

IN THE MATTER OF
THE ROBINSON CLAY PRODUCT COMPANY ET AL.

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

Docket 4034. Complaint, Feb. 16, 1940—Decision, Jan. 29, 1941

Where a number of corporations, firms, and individuals, namely—

I. Two concerns, to wit (a) a New York corporation which had a branch office and yard at Rochester and was a wholly owned subsidiary of a concern engaged, among other things, in manufacture and sale of vitrified sewer pipe, with plants and factories at various points in Ohio and Pennsylvania, and with office and principal place of business in Akron, Ohio, and (b) a Rochester firm or partnership which served as sales outlet at said point for another concern also engaged, among other things, in manufacture and sale of such pipe and with various factories for fabrication thereof and of kindred products in Ohio, Michigan, Indiana, and Pennsylvania, and with office and principal place of business in Cleveland, which actively participated either in the wholesale or retail transactions relating to sale of building materials, including vitrified pipe, in said city and vicinity and manufactured or caused to be manufactured or sold the greater part of such commodities used in said sales area; and

II. Some 25 or more corporations, firms and individuals, engaged in purchase and sale of builders' supply materials, including such pipe, in city aforesaid and sales area adjacent thereto, and, as thus engaged, in purchasing their supply of such materials and pipe from aforesaid manufacturers thereof or their sales subsidiaries, as above set forth, in other States, and in maintaining yards for temporary storage of products in question until sold or delivered to customers in or near said city (excepting carload or truckload quantities regularly shipped direct from place of manufacture to ultimate consumers at or near Rochester), and, as thus engaged, and except to extent to which competition in purchase and sale of such products had been restrained, lessened, injured, or suppressed by understanding, agreement, combination, and conspiracy below set forth, in active and substantial competition with each other and with other wholesalers, jobbers, dealers, and contractors in such materials, in purchase and sale of materials in question and in conduct of their respective businesses in said city and State; to purchasers in which city many other sellers of building materials, and including vitrified sewer pipe, with places of business located without said State, sold large quantities of such materials in commerce, in active and substantial competition, except to extent to which competition between them had been restrained, lessened, etc., by understanding, agreement, combination, and conspiracy above referred to, with each other in such sale and in sale of said products to Rochester dealers above referred to and to competitors of such dealers—

Cooperated, both acting directly and through their various representatives, with each other, beginning in 1936 or thereabouts, and continuing thereafter and for a long period of time, entered into and carried out understanding, agreement, combination, and conspiracy to restrict, restrain, suppress, and elim-

inate competition and to create monopoly in sale and distribution of building materials, including vitrified sewer pipe, in commerce; and in pursuance of, and for the purpose of carrying out, such agreement, understanding, combination, and conspiracy, and acting directly and through their designated representatives and in cooperation with each other—

- (1) Agreed among themselves to fix and maintain and pursuant to such agreement fixed and maintained uniform delivered prices to consumers at which they, and each of them, sold, or offered for sale building materials, including vitrified sewer pipe, to the consuming public, including municipalities and Government agencies and projects;
- (2) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, were sold or offered for sale by jobbers, dealers, or contractors in question, and uniform terms, discounts, and conditions attaching to sale of various items of building supplies, including vitrified pipe;
- (3) Induced certain of their members, by intimidation and persuasion, to raise the prices quoted by them to uniform delivered prices fixed as aforesaid, and held meetings among themselves to devise methods of exerting influence, or pressure, to require dealers, jobbers, manufacturers, and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other Government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established; and
- (4) Used and engaged in other cooperative acts and practices in promoting establishment of and carrying out aforesaid understanding, agreement, combination, and conspiracy set forth herein;

With result that capacity, tendency, and effect of said understanding, agreement, combination, conspiracy, and acts and practices of said various corporations, concerns, and individuals, were and had been to monopolize in themselves or some of their number business and industry of dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in vicinity of Rochester, to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, to deprive purchasing and consuming public, including municipalities and other Government agencies or projects, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free, fair, and unrestrained competition in such industry, to otherwise operate as a restraint of trade and a detriment to freedom of fair and legitimate competition in said industry, and to obstruct natural flow of trade in building materials, including vitrified sewer pipe, in channels of commerce, among and between the several States:

Held, That such acts and practices of said corporations, concerns or firms, and individuals, under the circumstances set forth, were all to the prejudice of the public, and had a dangerous tendency to, and actually did, hinder and prevent price competition between and among them in sale of building materials, including vitrified pipe, in commerce, placed in them power to control and enhance prices, tended to create in them monopoly in sale of such materials and pipe, and unreasonably restrained commerce therein and constituted unfair methods of competition.

Appearances

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Before *Mr. Lewis C. Russell*, trial examiner.

Mr. James M. Hammond for the Commission.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., and *Stabaugh, Seiberling, Huber & Guinther*, of Akron, Ohio, for The Robinson Clay Product Co. and The Robinson Clay Product Co. of New York.

Thompson, Hine & Flory, of Cleveland, Ohio, for Universal Sewer Pipe Corp.

Mr. Walter S. Forsyth, of Rochester, N. Y., for Empire Clay Products Co., Mann Builders Supply Co., Inc., Joseph L. Weckesser and Sinamus & Beck, Inc.

Harris, Beach, Folger, Bacon & Keating, of Rochester, N. Y., for American Clay & Cement Corp. and Goodstone Manufacturing Co., Inc.

Mr. Harold H. Barnsdale, of Lyons, N. Y., for Barnard Service & Supply Co.

Mr. J. Eugene Goddard, of Rochester, N. Y., for Gaetano Della Pietra.

MacFarlane & Harris, of Rochester, N. Y., for Domine Builders Supply Co., Inc.

Chamberlain, Page & D'Amanda, of Rochester, N. Y., for Flower City Builders' Supply Co.

Mr. Maurice G. Lynn, of Rochester, N. Y., for H. D. Grey Corp.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for Hutchison-Rathbun, Inc., and Rochester Lime & Cement Corp.

Backus & Backus, of Rochester, N. Y., for the Irondequoit Coal and Supply Co.

Mr. Daniel F. Fitzgerald, of Rochester, N. Y., for Keystone Builders Supply Co., Inc.

Jefferson & Allen, of Rochester, N. Y., for Matthews & Fields and Van de Visse & Kildea Lumber Co., Inc.

Peter G. & Jay A. Smith, of Webster, N. Y., for Russell B. Mason Co.

Mr. Robert W. Lochner, of Rochester, N. Y., for Ardean R. Miller, Inc., and Rappl & Hoenig Co.

Mr. Fred J. Slater, of Rochester, N. Y., for Peoples Coal & Lumber Co.

Mann, Strang, Bodine & Wright, of Rochester, N. Y., for Rochester Lumber Co.

Mr. William B. Hanks, of Rochester, N. Y., for Schaeffer Brothers Builders Supply Co., Inc.

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Ogden & Schwartz, of Rochester, N. Y., for Stonewood Builders Supply, Inc.

Castle & Fitch, of Rochester, N. Y., for Theodore H. Swan Brick & Tile Co., Inc.

Raines & Raines, of Rochester, N. Y., for Whitmore-Rauber & Vicinus.

Bartholomew & Bartholomew, of Buffalo, N. Y., for Pittsford Lumber Co., Inc.

Mr. J. Raymond Tobin, of Rochester, N. Y., for Schreib & Watson, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties described in the caption hereof, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the 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, The Robinson Clay Product Co., is a corporation organized and existing pursuant to the laws of the State of Maine, having its office and principal place of business in the Second National Bank Building, Akron, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe. It maintains and operates factories at Akron, Parral, Midvale, Mogadore, and Malvern, in the State of Ohio, and at Clearfield, in the State of Pennsylvania.

Respondent, The Robinson Clay Product Co. of New York, is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business in the Empire State Building, New York, N. Y. It is entirely owned and controlled by respondent, The Robinson Clay Product Co., and was organized by the latter concern for the purpose of marketing and furthering the sale of its said products to dealers, contractors, and to the public in the various States of the United States. Said respondent, The Robinson Clay Product Co., of New York, maintains a branch office and yard at Rochester, N. Y., in which it stores its said products temporarily awaiting sale, and from which office and yard it supplies dealers and contractors in that city and in the sales area adjacent thereto with the said products manufactured by respondent, The Robinson Clay Product Co., at its various factories

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located at points outside of the State of New York, as hereinabove set out, and shipped from said factories to said yards of said respondent, The Robinson Clay Product Co. of New York. Orders for vitrified pipe and similar materials received by it at Rochester are supplied direct from this yard, or if for carload quantities, the order may be, and generally is, filled by shipment from the said factories of respondent, The Robinson Clay Product Co. in the States of Ohio and Pennsylvania direct to purchasers at or near Rochester, New York. Said respondents, The Robinson Clay Product Co. and The Robinson Clay Product Co. of New York, at all times mentioned herein acted and now act concertedly and in cooperation with each other and with the other respondents hereinafter named in the acts and practices hereinafter alleged.

Respondent, Universal Sewer Pipe Corporation, is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business in the Union Trust Building, Cleveland, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe and maintains eight factories for the fabrication of that and kindred products in the States of Ohio, Michigan, Indiana, and Pennsylvania.

The products of the respondent Universal Sewer Pipe Corporation so manufactured at its various plants or factories located as aforesaid, are sold and distributed through the medium of dealers, jobbers, and wholesalers located in the various States of the United States. Its sales outlet at Rochester, N. Y., is through the medium of the respondent copartnership, Empire Clay Products Co., hereinafter described. The latter company maintains a yard at Rochester, N. Y., where substantial quantities of the products of the respondent Universal Sewer Pipe Corporation are temporarily stored, unchanged and as originally manufactured, for sale and delivery to local dealers and contractors. The respondent Empire Clay Products Co. also receives orders for carload quantities of the said products of the respondent Universal Sewer Pipe Corporation, which products are frequently shipped direct from the said factories of the latter company located in States other than the State of New York, to dealers, contractors, and other members of the public, including municipalities, at or near Rochester, including municipalities, at or near Rochester, N. Y.

Respondents Universal Sewer Pipe Corporation and Empire Clay Products Co. acted concertedly and in cooperation each with the other, and in cooperation with the other respondents named in this complaint, in the acts and practices hereinafter alleged.

PAR. 2. Respondent Rochester Builders Supply Association, hereinafter referred to as respondent Association, is an unincorporated voluntary association, composed of dealers in building and construction materials in the city of Rochester, N. Y., having its office and principal place of business at the Seneca Hotel, Rochester, N. Y.

Respondent, Edwin C. Kaelber, is an individual functioning as secretary of the respondent Association. His office and principal place of business is located at the Seneca Hotel, Rochester, N. Y.

Respondents, Russell L. Pinkley and Urban G. Weckesser, are copartners, doing business under the firm name and style of Empire Clay Products Co., having their office and principal place of business at 735 Lexington Avenue, Rochester, N. Y.

Respondent, Frank A. Seiser, is an individual doing business under the firm name and style of Acme Builders' Supply Co. His office and principal place of business is located at 1030 Main Street, East, Rochester, N. Y.

Respondent, American Clay & Cement Corporation, is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 1175 East Main Street, Rochester, N. Y.

Respondents, Nazareth L. Montalbine and George E. Hartman, are copartners, doing business under the firm name and style of Barnard Service & Supply Co. Their office and principal place of business is located at 2450 Dewey Avenue, Rochester, N. Y.

Respondent, Britton Stone & Supply Corporation, is a corporation existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business at 709 Commerce Building, Rochester, N. Y.

Respondent, Comac Builders' Supply Corporation, is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 16 Norman Street, Rochester, N. Y.

Respondent, Gaetano Della Pietra, is an individual having his office and principal place of business on Linden Avenue East, Rochester, N. Y.

Respondent, Domine Builders Supply Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at 155 Gould Street, Rochester, N. Y.

Respondent, John G. Bianchi, is an individual operating under the firm name and style of Flower City Builders' Supply Co. His office and principal place of business is located at 179 Cady Street, Rochester, N. Y.

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Respondent, Goodstone Manufacturing Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 470 Hollenbeck Street, Rochester, N. Y.

Respondent, H. D. Grey Corporation, is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 186 Norman Street, Rochester, N. Y.

Respondent, Hutchison-Rathbun, Inc., is a corporation existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 255 North Union Street, Rochester, N. Y.

Respondent, The Irondequoit Coal and Supply Co., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 149 Ridge Road East, Rochester, N. Y.

Respondent, Keystone Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 85 Palm Street, Rochester, N. Y.

Respondent, Mann Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 436 Conkey Avenue, Rochester, N. Y.

Respondents, Leslie E. Fields and Lena Matthews, are copartners doing business under the firm name and style of Matthews & Fields. Their office and principal place of business is located at 120 Stonewood Avenue, Rochester, N. Y.

Respondent, R. B. Mason, is an individual doing business under the firm name and style of Russell B. Mason Co. His office and principal place of business is located at 205 North Avenue, Webster, N. Y.

Respondent, Ardean R. Miller, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 500 West Avenue, Rochester, N. Y.

Respondent, Monroe Block Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 348 Exchange Street, Rochester, N. Y.

Respondent, William Heydweiller, is an individual doing business under the firm name and style of Peoples Coal & Lumber Co., having

his office and principal place of business at 4585 Lake Avenue, Rochester, N. Y.

Respondents, George Rappl and George Hoenig, are copartners doing business under the firm name and style of Rappl & Hoenig Co. Their office and principal place of business is located at 1441 Ridge Road East, Rochester, N. Y.

Respondent, Rochester Lime & Cement Corporation, is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 174 Colvin Street, Rochester, N. Y.

Respondent, Rochester Lumber Co., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 2040 East Avenue, Rochester, N. Y.

Respondent, Schaeffer Brothers Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 1025 Chili Avenue, Rochester, N. Y.

Respondent, Stonewood Builders Supply, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 85 Stonewood Avenue, Rochester, N. Y.

Respondent, Theodore H. Swan Brick & Tile Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 723 Clarissa Street, Rochester, N. Y.

Respondent, Van de Visse & Kildea Lumber Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 1503 Lyell Avenue, Rochester, N. Y.

Respondent, Joseph L. Weckesser, is an individual having his office and principal place of business at 364 Aberdeen Street, Rochester, N. Y.

Respondent, Whitmore-Rauber & Vicinus, is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 51 Griffith Street, Rochester, N. Y.

Respondent, Sinamus & Beck, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 32 High Street, Fairport, N. Y.

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Respondent, Pittsford Lumber Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

Respondent, Schreib & Watson, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

All of the respondents named in this paragraph, with the exception of the respondent Association and respondent Edwin C. Kaelber, its secretary, are engaged, among other things, in the purchase and sale of builders' supply materials, including vitrified pipe, in the city of Rochester, N. Y., and the sales area adjacent thereto. The respondents named in this paragraph purchase their supply of building materials, including vitrified pipe, from the manufacturer thereof, located in States other than the State of New York and maintain yards for the temporary storage of said products until they are sold and delivered to customers in or near Rochester, N. Y., except as to carload or truckload quantities which are regularly shipped direct from the place of manufacture as aforesaid, to the ultimate consumers at or near Rochester, N. Y.

PAR. 3. Respondent Association for more than 3 years last past had, and now has, for its purpose, among others, that of effectively aiding the other respondents or some of them herein named in paragraphs 1 and 2 hereof, to carry out the agreement, combination, and conspiracy set forth in paragraph 6 hereof.

Respondent, Edwin C. Kaelber, individually and as secretary of the respondent Association has assisted, aided, directed, and controlled, and now aids, assists, directs, and controls the organization of the said respondent Association; calls the meetings of its members and carries out for and on behalf of the members thereof the activities of the said respondent Association as hereinafter alleged.

PAR. 4. The aforesaid respondents named in paragraph 1 hereof have actively participated either in the wholesale or retail transactions relating to the sale of building materials, including vitrified pipe, in the said city of Rochester, N. Y., and vicinity, and manufacture the greater part of that commodity used in that sales area. The respondents named in paragraph 2 hereof now constitute, and for more than 3 years last past have constituted, a substantial majority of all dealers in building materials, including vitrified pipe, used or sold in the city of Rochester, State of New York, and vicinity. In the course and conduct of their respective businesses, as afore-

said, except to the extent to which competition in the purchase and sale of building supplies, including vitrified pipe, has been restrained, lessened, injured, or suppressed by the understanding, agreement, combination and conspiracy hereinafter alleged, the respondent manufacturers, jobbers, and dealers in building materials, including vitrified sewer pipe, have been and are now, in active and substantial competition with each other, and with other manufacturers, wholesalers, jobbers, dealers, and contractors in building materials, including vitrified pipe, in the purchase and sale of those materials.

PAR. 5. For more than 3 years last past there were and have been, and there are now, many other manufacturers and sellers of building materials, including vitrified sewer pipe, whose respective factories and places of business were, and are now, located outside the State of New York, who have been, and are now, engaged in the business of manufacturing and selling, or manufacturing or selling, building materials, including vitrified sewer pipe, which they have been, and are now shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of building materials to purchasers thereof located in the State of New York and shipping said building materials, including vitrified pipe, in commerce to such purchasers in the State of New York from States other than the State of New York. Except to the extent to which competition between said manufacturers and sellers, or manufacturers or sellers, of building materials, including vitrified pipe, and in the sale thereof for shipment in commerce into the State of New York from States other than the State of New York has been restrained, lessened, injured, and suppressed by the understanding, agreement, combination, and conspiracy hereinafter referred to, the said manufacturers and sellers, or manufacturers or sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture of building materials, including vitrified pipe, and in the sale thereof for shipment into the State of New York from States other than the State of New York, and in the sale thereof to the respondent dealers and to competitors of respondent dealers causing said products to be shipped to said respondent dealers and competitors of respondent dealers in commerce into the State of New York from States other than the State of New York.

PAR. 6. The respondents named in paragraphs 1 and 2 hereof, acting directly and through their respective representatives, and acting in cooperation with each other and with the respondent

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Association, and its officers, beginning in the year 1936, or thereabouts, and continuing thereafter for a long period of time, entered into, and since have carried out, an understanding, agreement, combination, and conspiracy to restrict, restrain, suppress, and eliminate competition and to create a monopoly in the sale and distribution of building materials, including vitrified pipe, in commerce among and between the several States of the United States, as hereinafter described.

In furtherance of said understanding, agreement, combination, and conspiracy, referred to above, and in order to effectuate the same, said respondents named in paragraphs 1 and 2 hereof, acting directly or through their respective representatives, agents, or dealers, and acting in cooperation with each other, agreed to organize, and did organize, and still participate in the operation and control of respondent Association, and since its organization have participated and now participate in the activities of said Association, as more fully hereinafter set out.

Pursuant to, and for the purpose of carrying out said understanding, agreement, combination, and conspiracy, said respondents named in paragraphs 1 and 2 hereof, acting directly and through their designated representatives, and acting in cooperation with each other, and in cooperation with the respondent Association, and its officers, have committed and performed, and continue to, and now do, perform and engage in, among others, the following acts and practices:

(a) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained, and now fix and maintain, uniform delivered prices to consumers at which the aforesaid respondents named in paragraphs 1 and 2 hereof and each of them sold or now sell, or offer for sale, building materials, including vitrified sewer pipe, to the consuming public, including municipalities, and other Government agencies and projects.

(b) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, are sold or offered for sale by the respondent jobbers, dealers, or contractors named herein.

(c) Induced certain of the aforesaid respondents by intimidation and persuasion to raise the prices quoted by them to the uniform delivered prices fixed as aforesaid.

(d) Interfered with or prevented competitors of respondent dealers from purchasing or obtaining building supplies from manufacturers thereof located in States other than the State of New York.

(e) Established and maintained uniform terms, discounts, and conditions attaching to the sale of various items of building supplies, including vitrified pipe.

(f) Held meetings among themselves or with the respondent Association, its members and officers, to devise methods of exerting influence, pressure, coercion, or other means of intimidation to require manufacturers and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established.

(g) Used and engaged in other cooperative acts, coercive means and practices in promoting the establishment of and carrying out the aforesaid understanding, agreement, combination, and conspiracy set forth herein.

PAR. 7. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy, and the acts and practices of the respondents, as set forth herein, are, and have been, to monopolize in said respondents, or some of them, the business and industry of manufacturing, dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in the vicinity of Rochester, N. Y.; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public, including municipalities and other Government agencies or projects, of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free, fair, and unrestrained competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry, and to obstruct the natural flow of trade in building materials, including vitrified sewer pipe, in the channels of commerce, among and between the several States of the United States.

PAR. 8. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, and have a dangerous tendency to, and have actually, hindered and prevented price competition between and among respondents in the sale of building materials, including vitrified sewer pipe, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have increased the prices of building materials, including vitrified sewer pipe, paid

by the purchasers thereof and consequently the prices paid by the public; have created in the respondents a monopoly in the sale of building materials, including vitrified sewer pipe, in such commerce, have unreasonably restrained such commerce in building materials, including vitrified sewer pipe, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 16, 1940, issued and on February 17, 1940, served its complaint on the parties named in the caption hereof as respondents, 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, the Commission by order entered herein granted the motions of respondents, The Robinson Clay Product Co. of New York; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp.; Domine Builders Supply Co., Inc.; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc.; H. D. Grey Corporation; Hutchison-Rathbun, Inc.; Keystone Builders Supply Co., Inc.; Mann Builders Supply Co., Inc.; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc.; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation; Rochester Lumber Co.; Schaeffer Brothers Builders Supply Co., Inc.; Stonewood Builders Supply, Inc.; Theodore H. Swan Brick & Tile Co., Inc.; Van de Visse & Kildea Lumber Co., Inc.; Joseph L. Weckesser; Whitmore-Rauber & Vicinus; Sinamus & Beck, Inc.; Pittsford Lumber Co., Inc.; and Schreib & Watson, Inc., for permission to withdraw their original answers and to substitute

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therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the offices of the Commission.

After the filing of said complaint, respondent Monroe Block Co., Inc., filed its answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing on said facts. Respondents Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, an association of building supply dealers, Edwin C. Kaelber, individually and as Secretary of respondent Rochester Builders Supply Association, Gaetano Della Pietra, an individual, and The Irondequoit Coal & Supply Co. filed answers denying the allegations of the complaint. No answers were filed by respondent Frank A. Seiser, an individual, deceased on the approximate date of the issuance of the complaint, formerly doing business under the firm name and style of Acme Builders' Supply Co., and respondent Britton Stone & Supply Corporation, bankrupt on the date of the issuance of the complaint.

Therefore, this proceeding regularly came on for final hearing before the Commission on the record herein, 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. The respondent The Robinson Clay Product Co. is a corporation organized and existing pursuant to the laws of the State of Maine, having its office and principal place of business located in the Second National Bank Building, Akron, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe. It operates and maintains plants and factories at various points in the States of Ohio and Pennsylvania.

The respondent, The Robinson Clay Product Co. of New York is a corporation organized, existing and doing business pursuant to the laws of the State of New York, having its office and principal place of business located in the Empire State Building, New York, N. Y. It is entirely owned and controlled by respondent The Robinson Clay Product Co. and was organized by the latter concern for the purpose of marketing and furthering the sale of its said products to dealers, contractors, and to the public in the various States of the

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United States. Said respondent The Robinson Clay Product Co. of New York maintains a branch office and yard at Rochester, N. Y., in which it stores its said products temporarily awaiting sale and from which office and yard it supplies dealers and contractors in that city and in the sales area adjacent thereto with the said products manufactured by respondent The Robinson Clay Product Co. at its various factories located at points outside the State of New York, as hereinabove set out, and shipped from said factories to said yards of respondent The Robinson Clay Product Co. of New York. Orders for vitrified pipe and similar materials received by it at Rochester are supplied direct from this yard or, if for carload quantities, the order will be, and generally is, filled by shipment from the said factories of respondent The Robinson Clay Product Co. in the States of Ohio and Pennsylvania, direct to purchasers at or near Rochester, N. Y.

Respondent, Universal Sewer Pipe Corporation, is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business in the Union Commerce Building, Cleveland, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe and maintains various factories for the fabrication of that and kindred products in the States of Ohio, Michigan, Indiana, and Pennsylvania. The products of the respondent, Universal Sewer Pipe Corporation, so manufactured at its various plants and factories, located as aforesaid, are sold and distributed through the medium of dealers, jobbers, and wholesalers located in the various States of the United States, including its sales outlet at Rochester, N. Y., respondent copartnership, Russell L. Pinkley, and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co., hereinafter described.

Respondents Russell L. Pinkley and Urban G. Weckesser are copartners, doing business under the firm name and style of Empire Clay Products Co., having their office and principal place of business at 735 Lexington Avenue, Rochester, N. Y. Said respondents maintain a yard at Rochester, N. Y., where substantial quantities of the products of the respondent Universal Sewer Pipe Corporation are temporarily stored, unchanged and as originally manufactured, for sale and delivery to local dealers and contractors. Said respondents also receive orders for car-load quantities of the said products of respondent Universal Sewer Pipe Corporation, which products are regularly shipped direct from the said factories of the latter company, located in States other than the State of New York, to dealers, con-

tractors and other members of the public, including municipalities at or near Rochester, N. Y.

PAR. 2. Respondent, Rochester Builders Supply Association, hereinafter referred to as respondent Association, was an unincorporated voluntary association, composed of dealers in building and construction materials in the city of Rochester, N. Y., including all or some of the respondent dealers, having its office and principal place of business at the Seneca Hotel, Rochester, N. Y.

Respondent Edwin C. Kaelber is an individual who functions as Secretary of the respondent Association. His residence is located at 29 Dorchester Road, Rochester, N. Y.

Respondent Frank A. Seiser was an individual doing business under the firm name and style of Acme Builders' Supply Co. His office and principal place of business was located at 1030 Main Street, East Rochester, N. Y. He died during the year 1940, approximately simultaneous with the issuance of the complaint in this proceeding.

Respondent American Clay & Cement Corporation is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 1175 East Main Street, Rochester, N. Y.

Respondents Nazareth L. Montalbino and George E. Hartman are copartners, doing business under the firm name and style of Barnard Service & Supply Co. Their office and principal place of business is located at 2450 Dewey Avenue, Rochester, N. Y.

Respondent Britton Stone & Supply Corporation was a corporation existing pursuant to and in accordance with the laws of the State of New York with its office and principal place of business located at 709 Commerce Building, Rochester, N. Y. Thereafter it changed its name to Sun Builders Supply Corporation and subsequently was declared a bankrupt. Its affairs are now in course of liquidation.

Respondent Comac Builders' Supply Corporation is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 16 Norman Street, Rochester, N. Y.

Respondent Gaetano Della Pietra is an individual having his office and principal place of business on Linden Avenue, East Rochester, N. Y.

Respondent Domine Builders Supply Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at 155 Gould Street, Rochester, N. Y.

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Respondent John G. Bianchi is an individual operating under the firm name and style of Flower City Builders' Supply Co. His office and principal place of business is located at 179 Cady Street, Rochester, N. Y.

Respondent Goodstone Manufacturing Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 470 Hollenbeck Street, Rochester, N. Y.

Respondent H. D. Grey Corporation is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 186 Norman Street, Rochester, N. Y.

Respondent Hutchison-Rathbun, Inc., is a corporation existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 255 North Union Street, Rochester, N. Y.

Respondent The Irondequoit Coal & Supply Co. is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 149 Ridge Road East, Rochester, N. Y.

Respondent Keystone Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 85 Palm Street, Rochester, N. Y.

Respondent Mann Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 436 Conkey Avenue, Rochester, N. Y.

Respondents Leslie E. Fields and Lena Matthews are copartners doing business under the firm name and style of Matthews & Fields. Their office and principal place of business is located at 120 Stone-wood Avenue, Rochester, N. Y.

Respondent R. B. Mason is an individual doing business under the firm name and style of Russell B. Mason Co. His office and principal place of business is located at 205 North Avenue, Webster, N. Y.

Respondent Ardean R. Miller, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 500 West Avenue, Rochester, N. Y.

Respondent Monroe Block Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office

and principal place of business is located at 348 Exchange Street, Rochester, N. Y.

Respondent William Heydweiller is an individual doing business under the firm name and style of Peoples Coal & Lumber Co., having his office and principal place of business at 4585 Lake Avenue, Rochester, N. Y.

Respondents George Rappl and George Hoenig are copartners doing business under the firm name and style of Rappl & Hoenig Co. Their office and principal place of business is located at 1441 Ridge Road East, Rochester, N. Y.

Respondent Rochester Lime & Cement Corporation is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 174 Colvin Street, Rochester, N. Y.

Respondent Rochester Lumber Co. is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 2040 East Avenue, Rochester, N. Y.

Respondent Schaeffer Brothers Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 1025 Chili Avenue, Rochester, N. Y.

Respondent Stonewood Builders Supply, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 23 Shepler Street, Rochester, N. Y.

Respondent Theodore H. Swan Brick & Tile Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 723 Clarissa Street, Rochester, N. Y.

Respondent Van de Visse & Kildea Lumber Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 1503 Lyell Avenue, Rochester, N. Y.

Respondent Joseph L. Weckesser is an individual having his office and principal place of business at 364 Aberdeen Street, Rochester, N. Y.

Respondent Whitmore-Rauber & Vicinus is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 51 Griffith Street, Rochester, N. Y.

Respondent Sinamus & Beck, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its

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office and principal place of business at 32 High Street, Fairport, N. Y.

Respondent Pittsford Lumber Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

Respondent Schreib & Watson, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

All of the respondents named in this paragraph, with the exception of the respondent Association and respondent Edwin C. Kaelber, its secretary, are engaged, among other things, in the purchase and sale of builders' supply materials, including vitrified pipe, in the city of Rochester, New York, and the sales area adjacent thereto. The respondents named in this paragraph purchase their supply of building materials, including vitrified pipe, from the manufacturers thereof or their sales subsidiaries as named in paragraph 1 hereof, located in States other than the State of New York and maintain yards for the temporary storage of said products until they are sold and delivered to customers in or near Rochester, N. Y., except as to carload or truckload quantities which are regularly shipped direct from the place of manufacture, as aforesaid, to the ultimate consumers at or near Rochester, N. Y.

PAR. 3. The respondents The Robinson Clay Product Co. of New York and the Empire Clay Products Co. have actively participated either in the wholesale or retail transactions relating to the sale of building materials, including vitrified pipe, in the said city of Rochester, N. Y., and vicinity, and manufacture or cause to be manufactured or sold the greater part of said commodities used in that sales area. The respondents named in paragraph 2 hereof now constitute, and for more than three years last past have constituted, a substantial majority of all dealers in building materials, including vitrified pipe, used or sold in the city of Rochester, State of New York, and vicinity. In the course and conduct of their respective businesses, as aforesaid, except to the extent to which competition in the purchase and sale of building supplies, including vitrified pipe, has been restrained, lessened, injured, or suppressed by the understanding, agreement, combination, and conspiracy hereinafter found, the respondent jobbers and dealers in building materials, including vitrified sewer pipe, have been and are now in active and substantial competition with each other, and with other wholesalers, jobbers, dealers, and contractors in building materials, including vitrified pipe, in the purchase and sale of those materials.

PAR. 4. For more than 3 years last past there were and have been, and there are now, many other sellers of building materials, including vitrified sewer pipe, whose respective places of business were, and are now, located outside the State of New York who have been, and are now, engaged in the business of selling building materials, including vitrified sewer pipe, which they have been, and are now, shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of building materials to purchasers thereof located in the State of New York and shipping said building materials, including vitrified pipe, in commerce to such purchasers in the State of New York from States other than the State of New York. Except to the extent to which competition between said sellers of building materials, including vitrified pipe, and in the sale thereof for shipment in commerce into the State of New York from States other than the State of New York has been restrained, lessened, injured, and suppressed by the understanding, agreement, combination, and conspiracy hereinafter referred to, the said sellers, in the course and conduct of their respective businesses as aforesaid have been, and are now, engaged in active and substantial competition with each other in the sale of building materials, including vitrified pipe, and in the sale thereof for shipment into the State of New York from States other than the State of New York, and in the sale thereof to the respondent dealers and to competitors of respondent dealers, causing said products to be shipped to said respondent dealers and competitors of respondent dealers in commerce into the State of New York from States other than the State of New York.

PAR. 5. The respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of Rochester Builders Supply Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra, and The Irondequoit Coal & Supply Co., acting directly and through their respective representatives, have acted in cooperation with each other beginning in the year 1936, or thereabouts, and continuing thereafter for a long period of time, entered into and since have carried out an understanding, agreement, combination and conspiracy to restrict, restrain, suppress and eliminate competition and to create a monopoly in the sale and distribution of building materials, including

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vitrified sewer pipe, in commerce among and between the several States of the United States as hereinafter described.

Pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy, said respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of said Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra and The Irondequoit Coal & Supply Co., acting directly and through their designated representatives, and acting in cooperation with each other, have committed and performed and continue to and now do perform and engage in, among other things, the following acts and practices:

(a) Agreed among themselves to fix and maintain and pursuant to such agreement have fixed and maintained and now fix and maintain uniform delivered prices to consumers at which they sell, and each of them sold or now sell, or offer for sale building materials, including vitrified sewer pipe, to the consuming public, including municipalities and to Government agencies and projects.

(b) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, are sold or offered for sale by the respondent jobbers, dealers or contractors named herein.

(c) Induced certain of the aforesaid respondents by intimidation and persuasion to raise the prices quoted by them to the uniform delivered prices fixed as aforesaid:

(d) Established and maintained uniform terms, discounts, and conditions attaching to the sale of various items of building supplies, including vitrified pipe.

(e) Held meetings among themselves to devise methods of exerting influence, or pressure, to require dealers, jobbers, manufacturers, and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other Government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established.

(f) Used and engaged in other cooperative acts and practices in promoting the establishment of and carrying out the aforesaid understanding, agreement, combination, and conspiracy set forth herein.

PAR. 6. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy and the acts and practices

of the respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of said Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra, and The Irondequoit Coal & Supply Co., are, and have been, to monopolize in said respondents or some of them (except those specifically named in this paragraph), the business and industry of dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in the vicinity of Rochester, N. Y., to unreasonably lessen, eliminate, restrain, stifle, hamper and suppress competition in said industry; to deprive the purchasing and consuming public, including municipalities and other Government agencies or projects of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free, fair, and unrestrained competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry and to obstruct the natural flow of trade in building materials, including vitrified sewer pipe, in the channels of commerce, among and between the several States of the United States.

PAR. 7. The Commission further finds that as to respondents The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association and Edwin C. Kaelber, individually and as secretary of said Association, Gaetano Della Pietra and The Irondequoit Coal & Supply Co., there is no evidence in the record in support of the allegations of the complaint.

CONCLUSION

The aforesaid acts and practices of the respondents The Robinson Clay Product Co. of New York, a corporation; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Supply Co., Inc., a corporation; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a

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corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse & Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, and each of them as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among the respondents named in this paragraph in the sale of building materials, including vitrified pipe, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in the respondents named in this paragraph the power to control and enhance prices; have tended to create in the respondents named in this paragraph a monopoly in the sale of building materials, including vitrified pipe, in such commerce; have unreasonably restrained such commerce in building materials, including vitrified pipe, and constitute 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 and the answers of respondents: The Robinson Clay Product Co. of New York; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbino and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Supply Co., Inc., a corpora-

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tion; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse & Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, in which answers said respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents The Robinson Clay Product Co. of New York, a corporation; Russell L. Pinkley, and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Co., Inc., a corporation; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B.

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Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappale & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of building materials, including vitrified pipe, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into and carrying out any understanding, agreement, combination or conspiracy between and among any two or more of said respondents, for the purpose or with the effect of restraining, restricting, or monopolizing, or eliminating competition in the sale in interstate commerce of building materials, including vitrified pipe, and as a part of such understanding, agreement, combination or conspiracy from doing any of the following acts or things:

(a) Agreeing to fix and maintain and fixing and maintaining uniform or minimum delivered prices, terms, discounts, and conditions of sale.

(b) Inducing or coercing members of the industry to raise the prices quoted by them to the uniform or minimum delivered prices, terms, discounts, and conditions resulting from said understanding, agreement, combination, or conspiracy.

(c) Holding meetings among themselves or with any organization or association created by them, or some of them, to devise methods of exerting influence, pressure, or other means of inducing or requiring dealers in building materials, including vitrified pipe, to fix, establish or maintain prices, or to fix, establish and publish prices for building materials, including vitrified pipe, or to abide by or adhere to any uniform price list resulting from said understanding, agreement, combination, or conspiracy.

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(d) Using and engaging in other cooperative acts and practices in promoting the establishment of and carrying out said understanding, agreement, combination, or conspiracy.

It is further ordered, That this complaint be and is, hereby dismissed as to the respondent Frank A. Seiser, deceased, an individual who formerly did business under the firm name and style of Acme Builders' Supply Co., because of his death.

It is further ordered, That this complaint be, and the same hereby is, dismissed as to respondent Britton Stone & Supply Corporation because of the change of name and ultimate bankruptcy of that concern.

It is further ordered, That the case herein be, and the same hereby is, closed as to respondents The Robinson Clay Product Co., a corporation; Universal Sewer Pipe Corporation, a corporation; Rochester Builders Supply Association, an association of building supply dealers; Edwin C. Kaelber, individually and as secretary of the Rochester Builders Supply Association; Gaetano Della Pietra, an individual; and The Irondequoit Coal & Supply Co., a corporation, without prejudice to the right of the Commission to resume trial of this proceeding as to them should the facts warrant.

It is further ordered, That all of the respondents hereinbefore ordered to cease and desist from the practices described herein shall, within 60 days after service upon them 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 this order.

IN THE MATTER OF

NICK A. GEORGE, J. LAWRENCE WALKER AND T. KYLE
WOODWARD TRADING AS WALKER & WOODWARD,
WALKER & WOODWARD, INC., AND JOHN G. BROWNCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4194. Complaint, July 24, 1940—Decision, Jan. 29, 1941*

Where an individual engaged in the compounding of his medicinal preparation designated "George's Compound"; two individuals engaged, under agreement with former and prior to April 1939, in sale and distribution of said preparation; and corporation which they organized and of which they were president and vice president, and of which they were principal stockholders, and practices and policies of which they formulated, directed, and controlled, engaged in such sale and distribution, thereafter; and fourth individual, likewise thus engaged, under direction of others hereinbefore referred to; in advertisements of said preparation which they disseminated and caused to be disseminated through the mails, and newspapers and periodicals, and by radio continuities, circulars, leaflets, and other advertising literature, and by various other means in commerce and otherwise, and acting in conjunction and cooperation with each other in carrying out acts and practices hereinafter alleged, and in sale of their said product as aforesaid to purchasers in various other States and in the District of Columbia—

Represented that their said medicinal preparation constituted a cure or remedy, and a competent and effective treatment for numerous ailments, diseases, and conditions of the body; and including, among large number set forth, rheumatism, stomach trouble, colds and tonsillitis, general run-down condition, arthritis and neuritis, high blood pressure, streptococcus infection, paralytic strokes, constipation, trench mouth, female trouble, children's diseases, low blood pressure, pneumonia; and for different forms of poisoning, including uremic, ptomaine, and black widow spider; and disorders due to menopause; and that said product possessed substantial therapeutic value in treatment of all ailments, diseases, and conditions of the body, except cancer and diabetes;

Facts being it possessed no therapeutic properties in excess of affording a stimulus to gastric juices, mild stimulation to the appetite, and temporary and palliative relief for aches and pains; use thereof for rheumatism, colds, influenza, tonsillitis, arthritis, muscular aches and pains, sore throat, headache, fever, or backache resulted only in temporary palliation of attendant pain or discomfort due to its analgesic properties, and it was not a cure or remedy nor adequate or competent treatment for any of said conditions or ailments; use thereof for stomach trouble, sour stomach, gas on the stomach, bloated stomach, indigestion, or gastric disturbances might be of benefit only when they were associated with insufficient flow of gastric juice, and it was not a cure or remedy nor an adequate and