

C O N T E N T S

Witnesses

FOR THE RESPONDENT

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J. M. Bowlby

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W. H. Hayt

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FOR THE RESPONDENT

FOR IDENTIFICATION IN EVIDENCE

No. 196

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OFFICIAL TRANSCRIPT OF HEARINGS
BEFORE THE
Federal Trade Commission

DOCKET No. 5253

IN THE MATTER OF: NATIONAL LEAD COMPANY, a corporation, et al.

PLACE: Washington, D. C.

DATE: September 18, 1947

PAGES: 3631 to 3689

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DOCKET NO. - 5253
CASE TITLE - NATIONAL LEAD COMPANY, a corporation, et al.
PLACE - Washington, D. C.
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transcript thereof for the files of the Commission.

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Official Reporter

By Donald L. Tepper, owner
(Title of Official)

N39106.02

1 of the Eagle-Picher Company?

2 A Well, just the normal duties that inure to an office of
3 chief executive of a company of our size and breadth of
4 activity.

5 Q Do you attempt to run any of those divisions individually?

6 A Oh, no.

7 Q Are you familiar with the general policy in those divi-
8 sions?

9 A Yes.

10 Q Now, at the time you made the survey for the company which
11 led to the changes of July 1, 1937, did you familiarize your-
12 self with the competitive policy of the company to the extent
13 necessary for that survey?

14 A I did.

15 Q And when you became president of the company in September,
16 1941, did you further familiarize yourself with competitive
17 policies?

18 A I have, since becoming president, kept myself informed on
19 competitive policies of the various divisions.

20 Q What was your purpose in familiarizing yourself with those
21 policies?

22 A Something that is obviously necessary to an understanding
23 of the business and the establishment of other general poli-
24 cies which are dependent upon the competitive position of the
25 company.

1 Q. Now, did you at any time find any agreements or under-
2 standings between your company and National Lead Company, or
3 any of the other companies engaged in the sale of lead pig-
4 ments, affecting prices or terms or conditions of sale?

5 A. No, I never found any such agreements.

6 Q. At the time you became president of the company, were you
7 concerned in any respect as to whether such agreements ex-
8 isted or not?

9 A. No, I don't believe it ever crossed my mind that such
10 agreements might exist.

11 Q. If you had found any such agreements, what would have
12 been your policy in respect to them?

13 A. Well, I certainly would have looked into their propriety,
14 and if I had found that there were any improper agreements of
15 that nature in existence, I would have taken the necessary
16 steps to terminate them.

17 Q. Were you particularly conscious at that time of the
18 activity of the anti-trust division of the Department of Jus-
19 tice?

20 MR. WRIGHT: Objection, Your Honor. I don't see
21 that that has any relevancy in this matter.

22 TRIAL EXAMINER NORWOOD: Well, I think that is a
23 leading question.

24 MR. WOOD: I think it is a proper question, because
25 Thurman Arnold's campaign was at its height at that time, and

1 every executive in the country was feeling very responsible
2 as to his position in regard to the anti-trust laws; every-
3 body was.

4 TRIAL EXAMINER NORWOOD: What time was that?

5 MR. WOOD: September, 1941.

6 MR. WRIGHT: Counsel has supplied the answer that
7 he hoped to get from that very leading question.

8 TRIAL EXAMINER NORWOOD: I think it is a leading
9 question, but I think he may bring out the fact that he kept
10 up with the law and the conditions respecting trade agree-
11 ments, and so forth.

12 MR. WRIGHT: Your Honor, I am not objecting so much
13 because of the fact that it is leading, but it is an absolute-
14 ly irrelevant matter. Knowledge has no part in this proceed-
15 ing. The fact that the Sherman Act is on the statute books
16 and has been since 1890 is a well known fact to everyone con-
17 nected with the business.

18 MR. WOOD: As president of the respondent corpora-
19 tion, I think the witness should have the greatest freedom in
20 testifying to his own state of mind.

21 TRIAL EXAMINER NORWOOD: I think they have been
22 allowed in all these cases to state their mental attitude to-
23 ward this situation. I will overrule the objection. Let
24 him answer.

25 MR. WOOD: Will you read the question to the witness,

1 please?

2 (The pending question was read by the reporter.)

3 A Yes, I was.

4 By Mr. Wood:

5 Q Now, what is the general competitive problem of the
6 Eagle-Picher Company?

7 A The Eagle-Picher Company is not a leader in any one of
8 its respective lines. In several instances it is second in
9 the field, and in the case of other products it ranks farther
10 down the scale. But I make the point that not being a leader
11 in any one of the lines, it is not in position to dictate the
12 selling price policy in any of the fields in which it operates.
13 It must follow rather than lead.

14 Q In the insulation field, who is your principal competi-
15 tor?

16 A There are many. Johns-Manville is probably the princi-
17 pal one.

18 MR. WRIGHT: I object to further questions along
19 the line of insulation, Your Honor, as irrelevant and immu-
20 terial to this case.

21 MR. WOOD: I am not pursuing the matter, Mr. Wright.
22 I am just trying to bring out the fact that there is a general
23 problem of the company in respect to which it has a formulated
24 policy.

25 TRIAL EXAM INER NORWOOD: I think he wants to give

1 us a complete picture of this company in throwing light on
2 its various activities.

3 By Mr. Wood:

4 Q. Now, who is your principal competitor in the sale of
5 zinc products?

6 A. New Jersey Zinc Company, with some substantial competi-
7 tion from St. Joseph Lead Company and American Zinc, Lead &
8 Smelting Company.

9 Q. And who is your principal competitor in the sale of lead
10 pigments?

11 A. National Lead Company.

12 Q. And who is your principal competitor in the sale of lead
13 products?

14 A. National Lead Company and Federated Metals Division of
15 American Smelting & Refining Company.

16 Q. Is it your company's policy to compete in any of these
17 fields by means of price wars?

18 A. No.

19 Q. How would you define a price war?

20 A. A situation in which competing companies are constantly
21 lowering prices to gain a larger segment of the available
22 business.

23 Q. Now, if the second largest company in a given field com-
24 mences a price war, what is the probable result, in your
25 opinion?

1 A. It will lose money and ultimately the more strongly
2 entrenched company will win out in the war.

3 Q. If you lower a price below your competitor's price, how
4 long is that competitive advantage likely to last?

5 A. Not any longer than it takes the competitor to lower his
6 price below ours.

7 Q. Does your company compete with the National Lead Company
8 in the sale of lead pigments?

9 A. It does.

10 Q. How does it do it?

11 A. By endeavoring to maintain a higher quality in its pro-
12 ducts and to give services to its customers over and beyond
13 that given by its major competitors.

14 Q. If your company does have superiority of product in this
15 respect to a competitor, is that an advantage to your company?

16 A. Obviously.

17 Q. Why, in spite of the fact that you said "obviously"?

18 THE WITNESS: Will you read the previous question?

19 TRIAL EXAMINER NORWOOD: Will you read the question?

20 (The question was read by the reporter.)

21 THE WITNESS: A superior product available at the
22 same price will sell more readily than the inferior product
23 available at that price.

24 By Mr. Wood:

25 Q. Can your competitor match that product, necessarily?

1 A. Not necessarily.

2 Q. Has your company engaged in any research activities?

3 A. Yes, we have very extensive research facilities, both
4 local plant facilities and central research activities.

5 Q. What if any is the relationship between your research
6 activities and your competitive policy?

7 A. One of the major objectives of the research organization
8 is to strive constantly to improve our products and to work
9 with our customers in producing a product that will meet their
10 requirements or will enable them to improve their products
11 through the use of our products.

12 Q. Has your company engaged in any institutional advertis-
13 ing?

14 A. Yes. That is one of the things that I have done since
15 I became president of the company, inaugurating a program of
16 institutional advertising.

17 Q. What is the general scope of that program, or I had better
18 say, what has been the general scope of that program?

19 A. It has varied from year to year as to the media employed,
20 but its principal purpose has been to acquaint the business
21 and financial community with the Eagle-Picher group of com-
22 panies, their financial strength and stability, and inci-
23 dentally, with the products which Eagle-Picher manufactures
24 and which by reason of their limited consumer use are very
25 frequently unknown to the general public.

1 Q. In what magazines have you advertised, in general?

2 A. Time, News Week, Collier's, Wall Street Journal, Chicago
3 Journal of Commerce.

4 Q. Is it your opinion that that type of advertising has any
5 effect on customer acceptance of your products?

6 A. I think it has a very material effect.

7 Q. Is that type of advertising intended to increase your
8 business in local areas or nationally?

9 A. Nationally.

10 Q. Is it the policy of your company to compete on a national
11 basis?

12 A. Yes.

13 Q. Did you read the testimony which Mr. Goetz and Mr.
14 Harner and Mr. Chubb gave before the Commission in July?

15 A. I have read Mr. Goetz's and Mr. Harner's testimony. I
16 do not recall that I read Mr. Chubb's.

17 Q. Does their testimony represent the type of service and
18 help which it is your policy to give the customer?

19 MR. WRIGHT: Objection, Your Honor. If this wit-
20 ness is going to testify as to the type of activities that
21 counsel is referring to in this question, he should testify to
22 them directly himself rather than by adoption of another wit-
23 ness' testimony when he has not even been in the room when it
24 was given.

25 TRIAL EXAMINER NORWOOD: I think it would save a