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1-12407

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

ACME ASBESTOS COVERING AND FLOORING COMPANY,
a corporation;
ASBESTOS, ASPHALT AND INSULATION MANUFACTURING COMPANY,
a corporation;
ATLANTIC ASBESTOS CORPORATION,
a corporation;
A. H. BENNETT COMPANY,
a corporation;
THE PHILIP CAREY COMPANY,
a corporation;
THE CLARK ASBESTOS COMPANY,
a corporation;
EMPIRE ASBESTOS PRODUCTS, INC.,
a corporation;
GILLEN-COLE COMPANY,
a corporation;
JOHNS-MANVILLE CORPORATION,
a corporation;
KEASBEY & MATTISON COMPANY,
a corporation;
L. A. RUBBER & ASBESTOS WORKS INCORPORATED,
a corporation;
G. A. MACARTHUR COMPANY,
a corporation;
NORRISTOWN MAGNESIA AND ASBESTOS COMPANY,
a corporation;
W. S. NOTT COMPANY,
a corporation;
PACIFIC ASBESTOS & SUPPLY COMPANY,
a corporation;
PLANT RUBBER & ASBESTOS WORKS,
a corporation;
THE RUBEROID CO.,
a corporation;
SALL MOUNTAIN COMPANY,
a corporation;
STANDARD ASBESTOS MANUFACTURING COMPANY,
a corporation;
DONALD TULLOCH, JR.,
an individual.

DOCKET NO. 4613

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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 named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of 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 ONE: The words and terms set out in this paragraph shall have the following meanings, wherever used in this complaint:

"Licensed materials" means the following materials which the respondents classified in the sub-license agreements which the respondent Donald Tulloch, Jr. had with the other respondents, as forming part of United States Patent No. 1,972,500:

(1) Low pressure (coarse corrugated) Aircell type asbestos pipe covering, sheets and/or blocks.

(2) Low pressure (fine corrugated) Aircell type asbestos pipe covering, sheets and/or blocks.

(3) Low pressure Laminated type asbestos pipe covering, sheets and/or blocks.

(4) Woolfelt types pipe covering.

(5) Anti-sweat type pipe covering.

(6) Frost proof type pipe coverings.

(7) High pressure Laminated type asbestos pipe covering, sheets, and/or blocks.

(8) Corrugated asbestos paper.

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(9) Asbestos paper and rollboard. (Materials so designated include all paper whose chief constituent is asbestos fiber.)

(10) Wool felt paper. (Materials so designated include all paper whose chief constituent is wool or rag fiber.)

(11) Sponge felt paper. (Materials so designated include all paper whose chief constituent is asbestos and sponge fibers.)

"Non-licensed materials" includes such items as: solid brass, zinc and lacquered bands, flexible range boiler jackets, and canvas covering.

"Toohey Patent" means United States Patent No. 1,972,500, issued on September 4, 1934, to respondent Johns-Manville Corporation as assignee of Edward A. Toohey and Earl K. Williams;

"Respondent corporations" means all of the respondents named in the caption hereof, except respondent Donald Tulloch, Jr.

PARAGRAPH TWO: Respondent, Acme Asbestos Covering and Flooring Company, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at Fulton and Elizabeth Streets, Chicago, Illinois.

Respondent, Asbestos, Asphalt and Insulation Manufacturing Company, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at 2100 West Fullerton Avenue, Chicago, Illinois. (It is the successor to the Illinois Philip Carey Company.)

Respondent, Atlantic Asbestos Corporation, is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business being located at 2128 Westchester Avenue, Bronx, New York. It was organized on January 1, 1939, when it succeeded to the business, assets, good will, etc. of J. Ozurovitch, Inc. On such succession it adopted, accepted, approved, and became a party to any and all of the agreements hereinafter set out which may have been entered into by its predecessor, J. Ozurovitch, Inc.

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Respondent, A. H. Bennett Company, is a corporation organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at 113 First Street, North, Minneapolis, Minnesota.

Respondent, The Philip Carey Company, is a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business being located at Lockland, Cincinnati, Ohio.

Respondent, The Clark Asbestos Company, is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business being located at 1893 East 55th Street, Cleveland, Ohio.

Respondent, Empire Asbestos Products, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business being located at the Atlas Terminal, Glendale, Long Island, New York.

Respondent, Gillen-Cole Company, is a corporation organized and existing under the laws of the State of Oregon, with its office and principal place of business being located at 714 S. W. Front Avenue, Portland, Oregon.

Respondent, Johns-Manville Corporation, is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business being located at 22 East 40th Street, New York, New York.

Respondent, Keasbey & Mattison Company, is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business being located at Ambler, Pennsylvania.

Respondent, L. A. Rubber & Asbestos Works Incorporated, is a corporation organized and existing under the laws of the State of California, with its office and principal place of business being located at 124 East Third Street, Los Angeles, California.

Respondent, G. A. MacArthur Company, is a corpora-

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tion organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at 2387 Hampden Avenue, St. Paul, Minnesota. This corporation was organized in February, 1913, under the name of Twin City Pipe Covering Company, which corporation was changed to its present form in May, 1931.

Respondent, Norristown Magnesia and Asbestos Company, is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business being located at Norristown, Pennsylvania.

Respondent, W. S. Nott Company, is a corporation organized and existing under the laws of the State of Minnesota, with its office and principal place of business being located at Second Avenue, North, and Third Street, Minneapolis, Minnesota.

Respondent, Pacific Asbestos & Supply Company, is a corporation organized and existing under the laws of the State of Oregon, with its office and principal place of business being located at S. W. Front and Clay Streets, Portland, Oregon.

Respondent, Plant Rubber & Asbestos Works, is a corporation organized and existing under the laws of the State of California, with its office and principal place of business being located at 537 Brannan Street, San Francisco, California.

Respondent, The Ruberoid Co., is a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business being located at 500 Fifth Avenue, New York, New York.

Respondent, Sall Mountain Company, is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business being located at 70 Pine Street, New York, New York.

Respondent, Standard Asbestos Manufacturing Company, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business being located at 820-822 West Lake Street, Chicago, Illinois.

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Respondent, Donald Tulloch, Jr., is an individual, having his principal office and place of business on the 16th floor of the Inquirer Building, Philadelphia, Pennsylvania.

PARAGRAPH THREE: Respondent corporations manufacture and sell approximately from 80 per cent to 90 per cent of the low pressure asbestos pipe covering manufactured and sold in the United States, with respondents Johns-Manville Corporation and The Philip Carey Company manufacturing and selling approximately 50 per cent of same. Both licensed and unlicensed materials are embodied, involved, and employed in the manufacture, use, and sale of such covering.

Some of respondent corporations manufacture some or all of their licensed and unlicensed materials and convert same into low-pressure asbestos pipe covering, while the other respondent corporations, which are known in the trade as "winders," purchase some or all of said materials from those respondent corporations which manufacture same, and then convert them into such covering.

To the extent that the respondent corporations act collusively and collectively in the pricing and sale of such covering and materials, they are in a position to dominate and control the prices at which same must be purchased by the purchasers and users thereof throughout the United States.

PARAGRAPH FOUR: In the course and conduct of their respective businesses, each of respondent corporations sells and distributes licensed and unlicensed materials and the asbestos covering, which are manufactured or converted by it, to the purchasers thereof located in the various states of the United States and in the District of Columbia, and in connection with such sales, transports or causes to be transported said products to such purchasers located in the various states of the United States other than the state or origin of said shipments and in the District of Columbia. The said respondent corporations have maintained, and still do maintain, a regular current of trade in such products in commerce between and among the various states of the United States, and in the District of Columbia.

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PARAGRAPH FIVE: Respondent, Donald Tulloch, Jr., (referred to herein as "respondent Tulloch") aided, abetted, furthered, cooperated with, and was an instrumentality of, and a party to, the understanding, agreement, combination and conspiracy hereinafter set out, and actively participated in the performance of some, if not all, of the acts and things hereinafter set out, which were done for the purpose of making said agreement, understanding, combination, and conspiracy effective, and of requiring compliance therewith by respondent corporations.

PARAGRAPH SIX: Each of respondent corporations has been, during the various times herein set forth, and some of them still are, in competition with one or more of the other respondent corporations in making and seeking to make sales in commerce between and among the various states of the United States and in the District of Columbia, of some or all of the licensed and unlicensed materials, and also of the low-pressure pipe covering embodying some or all of such materials, except in so far as such competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination and conspiracy and the methods, policies, and practices done in pursuance thereto and in furtherance thereof, as hereinafter set forth.

PARAGRAPH SEVEN: During the year 1931, application was made for respondent Johns-Manville Corporation for the Toohey patent which contained claims embodying the licensed materials and for an air-cell asbestos which, by the insertion of a wax "sizer," would make the asbestos covering both water repellent and moisture proof. Such asbestos is used primarily for low-pressure pipe covering. This patent was granted on September 4, 1934, and as part of, and an incident to, the agreement, understanding, combination, and conspiracy hereinafter set forth, respondent Johns-Manville Corporation did, on September 11, 1935, grant to respondent Tulloch an exclusive license to make, use, and sell, and exclusive right to issue non-exclusive licenses to others to use and sell the materials and products covered by the Toohey patent.

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PARAGRAPH EIGHT: Prior to and during the year 1934, respondents Tulloch, Johns-Manville Corporation, The Philip Carey Company, Norristown Magnesia and Asbestos Company, together with some of the other respondent corporations, entered into an unlawful agreement, understanding, combination and conspiracy for the purpose, intent, and with the effect of substantially restricting, suppressing and eliminating actual and potential competition in price and otherwise in the sale and distribution in commerce between and among the various states of the United States and in the District of Columbia, of both licensed and unlicensed materials and also of the low-pressure asbestos covering embodying some or all of such materials. Thereafter, during the years 1935 and 1936, those respondent corporations which originally did not enter into said agreement, understanding, combination, and conspiracy, did, from time to time, adopt, join in, and become parties to same, and all of the respondents named in the caption hereof did, after they entered into, joined in or became parties to said agreement, understanding, combination, and conspiracy, by concerted action and in cooperation with one another, carry out, enforce, and maintain same and did perform some, or all of the acts and practices done in furtherance of said agreement, understanding, combination, and conspiracy, and in pursuance thereto, as herein alleged; and respondents Tulloch, Johns-Manville Corporation and The Philip Carey Company are still carrying on, enforcing, and maintaining said agreement, understanding, combination, and conspiracy, and are performing many, if not all, of the methods, policies, and practices done in furtherance thereof and in pursuance thereto, as herein alleged.

PARAGRAPH NINE: Pursuant to, in furtherance of, and to effectuate, the said agreement, understanding, combination and conspiracy, respondent corporations and respondent Tulloch, cooperatively and concertedly, formulated, adopted, performed, and put into effect, among others, the following collusive methods of competition, policies, and trade practices:

(1) Fixing and maintaining the prices at which, and the conditions under which, both licensed and unlicensed materials are offered for sale, and sold, by respondent corporations to the various purchasers and users thereof;

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(2) Requiring and adopting a uniform method of computing and fixing the prices at which said licensed and unlicensed materials are offered for sale, and sold, by respondent corporations to the various purchasers and users thereof, through the use by respondent corporations of a so-called "Manual of Unit Prices for Pipe Covering and Insultating Blocks," and by other means and methods;

(3) Adopting and using uniform definitions of various classes of purchasers of said materials, so that respondent corporations all classify their respective customers in the same manner for pricing purposes;

(4) Fixing, establishing, and maintaining fixed differentials in prices between different classes of customers;

(5) Adopting and maintaining, by respondent corporations, uniform contracts for the sale of said materials by respondent corporations;

(6) Adopting and maintaining by respondent corporations a system of selling said materials at delivered prices only, which system is designed to prevent, and does prevent, the differences in the cost of freight delivery from the respective places of business of respondent corporations to those of purchasers of such materials, from creating any advantage or disadvantage in price to said purchasers without regard from which of respondent corporations such purchasers may desire to purchase said materials. Such system of identical delivered prices is predicated upon the use by respondent corporations of so-called basing points, whereby the delivered prices on said materials shipped from the widely separated places of business of respondent corporations are calculated as though shipments were made from a single point or points having a common freight rate or common delivery cost to any given destination;

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(7) Adopting and maintaining a plan whereby the United States is divided into certain price zones, so that the purchasers from all the respondent corporations within a designated price zone or area, regardless of the varying costs of delivery from the places of business of respondent corporations to the places of business of such purchasers, are quoted and charged the same delivered prices on said materials sold by respondent corporations;

(8) Simultaneously shifting particular localities or states from one delivered price zone in the United States to another such zone;

(9) Establishing standards for the size and thickness of said materials and also of low-pressure asbestos covering embodying some or all of said materials, and fixing differentials in price between said materials or coverings of different sizes or thickness;

(10) Discussing and adopting, before the granting of the Toohey patent on September 4, 1934, at meetings attended by respondent corporations and respondent Tulloch, a merchandising plan to be used, and which was used, by respondent corporations for the sale by said corporations of both licensed and unlicensed materials and also of low-pressure pipe covering embodying some or all of such materials, under which merchandising plan respondents specifically agreed, among other things, upon

(a) The classification of buyers from respondent corporations of said materials and covering, in order to determine the discounts and prices which customers of said corporations, so classified, were to receive;

(b) The zoning of the various states of the United States for pricing

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purposes, in order to nullify and neutralize differences in freight rates on said materials and coverings;

(c) The terms and conditions of sale which respondent corporations should, and did, follow in the sale of said materials and of said covering;

(d) The imposition of rigid control of the prices respondent corporations charge their purchasers for said materials and said coverings under threat of the imposition of penalties against said respondent corporations for any digressions therefrom;

(e) The arrangement for the appointment by each respondent corporation of a limited number of distributional accounts which were to be given, and were given, certain stated special discounts;

(f) The filing of price lists on said materials and covering, by respondent corporations, with respondent Tulloch, which price lists contained the delivered prices for and within the various price zones;

(11) Discussing and agreeing upon, in meetings, by correspondence, and by other means and methods, a proposed form of licensing agreement between respondent Johns-Manville Corporation and respondent Tulloch regarding the use and sale of the licensed materials and products covered by the Toohey patent, a form of sub-license agreement between respondent Tulloch and respondent corporations regarding the same subjects and a schedule of prices, terms, and conditions of sale of licensed materials by respondent corporations under such a sub-license agreement;

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(12) Entering into and carrying out said licensing agreement between respondent Johns-Manville Corporation and respondent Tulloch, and also entering into and carrying out such non-exclusive sub-license agreements between respondent Tulloch and respondent corporations, under the terms of which sub-license agreements respondent corporations are required to sell the licensed materials according to the schedule of prices, terms, and conditions of sale which are fixed by agreement among said respondents;

(13) Adopting by respondent corporations, as an integral part of said sub-license agreements which said respondent corporations had with respondent Tulloch, a merchandising plan substantially identical with the plan hereinbefore set out in subparagraph (10) of this paragraph, with respondent Tulloch managing and supervising the operation and enforcement of same and also imposing penalties upon respondent corporations for failure to sell either the licensed or unlicensed materials at the delivered prices provided for in said plan;

(14) Discussing and agreeing in advance, as to the changes and amendments to be made to sub-license agreements which respondent Tulloch had with respondent corporations for the sale by said corporations of both licensed and unlicensed materials, before respondent Tulloch actually announced such changes and amendments;

(15) Agreeing upon the inclusion of unlicensed materials to be covered by said merchandising plan and thereby fixing the prices, terms, and conditions of sale of said materials.

PARAGRAPH TEN: As an incident to, and a necessary result of, respondent corporations' agreement to use, and their use of, the basing point system of delivered prices, delivered prices were made identical within certain zones or areas defined by respondent corporations through agreements and understandings among said respondent corporations, notwithstanding differences in the actual freight from their respective places of business to various

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destinations within the same zone or area. As a further incident and necessary result, respondent corporations have habitually and systematically demanded, charged, accepted and received within the same delivered price zones and in other such zones, larger sums per unit of product from their customers located near their respective places of business than from their other customers located at greater distances within the same zones and in other such zones, and have thereby forced their nearby customers to pay more to respondent corporations for the licensed and unlicensed materials and the low-pressure pipe covering embodying such materials, in order that the more distant customers within the same area might pay less, thus depriving the nearby customers of any price advantage, which otherwise they would have by reason of their proximity to the places of production.

PARAGRAPH ELEVEN: Each of respondent corporations has acted, and some still act, in concert and cooperation with one or more of the other respondent corporations, by means of, and through, respondent Tulloch, or by, and through, other means and methods, in doing and performing the methods, policies, practices, and agreements hereinbefore set forth.

PARAGRAPH TWELVE: The methods, policies, practices, and agreements of respondents, as herein alleged, are all to the prejudice of actual and potential competitors of respondent corporations and of the public; have a dangerous tendency to, and have actually, hindered and prevented competition in commerce, between and among the various states of the United States and in the District of Columbia in the sale of both licensed and unlicensed materials and of low-pressure pipe covering embodying some or all of such materials; have unreasonably restrained such commerce in said products; have a dangerous tendency to create in respondent corporations a monopoly in the sale and distribution of such products, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 10th day of October , A.D., 1941, issues its complaint against all of the respondents named in the caption hereof, reciting its charges in that respect as hereinabove set out.

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NOTICE

Notice is hereby given you, Acme Asbestos Covering and Flooring Company, a corporation; Asbestos, Asphalt and Insulation Manufacturing Company, a corporation; Atlantic Asbestos Corporation, a corporation; A. H. Bennett Company, a corporation; The Philip Carey Company, a corporation; The Clark Asbestos Company, a corporation; Empire Asbestos Products, Inc., a corporation; Gillen-Cole Company, a corporation; Johns-Manville Corporation, a corporation; Keasbey & Mattison Company, a corporation; L. A. Rubber & Asbestos Works Incorporated, a corporation; G. A. MacArthur Company, a corporation; Norristown Magnesia and Asbestos Company, a corporation; W. S. Nott Company, a corporation; Pacific Asbestos & Supply Company, a corporation; Plant Rubber & Asbestos Works, a corporation; The Ruberoid Co., a corporation; Sall Mountain Company, a corporation; Standard Asbestos Manufacturing Company, a corporation; Donald Tulloch, Jr., an individual, respondents herein, that the 14th day of November, A. D., 1941, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

> In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

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Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington D. C., this 10th day of October, A. D., 1941.

By the Commission.

Otis B. Johnson,
Secretary

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