

Syllabus

IN THE MATTER OF

LOCK JOINT PIPE COMPANY, F. B. GRAY AND J. H. GRAY,
TRADING AS THE GRAY CONCRETE PIPE COMPANY,
MID-ATLANTIC CONCRETE PIPE AND PRODUCTS COM-
PANY, CONCRETE PIPE AND PRODUCTS COMPANY,
ARLINGTON CONCRETE PIPE CORPORATION, AND
JACK M. PARRISH, H. W. EASTERLY, AND J. SCOTT
PARRISH

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3127. Complaint, May 11, 1937—Decision, Aug. 5, 1938

Where three corporations and a partnership, and a fourth corporation organized, owned, controlled, and directed by the others, engaged in the manufacture, sale, and distribution of concrete pipe and other concrete products, and doing about 40 percent of the concrete pipe business in the territory along the eastern seaboard from New Jersey and Pennsylvania on the north to North Carolina on the south, and about 75 percent of such business in the territory of Virginia, Maryland, and the District of Columbia, and with plants and machinery, working capital, and funds more than sufficient to finance the manufacture and sale of such products and supply all probable demands in the territory involved, and with advantage of freight rates and transportation costs by virtue of the location of their respective plants, and, excepting and prior to the organization of the aforesaid fourth corporation, used by them to drive competition out of the territory of Virginia, Maryland, and Washington, in active competition with one another in said last named territory, and together constituting a group so large and influential that it was able to and did control, to a substantial degree, the flow of trade in commerce of the aforesaid products along the eastern seaboard and including the aforesaid States—

- (a) Wrongfully and unlawfully entered into an agreement and conspiracy to eliminate competition between themselves and to suppress the same and drive out competitors in the aforesaid territory, on the part of the aforesaid three corporations and partnership, first named; and maintained, in pursuance thereof, said fourth named, jointly owned corporation, which they dominated, managed, and controlled; and

Where the aforesaid three corporations, partnerships, aforesaid fourth corporation organized by them as above set forth, and three individuals, owners of the capital stock of one of the aforesaid three corporations and owners also of stock in the aforesaid fourth corporation, and active in the control and operation thereof, engaged as aforesaid and acting in combination with one another, as the case might be—

- (b) Refused and failed to submit independent competitive bids to supply concrete pipe and other concrete products to prospective customers in the territory hereinbefore set out;
- (c) Submitted bids through and in the name of the aforesaid jointly owned corporation to supply such products to such customers in the aforesaid territory, and thus sold the same; and

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(d) Submitted bids through and in the name of the aforesaid jointly owned corporation to supply such products to prospective customers in said territory, and quoted prices thereon in the name of said corporation which were below production cost;

With the result that competition between them was eliminated, and competition in said territory was substantially lessened and injured:

Held, That such acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Mr. C. Wallace Vail, of Newark, N. J., for Lock Joint Pipe Co.

Mr. William F. Kelly and *Mr. P. J. J. Nicolaides*, of Washington, D. C., for The Gray Concrete Pipe Co. and Arlington Concrete Pipe Corp.

Mr. Charles E. Jenkins, of Norfolk, Va., for Mid-Atlantic Concrete Pipe and Products Co.

Christian, Barton & Parker, of Richmond, Va., for Concrete Pipe and Products Co., Jack M. Parrish, H. W. Easterly, and J. Scott Parrish.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Lock Joint Pipe Co., a corporation; F. B. Gray and J. H. Gray, a copartnership trading as the Gray Concrete Pipe Co.; Mid-Atlantic Concrete Pipe and Products Co., a corporation; Concrete Pipe and Products Co., a corporation; Arlington Concrete Pipe Corporation, a corporation; and Jack M. Parrish, H. W. Easterly, and J. Scott Parrish, individuals, hereinafter described and named as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said Act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lock Joint Pipe Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its home office and principal place of business at 150 Rutledge Avenue, East Orange, N. J. It also owns and operates numerous concrete plants along the Eastern Seaboard of the United States.

Respondents, F. B. Gray and J. H. Gray, a copartnership trading as Gray Concrete Pipe Co., have their home office and principal place

of business in Thomasville, N. C. Said respondents operate branch plants in Baltimore and Hagerstown, Md.

Respondent, Concrete Pipe and Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, having its home office and principal place of business in Richmond, Va.

Respondent, Mid-Atlantic Concrete Pipe and Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia. Its home office and principal place of business is in Norfolk, Va. It also maintains and operates a concrete plant at Dover, Del.

Respondent, Arlington Concrete Pipe Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its home office and principal place of business at South Washington, Va.

Respondents, Jack M. Parrish, Harry W. Easterly, and J. Scott Parrish, are individuals and the legal address of each of said individuals is Richmond, Va. Said respondents own all of the capital stock of respondent Concrete Pipe and Products Co. and control and direct its business policies and operations. They are also the present owners of the 67 shares of stock in the respondent, Arlington Concrete Pipe Corporation, which were originally owned by the Concrete Pipe and Products Co. Said respondents take an active part in the control and operation of the Arlington Concrete Pipe Corporation.

PAR. 2. Respondent, Arlington Concrete Pipe Corporation was organized, and all its stock is owned by the other respondents above named. John E. Johnson, president of the respondent, Mid-Atlantic Concrete Pipe and Products Co., is also president of the respondent Arlington Concrete Pipe Corporation. H. F. Ahrens, treasurer of the respondent Lock Joint Pipe Co., is also treasurer of the respondent Arlington Concrete Pipe Corporation. Jack M. Parrish is president of the respondent Concrete Pipe and Products Co. and secretary of the respondent Arlington Concrete Pipe Corporation. The directors of the respondent Arlington Concrete Pipe Corporation are: Messrs. John E. Johnson, of the respondent Mid-Atlantic Concrete Pipe and Products Co.; H. F. Ahrens, of the respondent Lock Joint Pipe Co.; Jack M. Parrish, of the respondent Concrete Pipe and Products Co.; F. B. Gray, of the respondent Gray Concrete Pipe Co.; and P. W. Diecks.

PAR. 3. The respondents hereinabove designated are all now, and have been for more than 3 years last past, engaged at their respective places of business in the manufacture, sale, and distribution in commerce among and between the various States of the United States

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and the District of Columbia of concrete pipe and other concrete products. All of the respondents hereinabove named cause their respective products when sold to their respective customers to be transported from their respective places of business or plants hereinabove designated to, into and through States other than the State wherein such shipment originated to the purchasers thereof. Each respondent now maintains, and has at all times herein mentioned maintained, a constant or recurring current of trade in commerce of said products among and between the various States of the United States and the District of Columbia.

PAR. 4. Said respondents at all times herein mentioned, either individually or collectively, owned and now own and control along the Eastern Seaboard of the United States, from New Jersey and Pennsylvania on the north to North Carolina on the south, plants in which they manufacture concrete pipe and other concrete products. Respondents constitute a group so large and influential in the manufacture and sale of concrete pipe and other concrete products that they are able to and do influence and control the flow of trade in commerce of said products in the territory above mentioned.

Said respondents, with the exception of the Arlington Concrete Pipe Corporation were, prior to May 1934, in active competition with one another in the manufacture and sale of concrete pipe and other concrete products in the territory above mentioned and would have been at all times since said date, and would be now, in active competition with one another in the manufacture and sale of concrete pipe and other concrete products in commerce as herein set out, but for the wrongful and unlawful combination, agreement, understanding, and conspiracy hereinafter more fully described. Respondents, through their stock ownership and interlocking of officials and directors of the Arlington Concrete Pipe Corporation and the wrongful and unlawful agreement, combination, and conspiracy above mentioned, and which will be more fully set out hereinafter, have been, and are now, engaged in unfair methods of competition in the area of Virginia, Maryland, and the District of Columbia.

PAR. 5. Some time prior to October 11, 1935, the respondents herein entered into and engaged in an agreement, combination, and conspiracy to suppress price competition, restrain interstate trade, and drive out competitors in the territory including the States of Virginia, Maryland, and the District of Columbia and, pursuant to, and for the purpose of carrying out said agreement, combination, understanding, and conspiracy have, among other things, done the following acts and things.

(a) Failed and refused to submit to prospective customers competitive bids with one another to supply concrete pipe and other concrete products to said customers in the said territory above referred to;

(b) Failed and refused to submit, to prospective customers, competitive bids with the subsidiary corporation, the Arlington Concrete Pipe Corporation, to supply concrete pipe or other concrete products to said customers in the territory referred to in paragraph 4 hereof;

(c) Submitted bids through and in the name of the said subsidiary corporation, the Arlington Concrete Pipe Corporation, to supply concrete pipe or other concrete products to prospective customers in the territory referred to in paragraph 4 hereof;

(d) Quoted prices on concrete pipe and other concrete products and sold said products in said territory through and in the name of the Arlington Concrete Pipe Corporation at and for prices below production cost;

(e) Made disparaging statements and representations concerning the financial standing and business of competitors.

PAR. 6. The capacity, tendency, and effect of such agreement, combination, understanding, and conspiracy, and the acts and practices of the respondents as set out herein are, and have been to monopolize for said respondents the business of manufacturing and selling concrete pipe and other concrete products in the territory referred to in paragraph 4; to unreasonably lessen, eliminate and restrain, baffle, hamper, and suppress competition in said industry in said territory; to deprive the purchasing and consuming public of the advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in such industry in said territory; to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said industry; and to obstruct the natural flow of trade into channels of commerce among and between the several States of the United States.

PAR. 7. The above alleged acts and practices of the respondents set forth herein tend unduly to hinder competition and to create a monopoly in interstate commerce to the prejudice and injury of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of May 1937, issued and served its complaint in this proceeding upon the respondents, Lock Joint Pipe Co., a corporation; F. B. Gray and J. H. Gray, a copartnership trading as The Gray Concrete Pipe Co.; Mid-Atlantic Concrete Pipe and Products Co., a corporation; Concrete Pipe and Products Co., a corporation; Arlington Concrete Pipe Corporation, a corporation; and Jack M. Parrish, H. W. Easterly, and J. Scott Parrish, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by P. J. J. Nicolaides, Robert T. Barton, Jr., C. Wallace Vail, and Chas. E. Jenkins, attorneys for the respondents, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Lock Joint Pipe Co. is a New Jersey corporation, and was organized in May 1905, and has its home office and principal place of business at 150 Rutledge Avenue, East Orange, N. J. It owns and operates concrete plants located at Denver, Colo.; Chicago, Ill.; St. Louis, Mo.; Cleveland, Ohio; Kenilworth, N. J.; White Plains, N. Y.; Hartford, Conn.; and several in South America, and in carrying on its business moves portable concrete plants to different locations of the United States.

F. B. Gray and J. H. Gray are copartners and are doing business as The Gray Concrete Pipe Co., and have their home office and principal place of business in Thomasville, N. C., and they have branch plants in Baltimore and Hagerstown, Md.

Concrete Pipe and Products Co. is a Virginia corporation, and was organized in 1925, and has its home office and principal place of business in Richmond, Va.

Mid-Atlantic Concrete Pipe and Products Co. is a Virginia corporation, and was organized in May 1929, and it has its home office and principal place of business at Norfolk, Va. It also maintains and operates a concrete plant at Dover, Del.

Arlington Concrete Pipe Corporation is a Virginia corporation, and was organized on the 22d day of May 1934, and it has its home office and principal place of business at South Washington, Va.

Jack M. Parrish, Harry W. Easterly, and J. Scott Parrish are individuals, and the legal address of each individual is Richmond, Va. Said individuals own all of the capital stock of respondent Concrete Pipe and Products Co., and control and direct its business policies and operations. Said individual respondents also own 67 shares of the capital stock of the Arlington Concrete Pipe Corporation, and take an active part in the control and operation of the Arlington Concrete Pipe Corporation.

PAR. 2. Respondent Arlington Concrete Pipe Corporation was organized by the other respondents, and all of its capital stock is owned by the other respondents, and the other respondents control and manage the affairs, and control and direct the business operation of the Arlington Concrete Pipe Corporation. All of the officers and directors of the Arlington Concrete Pipe Corporation hold some official position in either one or the other of the other respondent corporations.

John E. Johnson is president of the respondent Mid-Atlantic Concrete Pipe and Products Co., and is also president of the respondent Arlington Concrete Pipe Corporation. H. F. Ahrens is treasurer of the respondent Lock Joint Pipe Co., and is also treasurer of the respondent Arlington Concrete Pipe Corporation. Jack M. Parrish is president of the respondent Concrete Pipe and Products Co., and is secretary of the respondent Arlington Concrete Pipe Corporation. The directors of the respondent Arlington Concrete Pipe Corporation are Messrs. John E. Johnson of respondent Mid-Atlantic Concrete Pipe and Products Co., H. F. Ahrens of respondent Lock Joint Pipe Co., respondent Jack M. Parrish of respondent Concrete Pipe and Products Co., respondent F. B. Gray of respondent The Gray Concrete Pipe Co., and C. W. Diecks, sales manager of the respondent Lock Joint Pipe Co.

PAR. 3. The respondents, Lock Joint Pipe Co., a corporation; F. B. Gray and J. H. Gray, a copartnership trading as The Gray Concrete Pipe Co.; Mid-Atlantic Concrete Pipe and Products Co., a corporation; Concrete Pipe and Products Co., a corporation; Arlington Con-

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crete Pipe Corporation, a corporation, have been engaged since their organization, in their respective places of business, in the manufacture, sale and distribution in commerce among and between the various States of the United States and the District of Columbia of concrete pipe and other concrete products. Respondents, Jack M. Parrish, Harry W. Easterly, and J. Scott Parrish, individuals, manage and control the business operation and direct the sales policy of the respondent Concrete Pipe and Products Co., and take an active part in the management and control of the respondent Arlington Concrete Pipe Corporation.

PAR. 4. The plants and machinery belonging to the respondents are valued at more than \$375,000.00, and the working capital and funds accessible to the respondents to carry on their business of manufacturing and selling concrete pipe and other concrete products are more than sufficient to finance the manufacturing and selling of concrete pipe to supply all probable demands in the territory herein set out.

The locations of the respondents' plants are such as to give them the advantage of freight rates and other transportation costs.

The respondents do about 40 percent of the concrete pipe business in the territory along the eastern seaboard of the United States, extending from New Jersey and Pennsylvania on the north to North Carolina on the south, and do about 75 percent of the concrete pipe business in the territory of Virginia, Maryland, and the District of Columbia.

PAR. 5. The respondents, with the exception of the Arlington Concrete Pipe Corporation, were, up until about February 10, 1934, in active competition with one another in the territory of Maryland, Virginia, and the District of Columbia.

A short while prior to February 10, 1934, the county of Arlington, Va., sent out invitations for proposals to supply Arlington County with approximately \$300,000 worth of concrete pipe in various sizes, to wit: 6, 8, 10, 12, 15, 18, 21, 24, 27, 30, 33, 36, and 42 inch pipe, 6 x 6 wyes, 8 x 6 wyes, 10 x 6 wyes, 6 inch stoppers, 4 x 6 increasers, 6'' $\frac{1}{8}$ bends, 6'' $\frac{1}{4}$ bends, 8'' $\frac{1}{8}$ bends, and 8'' $\frac{1}{4}$ bends. The date the proposals were to be opened was February 10, 1934. Subsequent to the date of said invitations, but prior to February 10, 1934, the date on which said proposals were to be opened, a meeting was held in the Lee House in the city of Washington, D. C., by the treasurer of the respondent Lock Joint Pipe Co., a salesman of the respondent Lock Joint Pipe Co., one of the partners of the respondent Gray Concrete Pipe Co., the president of the respondent Mid-Atlantic Concrete Pipe and Products Co., the president and the vice president of the respond-

ent Concrete Pipe and Products Co., at which meeting the said invitation for proposals was discussed.

While representatives of respondents attending this meeting state that they did not reveal to any party present the prices they intended to submit in behalf of the companies they represented, they admitted that they discussed the Concrete Pipe Code (code of fair competition promulgated by the N. R. A.) and also what prices their competitors, the vitrified clay pipe companies, were going to submit, and that there was a discussion of the probable amount that the vitrified clay pipe companies' bid would be, with a view of making in any event the price of the several concrete pipe companies below that of the vitrified clay companies, and that the prices were discussed in the way of getting a price that would be under the clay product. Respondent Harry W. Easterly testified that it was proposed that they (respondents) get together with an endeavor to try to figure out what the clay products prices were going to be so that they (respondents) could be sure and bid under their prices; that there was a general discussion of the probable amount that the vitrified clay pipe companies' bid would be with a view of making in any event the price of the several concrete pipe companies below that of the vitrified clay companies; that the prices were discussed in the way of getting a price that would be under the clay products.

Mr. John E. Johnson, president of respondent Mid-Atlantic Concrete Pipe and Products Co., testified that they (the representatives of the respondents) were trying to find out what the other man had up his sleeves and intended to do and what the hours provision was going to be and what the wages would have to be and what conditions were in general with reference to the said invitation.

Mr. H. F. Ahrens, treasurer of respondent Lock Joint Pipe Co., testified that they (representatives of respondents) discussed the Concrete Pipe Code and what the vitrified pipe people were going to do and what prices they were putting in.

The respondent Concrete Pipe and Products Co. was the only one of the four companies represented who submitted a bid on the 6, 8, and 10 inch pipe requirements of Arlington County. After the said meeting held in the Lee House, the president and vice president of the respondent Concrete Pipe and Products Co. revised the figures they had prepared to submit in behalf of the Concrete Pipe and Products Co. by raising the price on the 6", 8", and 10 inch sizes.

After the said meeting at the Lee House, the president of the respondent Mid-Atlantic Concrete Pipe and Products Co. revised the figures he had prepared to submit in behalf of the Mid-Atlantic Con-

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crete Pipe and Products Co. and deleted several items previously included.

After the said meeting at the Lee House, the treasurer of the respondent Lock Joint Pipe Co. revised the figures he had previously prepared to submit in behalf of the Lock Joint Pipe Co.

When the bids were opened it was found that the respondent Concrete Pipe and Products Co. was low bidder on the 6, 8, 10, 12, 15, 27, 30, and 36 inch pipe and on all wyes, stoppers, increasers, and bends; that respondent Lock Joint Pipe Co. was low bidder on the 18, 21, 24, 33, and 42 inch pipe. Together the respondent Lock Joint Pipe Co. and the respondent Concrete Pipe and Products Co. were low bidders on all items called for in the invitation.

About the first of March 1934, before the contract was awarded May 16, 1934, Mr. John E. Johnson, the president of the respondent Mid-Atlantic Concrete Pipe and Products Co., went to Arlington County to locate a site on which to install a pipe plant to manufacture the pipe to supply the Arlington County contract. At this time the Arlington Concrete Pipe Corporation had not been organized; neither had the contract to supply the pipe been awarded. Mr. Johnson's company was not low bidder on any item. On May 16, 1934, the County of Arlington, Va., awarded the contract, to supply the concrete pipe called for in the invitation, to the respondent Lock Joint Pipe Co. and the respondent Concrete Pipe and Products Co., jointly. On May 22, 1934, the respondent Arlington Concrete Pipe Corporation was organized by the respondent Lock Joint Pipe Co., the respondent Concrete Pipe and Products Co., the respondent Mid-Atlantic Concrete Pipe and Products Co., and the respondent Gray Concrete Pipe Co., and the contract to supply Arlington County with the concrete pipe called for in said invitation was assigned by the respondent Lock Joint Pipe Co. and the respondent Concrete Pipe and Products Co. to the respondent Arlington Concrete Pipe Corporation.

Since the organization of the respondent Arlington Concrete Pipe Corporation, the respondent Lock Joint Pipe Co. and the respondent Mid-Atlantic Concrete Pipe and Products Co. have submitted joint bids and obtained joint contracts to supply concrete pipe to the city of Norfolk, Va.

Until October 11, 1935, the employees of the respondent Arlington Concrete Pipe Corporation were not permitted by the directors of said corporation, who were also officials of the other respondent companies, to submit specific bids to supply concrete pipe in behalf of the respondent Arlington Concrete Pipe Corporation, but they were directed to promote the sale of concrete pipe generally in the territory of Virginia, Maryland, and the District of Columbia, and

were directed by the vice president of the Arlington Concrete Pipe Corporation to help obtain contracts for the respondent Gray Concrete Pipe Co. and the respondent Concrete Pipe and Products Co. in said territory.

Since October 11, 1935, the respondent Arlington Concrete Pipe Corporation has, under the directions of its said directors, been submitting bids to supply concrete pipe and has been selling concrete pipe supplied to it by respondent Gray Concrete Pipe Co. to the purchasing public in the territory of Virginia, Maryland, and the District of Columbia. The prices at which said respondent Arlington Concrete Pipe Corporation sells concrete pipe in said territory are fixed by officials of the other respondent companies.

The respondent Arlington Concrete Pipe Corporation, while under the direct control and management of the other respondents, did on November 11, 1935, May 26, 1936, November 2, 1936, December 26, 1936, and March 20, 1937, submit bids to the United States Construction Quartermaster to supply concrete pipe, and the prices quoted in said bids were below the production cost of said pipe. On March 20, 1937, the Arlington Concrete Pipe Corporation submitted a bid to supply concrete pipe to the city of Alexandria, Va., and the prices quoted in said bid were below the production cost of said pipe. During the years of 1936 and 1937, the respondent Arlington Concrete Pipe Corporation suffered a loss of over \$9,000 through selling concrete pipe below production cost.

All of the minutes of the meetings of the Board of Directors of the Arlington Concrete Pipe Corporation show that representatives of the other respondents were present and participating in the business conducted and were conversant with all the activities of the respondent Arlington Concrete Pipe Corporation and with the activities in the concrete pipe industry, including prices, bids, contracts, etc.

Subsequent to the organization of respondent Arlington Concrete Pipe Corporation the other respondent companies did not compete for concrete pipe business in the territory of Virginia, Maryland, and Washington, D. C.

Mr. H. F. Ahrens, who is treasurer of the respondent Arlington Concrete Pipe Corporation and also of the respondent Lock Joint Pipe Co., on October 31, 1934, wrote a letter to Mr. John E. Johnson, president of the Mid-Atlantic Concrete Pipe and Products Co. and also president of the respondent Arlington Concrete Pipe Corporation, in which he stated:

I might add that while we are not making as much on the 8" increase as we would on a more evenly distributed quantity of the various sizes for machine-

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made pipe, the fault lies with us in not bidding this particular size at a higher figure. (Mr. Ahrens was speaking of the Arlington County contract.)

In another letter written February 7, 1937, by Mr. John E. Johnson to respondent H. W. Easterly, Mr. Johnson stated:

Should anyone ask you for price, please have them drop Jordan a note and if he hasn't already quoted them, I am sure he will arrange to do so at once.

I am leaving all quotations to him as I do not feel it is good business for two or three of us to be quoting one job.

The respondent Arlington Concrete Pipe Corporation was used by the other respondents to drive competition out of the territory of Virginia, Maryland, and Washington, D. C.

On January 13, 1937, said Mr. Johnson, the president of the Mid-Atlantic Concrete Pipe and Products Co. and president of the respondent Arlington Concrete Pipe Corporation, wrote the said Mr. Ahrens, treasurer of the respondent Lock Joint Pipe Co. and also treasurer of the respondent Arlington Concrete Pipe Corporation:

I was in Washington yesterday and find that the Herndon Job is coming out on the 20th or 21st. This necessitates my being there those two days, as I fully intend to cover this job and not give any of the other Directors the feeling that we are passing out any business in that territory to our competitors on a silver platter. After going over matters carefully in Arlington, Jordan left with me and we went out to see the Superintendent of the Boyd and Goeforth Job at Falls Church. They are laying the pipe that Helms¹ is now furnishing and this outfit is going down after the Herndon Job. They gave us their assurance that they would play with us.

We then went to Fredericksburg and saw W. C. Spratt, who was low bidder at Berryville, and he has also given us his assurance of his fullest cooperation. I know that our competitor will have no chance of selling him.

Next, we drove to Richmond and communicated with two local contractors, McLean & Company and Hughes & Keegan. I don't think it is Keegan's intention to bid, as he is afraid of the unclassified excavation. He stated that if he did bid, that he would call either Hack or the writer and would play ball with us. We were unable to see Mr. McLean, as he was out of the city. Today, we will see the Virginia Engineering Company of Newport News, who also figure on bidding this job.

Monday, Jordan is going to get the complete list of bidders so that we can get together again and set a price for this job and stay with it until the bids are opened and the job awarded. As yet, I haven't decided on a price to put out on the 8's but feel that if our competitor wants to sell them for \$0.12 per foot, delivered to Herndon, less 5% discount, it will be well to let him have it.

Mr. J. H. Jordan, the manager of the Arlington Concrete Pipe Corporation, in October 1936, stated to a stockholder of a competitor that he (Mr. Jordan) would see that the stockholder never realized anything on his investment. The said Jordan, in the latter part of 1936, stated to another stockholder of a competitor that his stock was

¹ A competitor.

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not worth anything and would never be worth anything and that it was his (Mr. Jordan's) job to see that it never was worth anything. The said Mr. Jordan, in the latter part of 1936, stated to a contractor, a customer of a competitor, that it was their (respondents') idea and intention to break Helms (a competitor).

PAR. 6. The complaint charges that the respondents have made disparaging statements and representations concerning the financial standing and business of competitors. The Commission finds that there is not sufficient competent testimony in the record to sustain this charge of the complaint.

CONCLUSION

The Commission finds that the respondents, the Lock Joint Pipe Co., the Mid-Atlantic Concrete Pipe and Products Co., the Concrete Pipe and Products Co., F. B. Gray and J. H. Gray, copartners trading as The Gray Concrete Pipe Co., and the Arlington Concrete Pipe Corporation constitute a large and influential group of manufacturers and dealers in concrete pipe and other concrete products along the eastern seaboard of the United States, including the States of Virginia and Maryland and in the District of Columbia. They constitute a group so large and influential that they are able to and do control to a substantial degree the flow of trade in commerce of concrete pipe and other concrete products in the territory above mentioned, and respondents, the Lock Joint Pipe Co., the Mid-Atlantic Concrete Pipe and Products Co., F. B. Gray and J. H. Gray, copartners trading as The Gray Concrete Pipe Company, the Concrete Pipe and Products Co., and Harry W. Easterly, J. Scott Parrish, and Jack M. Parrish have wrongfully and unlawfully entered into an agreement and conspiracy to eliminate competition between themselves and to suppress competition and drive out competitors in said territory above mentioned, and in pursuance thereto have maintained a jointly owned corporation, to wit: the Arlington Concrete Pipe Corporation, which the respondents the Lock Joint Pipe Co., the Mid-Atlantic Concrete Pipe and Products Co., The Gray Concrete Pipe Co., and the Concrete Pipe and Products Co., dominate, manage, and control. Respondents have failed and refused to submit to prospective customers competitive bids with one another to supply concrete pipe and other concrete products in the territory hereinabove set out. Respondents have failed and refused to submit to prospective customers competitive bids with the jointly owned corporation, the Arlington Concrete Pipe Corporation, to supply concrete pipe or other concrete products to said customers in the territory hereinabove set out. Respondents have submitted bids through

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and in the name of said jointly owned corporation, the Arlington Concrete Pipe Corporation, to supply concrete pipe and other concrete products to prospective customers in the territory hereinabove set out and have quoted prices on concrete pipe and other concrete products and sold concrete pipe in said territory through and in the name of the jointly owned corporation, the Arlington Concrete Pipe Corporation, at and for prices below production cost, and as a result of said agreement competition between the respondents has been eliminated and competition in said territory has been substantially lessened and injured.

The acts and practices of respondents as hereinabove set forth are all to the prejudice of the public and competitors of the respondents and under the circumstances therein stated, are unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein (oral argument not having been requested) by Floyd O. Collins, counsel for the Commission and by P. J. J. Nicolaides, Robert T. Barton, Jr., C. Wallace Vail, and Chas. E. Jenkins, counsels for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

Now, therefore, it is hereby ordered. That the respondent corporations, Lock Joint Pipe Co., Mid-Atlantic Concrete Pipe and Products Co., Concrete Pipe and Products Co., Arlington Concrete Pipe Corp., the respondent copartners, F. B. Gray, and J. H. Gray, trading as The Gray Concrete Pipe Co., their successors, officers, agents, and employees, and the respondent individuals, Jack M. Parrish, H. W. Easterly, and J. Scott Parrish cease and desist, in connection with the business of manufacturing and selling or offering for sale in interstate commerce of concrete pipe and other concrete products, from doing and performing by agreement, combination, or conspiracy between or among any two or more of said respondents, the following acts and things:

1. Refusing and failing to submit independent competitive bids to supply concrete pipe and other concrete products to prospective customers; or

2. Selling or submitting bids to supply, either in the name of the Arlington Concrete Pipe Corporation or any other jointly owned corporation or organization, concrete pipe or other concrete products to prospective customers; or

3. Selling or submitting bids to supply, either in the name of the Arlington Concrete Pipe Corporation or any of the respondents, concrete pipe and other concrete products to prospective customers below production cost.

It is further ordered, That the respondents, and each of them, shall, within 60 days after service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
LOUISVILLE POTTERY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3296. Complaint, Jan. 11, 1938—Decision, Aug. 6, 1938

Where a corporation engaged in the manufacture, sale, and distribution of pottery wares, in competition with sellers and distributors of like and similar products designed and intended for similar usage who refrain from advertising or representing that their products had an origin which they did not have or that they were made by Indians, when not—

Represented, through words "Cherokee Pottery" imprinted on its products, and in its price lists, catalogs, and other advertising matter, and on its business stationery, together with an Indian head profile on large pieces of its said ware, and through featured words "Cherokee Hand Turned Pottery" on the cover of its catalog and in various places throughout the same, that its said wares were made by the Cherokee Indians;

Notwithstanding fact that its said products were not those wares made by said Indians, and for which a substantial part of the consuming public has long had a marked preference and of which it has bought, by reason thereof, a substantial volume, and no Indian was connected with manufacture of such various articles, all of which were made in its ordinary and common pottery shops at Louisville;

With result of placing in the hands of unscrupulous dealers buying for resale an instrument and means whereby they might commit a fraud upon and deceive a substantial portion of the consuming public by enabling them to represent and to offer for sale its aforesaid wares as genuine Cherokee Indian pottery, and with tendency and capacity to mislead a substantial number of members of the purchasing public into the erroneous and mistaken belief that its aforesaid products, thus described and marked, were made by said Indians, and into the purchase thereof, and with the result thereby of unfairly diverting trade to it from those competitors engaged in like and similar businesses who do not misrepresent their respective products; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Louisville Pottery Co., a corporation, hereinafter referred to as respondent, has