

C O N T E N T S

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FTC
5253
10-3-46

Witnesses

FOR THE COMMISSION

DIRECT CROSS REDIRECT RECROSS

Hayt, William H.	1547
Zoller, Miles M.	1563

Exhibits

COMMISSION'S

FOR IDENTIFICATION IN EVIDENCE

838-A thru -C	155
838-D, 838-D-1, 838-D-2, (previously identified as 838-D on 10-2-46)	1584
838-E, 838-E-1, 838-E-2, (previously identified as 838-E on 10-2-46)	1584
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839 (Not used)	-
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N39105

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
Federal Trade Commission

DOCKET No. 5253

In the Matter of: NATIONAL LEAD COMPANY, ET AL.

Place Washington, D. C.

Date October 3, 1946

Pages 1546 to 1621

ELECTREPORTER, INC.,

(WARD & PAUL)

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N39105.01

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 - Washington, D. C.

DATE - October 3, 1946

PAGES NUMBERED 1546 to 1621 INCLUSIVE:

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 Birdsell
Vice-President.

N39105.02

1 A No.

2 Q Mr. Hayt, in selling keg products on the basis of this
3 zone map, how do you handle the freight charge where there is
4 an element of transportation by the carrier involved? Is
5 customarily the freight paid by Eagle-Picher, or does the
6 customer pay it, and an allowance made for it?

7 A Generally speaking, the customer pays the freight, and
8 an allowance is made for it.

9 Q Mr. Hayt, what brands are your white lead in-oil sold
10 under?

11 A The Eagle Brand, and Hammer Brand.

12 Q Is the Hammer Brand sold to dealers at the same price as
13 the Eagle Brand?

14 A No, the Hammer Brand has been consistently, I believe,
15 sold at a quarter of a cent a pound less than the Eagle Brand.

16 Q How do the resale prices suggested by Eagle-Picher Company
17 compare on the two brands?

18 MR. WOOD: I object to the question. There is no
19 evidence in the record that Eagle-Picher has any policy of
20 controlling resale prices.

21 MR. WRIGHT: I withdraw the question, your Honor.

22 TRIAL EXAMINER NORWOOD: All right, go ahead.

23 By Mr. Wright:

24 Q Mr. Hayt, has the Eagle-Picher Company, in the period from
25 1937 to 1943, suggested to dealers the resale prices at which

2101 they sell Hammer and Eagle brands of white lead in-oil?

2 A That is right.

3 MR. HINDS: I object, your Honor, on the ground it
4 is immaterial. It has been repeatedly held there is nothing
5 illegal about suggesting retail prices, as long as there is
6 no agreement.

7 MR. WRIGHT: Your Honor, the only purpose of the
8 question is to lay the foundation for the question which was
9 objected to.

10 TRIAL EXAMINER NORWOOD: Objection overruled. Read
11 the question and answer.

12 (Question and answer read by the reporter.)

13 By Mr. Wright:

14 Q In other words, they have suggested the resale price?

15 A Yes.

16 Q Was there a similar differential between the suggested
17 resale prices as to the two brands?

18 A No.

19 Q In other words, the dealer was requested to resell the
20 Hammer brand at the same price?

21 A He was not requested.

22 Q Required?

23 A He was not required.

24 Q Was it suggested by Eagle-Fischer that he resell at the
25 same prices?

rll 1 A That is right.

2 Q Mr. Hayt, does the Eagle-Picher Company supply statistics
3 on production and shipments of lead pigment to the Lead
4 Industries Association?

5 A Yes.

6 Q Do they receive from the Lead Industries Association
7 statistics compiled as to the whole industry showing total
8 shipments and sales?

9 A A summarized report.

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SHACK(3)
WLC

1 Q So you were able to ascertain your exact position
2 with reference to the remainder of the industry?

3 A That is right.

4 Q I call your attention to Commission's Exhibit 669,
5 which has been identified as statistics showing the percent-
6 age of production by the various lead producers of both
7 dry white lead and white lead in-oil for the years 1938,
8 1939, 1940 and 1941, produced by Mr. Wormser of the Lead
9 Industries Association. The figures in the column under
10 "Eagle-Picher" appear to be combined figures of dry and in-
11 oil percentages.

12 Can you state the approximate percentage of production
13 of the Eagle-Picher Company of white lead in-oil for those
14 four years?

15 A You mean our percentage of the total business?

16 Q Yes, sir.

17 A Well, I feel, as has been said before in this case,
18 that that is confidential information in the presence of
19 competitors. I would just as soon state it without the
20 competitors present.

21 TRIAL EXAMINER NORWOOD: I think he asked you
22 if, from those figures, you could compute that percentage?

23 THE WITNESS: I could compute it, yes, sir.

24 By Mr. Wright:

25 Q Mr. Hayt, I call your attention to Commission's Exhibit

WLC2

1 665 and ask you if you recognize that document, which has
2 been identified as being obtained by Mr. Dunn of the
3 Federal Trade Commission from you, showing your dollar
4 volume of sales of both white lead in-oil and dry white
5 lead in 1940.

6 A Yes, that is my handwriting.

7 Q At that time you apparently had no reluctance to state
8 these figures.

9 A To whom.

10 Q To the representative of the Federal Trade Commission.

11 A I still have no reluctance to state it to the Federal
12 Trade Commission.

13 TRIAL EXAMINER NORWOOD: You do not want to tell
14 the world about it?

15 THE WITNESS: That is right.

16 By Mr. Wright:

17 Q Do I understand then that you refuse to state the per-
18 centage of production of Eagle-Picher during those years
19 to the total of the industry?

20 A Not to you.

21 MR. WOOD: If the witness is requested by the
22 Trial Examiner to give the information he is instructed by
23 counsel to answer the question.

24 MR. WRIGHT: Your Honor, I request that the witness
25 be instructed to answer the question. Certainly it is

WLC3

1 relevant material and competent to the issues in this case,
2 which involve specific charges relating to the percentages
3 of production of the various respondents.

4 TRIAL EXAMINER NORWOOD: Read the question.

5 (The question was read by the reporter.)

6 TRIAL EXAMINER NORWOOD: I will ask the counsel
7 to reframe the question now that he wants to ask, that is,
8 the question that elicits this information that he wants
9 to ask about, so as to be clear.

10 By Mr. Wright:

11 Q Mr. Hayt, will you please state the percentage of the
12 production and sales of the Eagle-Picher Company of white
13 lead in-oil to the total for the industry during 1938?

14 TRIAL EXAMINER NORWOOD: Now, that is the question
15 that the witness expresses a reluctance to answer. I will
16 hear from the counsel as to its relevancy.

17 MR. WRIGHT: Well, your Honor, the complaint in
18 this matter charges the National Lead Company specifically
19 with monopolizing the industry and charges the respondents
20 as a group with a combination in restraint of trade. The
21 complaint makes positive allegations as to the percentages of
22 control by each of these various respondents. It is apparent
23 that we cannot get at the heart of the issue raised by that
24 portion of the complaint without obtaining this information
25 from these respondents.

WLC4

1 TRIAL EXAMINER NORWOOD: I see.

2 MR. WRIGHT: As was testified yesterday by a repre-
3 sentative of the Bureau of Mines these statistics have been
4 turned over to that Bureau as confidential and they refuse
5 to disclose them without the consent of the respondents.

6 TRIAL EXAMINER NORWOOD: I will instruct the witness
7 to answer the question.

8 THE WITNESS: What was the year involved?

9 MR. WRIGHT: 1938.

10 MR. WOOD: The product was white lead in-oil?

11 MR. WRIGHT: The product was white lead in-oil.

12 THE WITNESS: I do not know that I can answer
13 specifically for that year, but I can tell you approximately.

14 By Mr. Wright:

15 Q That will be sufficient.

16 A It was probably about 15 or 16 percent of the total.

17 Q What about the year 1937?

18 A You are drawing fine lines, as far as my memory is con-
19 cerned. I would say approximately the same.

20 Q Would it be fair to say, Mr. Hayt, that it has been
21 approximately that percentage?

22 A Yes.

23 Q Over what period of time?

24 A I would say it varied probably from between 15 and 20
25 percent over a period perhaps from 1930 to the present time.

1 Q I see.

2 What about with reference to dry white lead, basic
3 carbonate?

4 A About 10 percent plus or minus 2 percent either way.

5 Q Would that be over the same period?

6 A Yes.

7 Q From 1930 on?

8 A Yes.

9 Q Would you know those figures in the same way with
10 reference to basic sulphate?

11 A I have nothing to do with the sale of basic sulphate.

12 Q Would you know those approximate percentages as to
13 dry red lead and red lead in-oil and keg products?

14 A They are such minor factors in our total sales that it
15 would be pretty difficult to give you any figures on those.

16 Q Does Eagle-Picher also produce blue lead?

17 A Yes.

18 Q Is it the only producer of blue lead?

19 A I believe at the present time they are the only pro-
20 ducer. They have not always been.

21 Q Is orange mineral sold as a keg product?

22 A There is no sale for orange mineral in small packages.

23 Q Where does the Eagle-Picher Company obtain the corroding
24 lead that it uses in its white lead production in Cincinnati?

25 A Most of it comes from the U.S. Smelting and Refining at

1 East Chicago, Indiana.

2 Q In other words, Eagle acquires its corroding lead on the
3 open market, is that correct?

4 A That is correct.

5 Q Eagle is also a large producer of pig lead, is it not?

6 A I would not say a large producer in relation to the
7 general field.

8 Q Its production of lead is in the dry state field, is it?

9 A That is right.

10 Q In and around Joplin?

11 A Yes, in the Tri-state District of Missouri, Kansas
12 and Oklahoma.

13 Q Mr. Hayt, you mentioned that prior to the inauguration
14 of the zone method you sold on warehouse and differential or
15 equalization points. I show you Commission's Exhibits
16 513-C and -D which are headed "List of Differentials
17 and Points to which They Apply in Territory East of the
18 Mississippi"; and D, "in Territory West of the Mississippi."

19 Is that the type of point differential that was employed
20 prior to the use of the zone method of Eagle-Picher?

21 A I do not recall ever seeing that document before.
22 When the job and equalization point system was in effect
23 I was not in the white lead division, so I know about that
24 only by hearsay, but my recollection is that the set-up was
25 very much more involved than is indicated there.