business person in the plaintiff's position would likely have adopted, given the circumstances as they appeared at the time. The plaintiff should be given a wide latitude in deciding how to handle the situation, so long as what the plaintiff did was not unreasonable in light of the existing circumstances.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

ANSWER: $2,000,000

V.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence. Select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the Court has given you about your conduct during the trial. After you have reached your unanimous verdict, your Foreperson is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While your are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

If you want to communicate with me at any time, please give a written message or question to the bailiff, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise.

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return our unanimous verdict into Court.

_____
Jury Foreperson

03/25/2014
Date