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OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
Federal Trade Commission

DOCKET No. 5253.....

In the Matter of: NATIONAL LEAD COMPANY, et al.....

Place New York, N. Y.....

Date June 26, 1946.....

Pages 1062 to 1181...

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C E R T I F I C A T E

This is to certify that the following pages and related exhibits are a transcript of hearings before the FEDERAL TRADE COMMISSION in the matter of:

DOCKET NO. - 5253.

CASE TITLE - NATIONAL LEAD COMPANY, et al.

PLACE - New York, N. Y.

DATE - June 26, 1946.

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which were had as therein appears, and that this is the original transcript thereof for the files of the Commission.

ELECTREPORTER, INC.
Official Reporter

By Wayne Birdsall
Vice-President.

N39103.02

1 Company, which operates from mines in the supply state area;
2 but their production is nil, so far as our own requirements
3 are concerned, and we are dependent upon the market for our
4 supplies.

5 Q Does that hold true over a period of years, say back to
6 1930 to 1935?

7 A Yes, we have never been a factor, to my recollection,
8 in the mining business.

9 Q You mentioned several suppliers of pig lead, which is
10 used in the manufacture of pigments. Could you list those
11 in the order of importance; that is to say, in the order
12 of the largest purchases that you make.

13 MR. DUBOSE: That is, of percentages, Mr. Wright?

14 MR. WRIGHT: Yes, percentages.

15 THE WITNESS: We keep the figures, Mr. Wright; and
16 while I am not connected with the metal purchasing department,
17 I don't know that I would be a competent witness on a ratio
18 basis, because all I could say would be to approximate them.
19 But I would say from the figures I have seen from time to
20 time, that our largest single source of supply would be St.
21 Joe; and of course, since Pearl Harbor, the metal reserve
22 division of the Federal Government has more or less monopol-
23 ized the distribution of pig lead. They buy, of course, from
24 the field, and we in turn are allocated in our own pig lead
25 requirements from Washington from them.

N39103.03

1 Q From the records that you have seen, and do you have any
2 other knowledge, whether the prices at which pig lead is pur-
3 chased from St. Joe, are the same as which pig lead is purchas-
4 ed from American Smelting and Refining?

5 A The market on pig lead is uniform, yes.

6 Q Can you state what lead pigments the National Lead
7 Company produces at the present time?

8 A We produce basic carbonate of white lead, which is known
9 in the trade as dry white lead. We produce basic sulphate of
10 lead, which is another type of white lead, and those are the
11 two large articles of commerce in the paint industry. And
12 then, in addition, we produce various grades of dry red lead,
13 which are used in the manufacture of red lead paints, and
14 those, in the phraseology of the trade, are the only pigments
15 we produce -- lead pigments, that is.

16 Q Does the Company also produce litharge?

17 A Yes. Litharge is an oxide, and we are also a producer of
18 litharge.

19 Q Does it produce Orange mineral?

20 A That is a very minor article of commerce, and we have pro-
21 duced orange mineral, but frankly, I don't know how long
22 ago it was.

23 Q Are any other additional pigments that the National Lead
24 Company sells purchased from others, not produced by Nation-
25 al Lead?

1 MR. EWING: You mean lead pigments?

2 MR. WRIGHT: Yes.

3 THE WITNESS: There is a product known as lead ace-
4 tate, which at one time we manufactured, but because of its
5 very minor tonnage, it is my understanding that in recent
6 years we have purchased it of another chemical company, be-
7 cause the tonnage is such a minor factor that it didn't pay
8 us to maintain its production.

9 Q Does National produce the so-called "Blue Lead" ?

10 A No, blue lead is a by-product of the smelting process,
11 and since we are not miners and smelters, we don't have ac-
12 cess to that type of material.

13 Q Does National sell, or have they ever sold it to your
14 knowledge?

15 A Occasionally, when specifications have favored blue lead,
16 in order to be competitive, we have secured it in the outside
17 market and we sold it just to keep our place in the picture.

18 Q From whom do you recall National purchasing it?

19 A I would assume it would be secured from Eagle-Picher,
20 the only known manufacturer of the material.

21 Q Am I correct in understanding that National maintains
22 factories and plants in various parts of the United States for
23 producing these various pigments?

24 A We are in production of white lead products of five
25 points, the New York area at Perth Amboy, New Jersey, Phila-

1 delphia, Chicago, St. Louis, and in the Oakland section of
2 San Francisco.

3 Q Can you state the percentage of production that is ac-
4 counted for at each one of these points?

5 MR. EWING: You mean the percentage of National's
6 production?

7 MR. WRIGHT: Yes, the percentage of National's pro-
8 duction.

9 THE WITNESS: I would say 40% at Chicago; 30% in
10 New York; and 10% at each of the other three points, Phila-
11 delphia, St. Louis and San Francisco.

12 Q At what points does National produce lead sulphate?

13 A Only in St. Louis.

14 Q Can you state briefly the process by which lead sulphate
15 is produced.

16 A Lead sulphate is a pigment that is chemically precipitat-
17 ed from lead oxide. In other words, the litharge of a proper
18 grade and fineness is precipitated in the presence of sul-
19 phuric acid, and produced as lead sulphate.

20 Q What processes of producing basic carbonate are employ-
21 ed by National?

22 A We are using three processes at the present time: The
23 Carter process, in which atomized lead or lead dust is treat-
24 ed in revolving cylinders in the presence of acetic acid and
25 carbon dioxide. And we use a Thompson-Stewart process of

1 our own development, in which lead oxide is precipitated
2 chemically in the presence of acetic acid. And at one point
3 we use the Old Dutch process, in which lead buckles or is
4 exposed in stacks in piles of tanbark, for a period of 120
5 days, developing a form of lead carbonate at the end of that
6 time by a rather natural process.

7 Q Can you state whether the resulting product is substan-
8 tially the same thing?

9 A All three products comply with Federal Specifications.

10 Q Is there any difference in these three products, produced
11 by the three?

12 A Yes, their differences are primarily for the raw material
13 customer who, for example, wants certain qualities in his pro-
14 duct. A potter ceramic manufacturer will have a different
15 requirement than a paint grinder; and the manufacturers of
16 putty will use a different grade of lead than the manufactur-
17 ers of dry colors, for example.

18 Q With respect to the basic carbonate that is sold to paint
19 manufacturers, is there any difference in quality as between
20 the carbonate produced by any of these three processes?

21 A In this respect only: That some of these pigments are
22 the finer particle size, because of their method of manufact-
23 ure, and therefore they have different characteristics for
24 the paint manufacturer in point of color and paint consis-
25 tency and tinting strength.

1 of Mines, or to the Lead Industries Association; and with re-
2 spect to Lead Industries Association, that information sup-
3 plied it by individual companies is never given out to the
4 other companies, except in a total form. In other words,
5 National's production in particular lines supplied to Lead
6 Industries Association is never passed out to any other member
7 as National's production in that line.

8 In view of the fact that it is made a practice not
9 to disclose that information, and in view of the fact that
10 it regards it as an important element of its business which
11 should be kept confidential, I feel constrained to instruct
12 the witness not to answer the question.

13 MR. WRIGHT: Well, your Honor, I would like to point
14 out that there is already in the record Commission's Exhibit
15 664, which consists of a memorandum of the sales of white
16 lead and white-lead-in-oil by The National Lead Company, the
17 total sales, which has already been received in evidence in
18 the case.

19 MR. MacINTYRE: That is one of the pigments involved
20 here. The other pigments, of course, are, I would say, no
21 more important to the position of National in its desire to
22 withhold its disclosure than would be white lead; and the
23 charges in the complaint are to the effect that the large
24 percentages of the total business in each of these disclosed
25 its monopolistic position that it holds. How else can you

1 prove that fact, in answer to the allegations of the complaint,
2 except by getting answers to the questions of the line such
3 as represented by the pending one.

4 TRIAL EXAMINER NORWOOD: It will not be necessary to
5 put anything further on the record, because the rest of the
6 talk had to be to the District Judge. The counsel has ad-
7 vised, or rather instructed and advised this witness to re-
8 fuse, and I take it that the witness does refuse on the ad-
9 vice of counsel.

10 THE WITNESS: Yes, sir.

11 TRIAL EXAMINER NORWOOD: Now the Commission's counsel
12 know they are limited. They may go to the District Court for
13 an order to make him answer, if they show it is relevant --
14 if they show its relevancy, materiality, and necessity for
15 it. In that case the Court will instruct the witness to
16 answer it.

17 By Mr. Wright:

18 Q Mr. McCarthy, has The National Lead Company received from
19 the Lead Industries Association statistics which show the
20 proportion of the production or sales of lead pigments of The
21 National Lead Company to the total production of such pig-
22 ments for the industry?

23 A We received from the Lead Industries Association total
24 industry figures, and knowing what our own figures are, we
25 can determine in our own organization by ratio what our

1 competitive position is; but we don't know what share of the
2 balance belongs to any individual competitor.

3 Q My question was: Has The National Lead Company ever re-
4 ceived such information compiled to show the percentage of
5 The National Lead Company to the total from the industry?

6 A Regularly on each month, we can tell what our share of the
7 total is.

8 MR. EWING: I move to strike that as not responsive

9 TRIAL EXAMINER NORWOOD: Read the question and answer,
10 please.

11 MR. WRIGHT: Your Honor, I accept that answer.

12 (The question and answer were read.)

13 TRIAL EXAMINER NORWOOD: Your motion to strike the
14 answer is denied.

15 By Mr. Wright:

16 Q In what form are the statistics showing the production of
17 the industry received by National Lead Company from Lead In-
18 dustries Association?

19 A A page headed by the type of product, showing the total
20 industry's production, deliveries and inventories, as of the
21 end of the month.

22 Q Does that page, as it is received from Lead Industries
23 Association, by National Lead Company, have entered upon it
24 the percentage of National Lead Company's production and
25 sales, inventories, and shipments to the total?

1 MR. DuBOSE: (Interposing) I object to that ques-
2 tion, as involving two concepts. He said Does it have en-
3 tered on it. At what stage do you mean, Mr. Wright? Do you
4 mean the way it was originally?

5 MR. WRIGHT: When it was received by The National
6 Lead Company. That was the question.

7 THE WITNESS: No.

8 By Mr. Wright:

9 Q Do you report to the Lead Industries Association your
10 total production, sales, shipments, and inventories of these
11 pigments?

12 A Yes.

13 Q At what intervals?

14 A Each month.

15 Q And is that information also reported to the Bureau of
16 Mines?

17 A I think the Bureau collects it quarterly.

18 Q Quarterly?

19 A Yes.

20 TRIAL EXAMINER NORWOOD: Now is it confidential when
21 you send it to the Association?

22 THE WITNESS: Yes, sir.

23 TRIAL EXAMINER NORWOOD: And confidential, when you
24 send it to the Bureau of Mines?

25 THE WITNESS: Yes.

1 By Mr. Wright:

2 Q Is such information disseminated to any other individual
3 or agency?

4 A Not to my knowledge.

5 Q Mr. McCarthy, will you state, as to dry basic carbonate,
6 dry lead sulfate, white-lead-in-oil, dry red lead, dry lead-
7 in-oil, and litharge, the percentage of the sales of the
8 National Lead Company during the year 1943 to the total of
9 such sales by the industry?

10 MR. EWING: I object to that question. It is similar
11 to the prior question, and I advise the witness not to answer
12 it.

13 TRIAL EXAMINER NORWOOD: I instruct the witness to
14 answer the question. His counsel advises that he need not
15 answer it.

16 Proceed with the examination. The counsel know their
17 remedy.

18 MR. EWING: I advise him not to answer.

19 By Mr. Wright:

20 Q Will you answer the question, Mr. McCarthy?

21 A No, the same reason, because those total figures are known
22 to other people in the industry, and my ratio figures then
23 apply. It would give them the identical information that I
24 prefer not to answer.

25 MR. WRIGHT: I move to strike that answer as not responsive to the question.

TRIAL EXAMINER NORWOOD: Read the question again.
(Question read by the reporter.)

ALEY

1 MR. WRIGHT: Your Honor I amend my motion to strike
2 to make it strike all after the word "no."

3 MR. EWING: I think I am entitled to have his reason
4 under the circumstances.

5 TRIAL EXAMINER NORWOOD: It might stand there for
6 the information of the court.

7 MR. WRIGHT: I submit your Honor if that information
8 is to be in the record I don't like it to be in response to
9 a question of mine.

10 TRIAL EXAMINER NORWOOD: Read the answer again.

11 (The reporter again read the answer.)

12 TRIAL EXAMINER NORWOOD: I think Mr. Wright has a point there.
13 I will allow the motion to strike everything after the word
14 "reason" there. And the answer will be to stand to this
15 effect, "No, for the same reason."

16 By Mr. Wright:

17 Q Mr. McCarthy, do you recall supplying information con-
18 cerning freight rates on various lead pigments to representa-
19 tives of the Commission in connection with an investigation
20 of the National Lead Company?

21 A I do.

22 Q Are you able to state whether the freight rates actually
23 used in the shipment of lead pigments from the National Lead
24 Company to destination of the customer would be the same
25 on red lead-in-oil or dry/^{red}lead or litharge when packed in