

Hearing Room,
Federal Trade Commission,
Washington, D. C.,
September 16, 1947.

ent, at 10:00 a.m.

Examiner.

for the Respondent National
10 Broadway, New York, New

Richard Serviss, Attorney
le-Picher Sales Company and
Company. (American Build-
)

orney for Respondents Ana-
Company and International
Company. (120 Broadway,
.)

y for Respondent The Sher-
7. (815 15th Street, N. W.,

aul R. Dixon, attorneys for
mission.

INGS.

The hearing will come to

se 23rd of July, 1947, hear-
vened at 10 o'clock a. m.,
47, in Room 332, Office of
Washington, D. C.

peared:

aBose appearing for the

l Serviss appearing for
le-Picher Sales Company.

Henry E. Gardiner appearing for Anaconda Copper
Mining Company and International Smelting & Refining
Company.

James T. Welch appearing for The Sherwin-Williams
Company.

Joseph S. Wright and Paul R. Dixon appearing for the
Federal Trade Commission.

You may call your witness.

Mr. Gardiner: If Your Honor please, I would like to
call Mr. Frank Hurless.

FRANK H. HURLESS was thereupon called as a witness
for the respondent International Smelting & Refining
Company and, having been first duly sworn, testified as
follows:

3487 Direct Examination by Mr. Gardiner.

Q. Will you please state your name and address?

A. Frank H. Hurless, Lowell, Indiana.

Q. At the present time, what is your occupation?

A. At the present time I am employed by the Interna-
tional Smelting & Refining Company in the Midwest area
as a special representative. My duties consist right now
mainly in the purchase of copper scrap for refining at Ana-
conda, Montana, and Perth Amboy, New Jersey.

Q. When were you first employed by that company?

A. In 1922.

Q. Will you kindly outline your activity with the Inter-
national Smelting & Refining Company from that date down
to the present, giving your various assignments with the
company?

A. At first I was employed as a checker in the construc-
tion of a zinc oxide plant at Akron, Ohio.

Q. What time was that, when, what year?

A. 1922. My duties consisted in checking on the use
of supplies and materials and the labor used in construct-
ing the plant, as the construction was on a cost-plus basis.
Subsequently I was in charge of the small plant office at
Akron, Ohio.

In 1927 I began part-time sales work, and about 1929, as
I recall it, I began full-time sales work.

3488 In 1929 I was transferred to the main office at
East Chicago, Indiana.

In 1930, I was made district salesmanager and had charge of the dry white lead and zinc oxide sales in the Midwest area.

In 1936 I was made assistant salesmanager, and had charge of the sale of dry white lead, white lead and oil, and zinc oxide.

While assistant salesmanager, I virtually had charge of the sales of all territories, inasmuch as our official salesmanager, who was located in Akron, Ohio, had other duties which prevented him from giving full time to sales work.

Then in 1938 I was made salesmanager, and had full charge of the sale of dry white lead, white lead and oil, and zinc oxide in all territories.

Q. When did you first have anything to do with the sale of white lead and oil?

A. In 1931.

Q. The amended complaint in this proceeding defines lead pigments as the lead pigment commonly known in the industry as white lead, both basic carbonate and basic sulphate of lead, blue lead, red lead, or red oxide of lead, litharge or monoxide of lead, orange mineral and grinders' lead paste, such pigments as marketed either as dry products in the form of dry powder or in oil, in the form of a paste, after mixture with linseed or other oils.

What products covered by this definition have been produced by respondent, International Smelting & Refining Company?

A. Dry white lead and white lead and oil.

Q. Are those the only ones?

A. Yes.

Q. When did International first start to manufacture dry white lead?

A. In the latter part of 1936.

Q. Where was this operation conducted?

A. At East Chicago, Indiana.

Q. Prior to 1936, was dry white lead produced at the East Chicago plant of International?

A. Yes, it was.

Q. By what company was dry white lead produced prior to that time?

A. By the Anaconda Lead Products Company.

Q. Do you know what relation that company had to respondent, International, and respondent, Anaconda Copper Mining Company?

A. The Anaconda Lead Products Company was a sub-

... of the Anaconda Copper Mining Company, as was the International Smelting & Refining Company.

Q. Do you know whether there was any subsequent change in this relationship?

A. Yes, there was.

Q. Is the Anaconda Lead Products Company still in existence?

A. No, it is not.

Q. What became of it?

A. The assets and properties of the Anaconda Lead Products Company were taken over by the International Smelting & Refining Company.

Q. Is the Anaconda Lead Products Company as a company still in existence, do you know?

A. No, it was dissolved.

Q. Do you know when?

A. In the latter part of 1936.

Q. When did the Anaconda Lead Products Company first start to produce dry white lead?

A. In the latter part of 1919.

Q. And do you know when they first made sales of that product?

A. In the first part of 1920.

Q. Do you know how much of a factor this production was in the total output of dry white lead in the earlier years of production of that commodity by this company?

Mr. Wright: Objection, Your Honor. This witness is not shown to have been employed or to have had any contact with these products prior to about 1930.

Trial Examiner Norwood: In the question, how much of a factor, it seems to me the term "factor" is not very definite. You must show any percentages within the knowledge of this witness.

Mr. Gardiner: I will withdraw that question.

Trial Examiner Norwood: Yes.

By Mr. Gardiner:

Q. Are you familiar with the figure showing the production of the International Smelting & Refining Company of white lead during the period that it produced dry white lead?

A. I am.

Q. I hand you an exhibit and ask that it be marked Respondent's Exhibit No.—

the district salesmanager and had charge of lead and zinc oxide sales in the Midwest.

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complaint in this proceeding defines dry white lead pigment commonly known in the industry, both basic carbonate and basic sulfate, red lead, or red oxide of lead, orange lead, orange mineral and grinders' white, as marketed either as dry product or in oil, in the form of a mixture with linseed or other oils. All products covered by this definition have been produced by International Smelting & Refining Company.

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and Products Company was a subsidiary of the Anaconda Copper Mining Company, as was the International Smelting & Refining Company.

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3490 A. Yes, there was.

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Q. Is the Anaconda Lead Products Company as a company still in existence, do you know?

A. No, it was dissolved.

Q. Do you know when?

A. In the latter part of 1936.

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Mr. Wright: Objection, Your Honor. This witness is not shown to have been employed or to have had any contact with these products prior to about 1930.

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Trial Examiner Norwood: Yes.

By Mr. Gardiner:

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A. I am.

Q. I hand you an exhibit and ask that it be marked Respondent's Exhibit No.—

Trial Examiner Norwood: I think it will be 190. I will ask the counsel to check.

Is the next respondent's exhibit 190?

Mr. Wright: I can ascertain that in just a moment.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Wright: According to my records, it is 190.

Trial Examiner Norwood: Very well. We will mark it 191, to be safe.

(The document referred to was marked Respondent's Exhibit 191 for identification.)

By Mr. Gardiner:

3492 Q. I show you Respondent's Exhibit marked for identification No. 191, and ask if you have seen this document before?

A. Yes, I have seen these figures before.

Q. Do you know anything about their preparation?

A. They were prepared under my supervision.

Q. At whose request?

A. At the request of our counsel.

Q. What does this record purport to show?

A. This record purports to show the percentage of International's production of dry white lead of the total production of dry white lead in the United States for the years shown.

Q. What was the basis on which these figures were calculated?

A. The figures for the total production of dry white lead in the United States were taken from figures submitted by the United States Bureau of Mines. The figures for the production of International were taken from our records in our accounting department at East Chicago, Indiana.

Mr. Wright: I would like a few preliminary questions on that.

Trial Examiner Norwood: Very well.

By Mr. Wright:

Q. Mr. Hurless, in what form were the figures secured from the Bureau of Mines?

A. Those figures are in the regularly published form of the Bureau of Mines. I think sometimes they are in book form or they can be secured by writing the United States Bureau of Mines direct.

Q. Were these secured from the publication of Mines known as the "Minerals Year Book"?

A. I do not know.

Q. Then you cannot tell me where you got those figures?

A. Well, you could get the figures from the United States Bureau of Mines. But whether or not they are in the exact physical form we got them in, I do not know.

Trial Examiner Norwood: Is that all? Is that part of the confidential information?

The Witness: No, I do not think it is considered confidential, because my understanding is that anyone writing for it can secure it from the Bureau of Mines.

Mr. Wright: Your Honor, I realize that the Bureau of Mines does publish in its mineral year book the total production of these various minerals, but I have no way of knowing whether the figures that appeared in the "Minerals Year Book" are public information, or not.

By Mr. Gardiner:

3494 Q. Mr. Hurless, when were the figures secured, do you recall?

A. I do not know the date, but I probably a few months after this conference.

Q. And do you recall at that time whether or not you were securing the information on the work of the Bureau of Mines, or whether there any directive to you as to how the figures on the United States production of dry white lead were to be secured?

A. Well, we were not told where to get the figures; that is, whether from the "Minerals Year Book" or to write the United States Bureau of Mines. I do know that at East Chicago we had copies of the "Minerals Year Book" and whether or not these figures were secured from it, I cannot say.

Mr. Wright: Your Honor, may we ask another question?

Trial Examiner Norwood: Off the record. (Discussion off the record.)

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Very well. We will mark

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Mines direct.

Q. Were these secured from the publication of the Bu-
reau of Mines known as the "Minerals Year Book"?

A. I do not know.

Q. Then you cannot tell me where we could have access
to those figures?

A. Well, you could get the figures from the United
States Bureau of Mines. But whether or not you would get
them in the exact physical form we got them, I do not know.

Trial Examiner Norwood: Is that information confi-
dential? Is that part of the confidential Bureau of Mines
information?

The Witness: No, I do not think that this information
is considered confidential, because my understanding is that
anyone writing for it can secure it from the Bureau of
Mines.

Mr. Wright: Your Honor, I realize that the Bureau
of Mines does publish in its mineral year books figures on
the total production of these various products and others,
but I have no way of knowing whether these are the fig-
ures that appeared in the "Minerals Year Book", which
is public information, or not.

By Mr. Gardiner:

3494 Q. Mr. Hurless, when were these figures compiled,
do you recall?

A. I do not know the date, but I would say that it was
probably a few months after this complaint was issued.

Q. And do you recall at that time what the request was
so far as the compilation of these records with relation to
securing the information on the world production? Was
there any directive to you as to how you were to secure
the figures on the United States production in this ma-
terial?

A. Well, we were not told where we should go to get
the figures; that is, whether from the "Minerals Year
Book" or to write the United States Bureau of Mines. But
I do know that at East Chicago we always maintained
copies of the "Minerals Year Book" in our library. But
whether or not these figures were actually taken from that
or not, I cannot say.

Mr. Wright: Your Honor, may we go off the record just
a minute?

Trial Examiner Norwood: Off the record.
(Discussion off the record.)

Mr. Gardiner: I should like to offer at this time Respondent's Exhibit 191 in evidence.

Mr. Wright: Your Honor, I have no objection provided it is admitted subject to motion to strike later provided that the basic data from which this exhibit was compiled is not made available on my request.

Trial Examiner Norwood: It will be admitted subject to that condition.

(The document referred to, heretofore marked for identification RESPONDENT'S EXHIBIT 191, was received in evidence.)

Mr. Gardiner: I ask that this document be marked Respondent's Exhibit No. 192 for identification.

(The document referred to was marked Respondent's Exhibit 192 for Identification.)

By Mr. Gardiner:

Q. I show you this document marked Respondent's Exhibit 192 for Identification, and ask you if you have seen it before?

A. Yes, I have seen these figures before.

Q. Did you have anything to do with their preparation?

A. They were prepared under my supervision.

Q. Where?

A. At East Chicago, Indiana.

Q. What do these figures purport to show?

A. These figures purport to show the percentage of sales by International of the total percentage of sales in the United States for the years specified.

Q. What is the basis on which these figures were calculated?

A. The figures for total sales in the United States were taken from figures supplied by the Lead Industries Association.

The figures for sales by International were taken from our records, in our sales department at East Chicago, Indiana.

Mr. Gardiner: I should like to offer in evidence Respondent's Exhibit 192 subject to the same qualifications as Exhibit 191.

Mr. Wright: I have no objection subject to the same qualifications.

Trial Examiner Norwood: It is so received.
(The document referred to, heretofore marked for identification RESPONDENT'S EXHIBIT 192, was received in evidence.)

By Mr. Gardiner:

Q. Did the Anaconda Lead Products International sell dry white lead to the trade? They use a sales agent for some or all of it?

A. They sold the dry white lead on through a sales agency.

Q. What was the name of this sales agency?

A. The Anaconda Sales Company.

Q. What connection did this sales agency have with the Anaconda Copper Mining Company or with Respondent's International or with Respondent's Mining Company?

A. The Anaconda Sales Company is a subsidiary of the Anaconda Copper Mining Company. It is International or is International.

Q. Why was the Anaconda Sales Company a sales agency?

A. Because in certain States it is licensed where the International Smelting & Refining Company is licensed to do business.

Q. To what class of trade did Anaconda Company and International sell dry white lead?

A. They sold principally to manufacturers of ceramic products.

Q. What was the price basis or system used by Anaconda Lead Products and International?

A. On the basis of f. o. b. East Chicago, Indiana.

Q. To any point in the United States?

A. As I recall it, that was the case.

Q. Was any change subsequent made in the system?

A. Yes.

Q. What was it?

A. We established a par zone and a zone.

Q. What do you mean by par zone?

A. The territory in the United States west of and including the Rocky Mountains was considered the par zone. The Pacific Coast zone.

Q. What was the par zone?

A. That part of the United States that was west of and including the Rocky Mountains. That group, but what distinguishes the Pacific Coast zone? What was the difference?

I should like to offer at this time Re-
spondent's EXHIBIT 191 in evidence.

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RE-SPONDENT'S EXHIBIT 192, was received

By Mr. Gardiner:

Q. Did the Anaconda Lead Products Company and In-
ternational sell dry white lead to the trade directly, or did
they use a sales agent for some or all of their production?

A. They sold the dry white lead on a direct basis and
through a sales agency.

Q. What was the name of this sales agency?

A. The Anaconda Sales Company.

Q. What connection did this sales agency have with re-
spondent International or with respondent Anaconda Cop-
per Mining Company?

A. The Anaconda Sales Company is a subsidiary
3497 of the Anaconda Copper Mining Company, as was In-
ternational or is International.

Q. Why was the Anaconda Sales Company used as a
sales agency?

A. Because in certain States it is licensed to do business
where the International Smelting & Refining Company is
not licensed to do business.

Q. To what class of trade did Anaconda Lead Products
Company and International sell dry white lead?

A. They sold principally to manufacturers of paint and
ceramic products.

Q. What was the price basis or system on which Ana-
conda Lead Products and International first sold dry white
lead?

A. On the basis of f. o. b. East Chicago, Indiana, freight
allowed.

Q. To any point in the United States?

A. As I recall it, that was the case.

Q. Was any change subsequent made in this pricing
system?

A. Yes.

Q. What was it?

A. We established a par zone and a Pacific Coast zone.

Q. What do you mean by par zone?

A. The territory in the United States east of the Rocky
Mountains was considered the par zone, and the territory
west of and including the Rocky Mountains was considered
the Pacific Coast zone.

3498 Q. What was the par zone? I understand it is
part of the United States that was included within
that group, but what distinguishes that from the Pacific
Coast zone? What was the difference between them?

A. There was a difference in price of one-quarter cent per pound.

Trial Examiner Norwood: In favor of the par zone?

The Witness: That is right.

By Mr. Gardiner:

Q. Now, do I understand that the material was sold in the par zone f. o. b. where?

A. East Chicago, Indiana.

Q. Freight allowed?

A. Freight allowed.

Q. Within any part of the par territory?

A. That is right.

Q. And what was the situation so far as the Pacific Coast zone was concerned?

A. It was sold f. o. b. East Chicago, Indiana, freight allowed, the price being one-quarter of a cent per pound more.

Q. Why did these companies adopt this two-zone system for selling dry white lead?

A. Well, we adopted it because it was adopted by our competitors, and we went along on the same basis.

Q. How did you know that your competitors had such a system?

3499 A. Well, it was very easy for us to pick up information regarding our competitors' practices in the pricing of their products from our customers and prospective customers.

Mr. Gardiner: Will you read my last question, please, and the answer?

Trial Examiner Norwood: Read the question.

(The question and answer were read.)

By Mr. Gardiner:

Q. Now, so far as your competitors were concerned, how did you learn what their prices were?

Mr. Wright: Objection, Your Honor. That is repetitious.

Trial Examiner Norwood: No, let him answer. Objection overruled.

The Witness: Will you repeat the question, please?

(The pending question was read.)

The Witness: We could very easily learn what our competitors' prices were by asking our customers and prospective customers.

By Mr. Gardiner:

Q. How did you determine what selling tactics were? How

A. By making inquiries from prospective customers.

Mr. Wright: Your Honor questioning because it is a long time. So far as we know about the period from 1922 to the present to any specific instance.

Trial Examiner Norwood: They made a change in the par zone and the operations thereafter. definite. You may cross-examine.

By Mr. Gardiner:

Q. Did Anaconda Lead Pro any quantity discount on the sale?

A. Yes, they did.

Q. What discount was allowed?

A. A discount of one-quarter cent per carload price was allowed more.

Q. Was this discount allowed in the Pacific Coast zones?

A. Yes.

Q. Why was such a discount allowed?

A. Well, we allowed such a discount as a general practice of competition.

Q. How did you know that was the practice of competition?

A. By contacting our customers we would learn what they were doing price-wise.

3501 Q. Did your company sell to railroads and industrial customers?

A. Yes.

Q. Why were different prices charged to railroads and industrial customers?

Mr. Wright: Your Honor, questioning. It is not restricted to about another matter than the par zone.

Trial Examiner Norwood:

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Honor. That is repeti-

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By Mr. Gardiner:

Q. How did you determine what your competitors' gen-
eral selling tactics were? How did you determine that?

A. By making inquiries from our customers and pro-
spective customers.

Mr. Wright: Your Honor, I object to this line of
3500 questioning because it is not restricted to any period
of time. So far as we know, we have been talking
about the period from 1922 to the present. It is not limited
to any specific instance.

Trial Examiner Norwood: It applies to the time when
they made a change in the par zone and Pacific Coast zone,
and the operations thereafter. I think that is sufficiently
definite. You may cross-examine him further on it.

By Mr. Gardiner:

Q. Did Anaconda Lead Products or International allow
any quantity discount on the sale of dry white lead?

A. Yes, they did.

Q. What discount was allowed?

A. A discount of one-quarter cent per pound under the
less carload price was allowed for carlots of 20 tons or
more.

Q. Was this discount allowed in both the par and the
Pacific Coast zones?

A. Yes.

Q. Why was such a discount made?

A. Well, we allowed such a discount because it was the
general practice of competition.

Q. How did you know that that was the general prac-
tice of competition?

A. By contacting our customers and prospective cus-
tomers we would learn what our competitors were doing
pricewise.

3501 Q. Did your companies quote different prices to
railroads and industrials?

A. Yes.

Q. Why were different prices quoted to railroads and
industrials?

Mr. Wright: Your Honor, I object to this line of ques-
tioning. It is not restricted as to time. We are talking
about another matter than the zone matter now.

Trial Examiner Norwood: You may clarify that.

By Mr. Gardiner:

Q. Subsequent to the adoption of the par and Pacific Coast zones, did your companies quote any different prices to railroads and the industrials?

A. Yes.

Q. Why were different prices quoted to railroads and industrials?

A. Well, we quoted different prices to railroads and industrials because competitors were likewise quoting such prices.

Q. How did you learn that your competitors were quoting different prices to these groups?

A. By contacting industrial and railroad accounts we would find out what our competitors were doing pricewise.

Q. Through what medium did you make this contact?

A. Usually through our salesmen.

Q. During the period subsequent to the adoption 3502 of the two-zone system, do you know generally what the profit and loss situation was so far as the production and sale of dry white lead was concerned?

A. Well, in a general way—

Trial Examiner Norwood: Answer yes, if you know.

The Witness: Yes, in a general way I know.

By Mr. Gardiner:

Q. What was the situation?

Mr. Wright: I object, Your Honor. What profit and loss situation might have been at a particular time is absolutely irrelevant to the issues of this matter.

Mr. Gardiner: If Your Honor please, I think it is very pertinent, because we are discussing the matter of pricing practices and the matter of competition, and it is important to determine what relation the pricing practices of a company had as to whether or not they were making or losing money.

Mr. Wright: Now, Your Honor, if that is counsel's purpose, to show that any one of the pricing practices had any effect on their profit and loss, it can hardly be established in this way. It is going to be necessary to get into the whole profit and loss structure of the company, and we are going to open up a field here that is going to be endless if we are going into the question of profit and loss as having anything to do with the changing or establishing 3503 of zone systems in this case.

Mr. Gardner: Well, of course the been directed to the adoption of 201 preceding questions dealt with prices s and industrials were concerned, and I generally knew what the situation was the answer was yes. Now I have ask situation in general was.

Trial Examiner Norwood: I think the track here, I really do. I will sustain

By Mr. Gardiner:

Q. In the sales to railroads and ind to the introduction of the par zone syste given to the sale of dry white lead at hat sold by your competitors?

Trial Examiner Norwood: Read th (The pending question was read.)

Trial Examiner Norwood: You ma

A. No, I don't think we consider white lead at a price higher than that

By Mr. Gardiner:

Q. Why not?

A. We could hardly be expected to our product.

3504 Mr. Wright: Your Honor, I ask that the last answer be stricken no consideration was given to the que higher price.

Now, if no consideration was given certainly it is improper to try to t was a particular reason for not giving the matter.

Trial Examiner Norwood: Well, b no consideration, and now he is telling no consideration.

Mr. Wright: If no consideration the matter never came up, and there in anyone's mind.

In other words, the witness is a that no consideration was ever given can he have a reason in his mind, is considered?

Trial Examiner Norwood: I will

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was so far as the produc-
as concerned?

nswer yes, if you know.
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Honor. What profit and
at a particular time is
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changing or establishing

Mr. Gardner: Well, of course the question has not been directed to the adoption of zone systems. The preceding questions dealt with prices so far as railroads and industrials were concerned, and I asked him if he generally knew what the situation was in that field, and the answer was yes. Now I have asked him what that situation in general was.

Trial Examiner Norwood: I think we are getting off the track here, I really do. I will sustain the objection.

By Mr. Gardiner:

Q. In the sales to railroads and industrials subsequent to the introduction of the par zone system, was any thought given to the sale of dry white lead at a price higher than that sold by your competitors?

Trial Examiner Norwood: Read that question, please.

(The pending question was read.)

Trial Examiner Norwood: You may answer.

A. No, I don't think we considered selling our dry white lead at a price higher than that of our competitors.

By Mr. Gardiner:

Q. Why not?

A. We could hardly be expected to get a premium for our product.

3504 Mr. Wright: Your Honor, I object to that, and I ask that the last answer be stricken. The witness said no consideration was given to the question of selling at a higher price.

Now, if no consideration was given to such a question, certainly it is improper to try to bring out that there was a particular reason for not giving consideration to the matter.

Trial Examiner Norwood: Well, he said that they gave no consideration, and now he is telling us why they gave no consideration.

Mr. Wright: If no consideration was given, obviously the matter never came up, and there was never any reason in anyone's mind.

In other words, the witness is already on the record that no consideration was ever given to that question. How can he have a reason in his mind, if the thing was never considered?

Trial Examiner Norwood: I will overrule the objec-

tion. I think he may tell us why they did not give serious consideration to selling the competitors. And I think he has already told us.

Did you say you could not get a higher price?

The Witness: I said that we could not be expected to get a premium for our products.

3505 Trial Examiner Norwood: Yes.

By Mr. Gardiner:

Q. Subsequent to the adoption of the two-zone system in the sale of dry white lead, did you ever sell that commodity at a price less than that sold by your competitors?

A. No.

Q. Why not?

A. The production and sale of dry white lead was not too profitable a business, and we felt that we had to get as much for our product as we possibly could.

Q. During the time that Anaconda Lead Products and International were producing and selling dry white lead, were they in competition with other companies?

A. Yes.

Q. What would you say as to the extent of competition that your company encountered on the sale of these products?

A. I would say that there was very stiff competition.

Q. Was Anaconda Lead Products or International able to improve their financial return through improvements in the methods of production?

A. To some extent.

Q. What improvements were made?

A. We discontinued our method of kiln drying dry white lead and substituted a mechanical Loudon dryer. Then we perfected a machine for mechanically washing also lead anodes. In the handling of our finished product in the warehouse, we installed the best mechanical equipment to be used in piling it and for taking it from stock and loading it into cars and trucks.

3506 Q. Did these improvements in the production of this material result in an increase in your net return from the sale of that product?

A. To some extent.

Q. Was that reflected in any change in your prices?

A. No.

Q. Why not?

A. Well, our experience over a period we constantly had to strive to get lower. We succeeded in cutting the costs in one place offset in another place; for example, by materials, supplies and labor.

Q. You testified previously that the Products Company went out of the business of dry white lead and was succeeded by International.

When that occurred, was there any change the pricing system for dry white lead?

A. No.

Q. Did anything occur in the trade in the early '30's that had a major effect on the Products' outlets for its production?

3507 A. Yes; we encountered increased demand due principally to the expansion in automobile pigments. We were forced to go to territories that we had not solicited before in order to maintain our volume of sales and production.

Q. You stated that due to this increase in demand you had to go out and sell in an area that was not a production area. Was anything done on your part to secure more sales and to increase production of dry white lead?

A. Yes; we decided to go into the production of white lead in oil.

Q. Was that the primary reason for the change in lead in oil field?

A. I would say that it was the reason.

Q. What percentage of Anaconda Lead Products' dry white lead production was in white lead in oil?

A. Generally about 30 to 35 percent.

3508 Trial Examiner Norwood: Will you please answer the question?

A. Generally about 30 to 35 percent.

(The question was read.)

Mr. Gardiner: May I have the answer?

(The answer was read.)

By Mr. Gardiner:

Q. Was dry white lead ever produced by either of your companies?

A. No.

Q. Do you know of any agreement between your companies and the Products Company regarding the sale of dry white lead?

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A. Well, our experience over a period of years was that
we constantly had to strive to get lower costs. When we
succeeded in cutting the costs in one place, they were usually
offset in another place; for example, by increased costs of
materials, supplies and labor.

Q. You testified previously that the Anaconda Lead
Products Company went out of the business of producing
dry white lead and was succeeded by International.

When that occurred, was there any attempt made to
change the pricing system for dry white lead?

A. No.

Q. Did anything occur in the trade in the late '20's or
early '30's that had a major effect on Anaconda Lead
Products' outlets for its production of dry white lead?

3507 A. Yes; we encountered increased competition,
due principally to the expansion of the use of titan-
ium pigments. We were forced to go into outlying terri-
tories that we had not solicited before in order to endeavor
to maintain our volume of sales and production.

Q. You stated that due to this increased competition
you had to go out and sell in an area outside of the pro-
duction area. Was anything done outside of attempting
to secure more sales and to increase your production of
dry white lead?

A. Yes; we decided to go into the production and sale
of white lead in oil.

Q. Was that the primary reason for entering the white
lead in oil field?

A. I would say that it was the reason.

Q. What percentage of Anaconda Lead Products' and
International's dry white lead production came to be used
in white lead in oil?

A. Generally about 30 to 35 percent.

Trial Examiner Norwood: Will you read that question,
please?

(The question was read.)

Mr. Gardiner: May I have the answer again?

(The answer was read.)

By Mr. Gardiner:

Q. Was dry white lead ever sold under consign-
3508 ment by either of your companies?

A. No.

Q. Do you know of any agreement on the part of Inter-

national with the other respondents in this proceeding, who are the National Lead Company, Eagle-Picher Lead Company, the Eagle-Picher Sales Company, the Sherwin-Williams Company, and the Glidden Company, for the adoption and maintenance of a system of delivered price quotations of dry white lead?

A. No, I do not.

Trial Examiner Norwood: Either or any of them?

The Witness: Either or any of them.

By Mr. Gardiner:

Q. Do you know of any attempt between International and any or either of the respondents just named in this proceeding for the adoption and maintenance of a plan whereby the United States is divided into zones for the purpose of selling dry white lead?

A. No, I do not.

Q. Do you know of any arrangement whereby International sought and secured advice, assistance and cooperation of the Lead Industries Association, its officers, employees and agents along with other respondents in this case previously mentioned in publishing and using non-competitive terms and conditions of sale in connection with the sales and offers to sell of dry white lead?

3509 A. No, I do not.

Q. Do you know if International ever used the office of the Lead Industries Association with the cooperation of officials of the same for the purpose of exchanging price factors and information concerning price factors to be used at times by International and other respondents in calculating, determining and announcing their offers to sell dry white lead?

A. No, I do not.

Q. In my last question, I referred to respondents, and by that I included all the respondents previously mentioned. Does that change the answer to the question?

A. No.

Q. Do you know if International ever agreed to adopt or adopted, maintained and used terms and conditions of sale employed in so-called consignment or agency agreements under the leadership of respondent National Lead Company for the purpose of preventing dealers from selling dry white lead and from making offers to sell such products at levels lower than the offers made by respective

respondent producers whose name is on the consignment or agency agreement?

A. No, I do not.

Q. Do you know if International ever used other respondents previously named in this proceeding to fix or fixed and included in the terms and conditions at which dry white lead was sold or offered for sale in the United States?

A. No, I do not.

Q. When did International first begin the sale of white lead in oil?

A. During the latter part of 1931.

Q. Where was this material first sold?

A. At East Chicago, Indiana.

Q. Had it previously been sold in that area?

A. Yes.

Q. By what company?

A. By the Anaconda Lead Products Company.

Q. When did Anaconda Lead Products Company first produce white lead in oil, if you know?

A. In the first part of 1931.

Q. You have previously mentioned that the Lead Products Company went into the business of manufacturing dry white lead upon the acquisition by International of the Anaconda Lead Products Company.

Did the Anaconda Lead Products Company produce white lead in oil up to the time of the acquisition?

A. Yes.

Q. Were these activities the same as those of the respondent International?

A. Yes.

3511 Q. Will you describe to me the Anaconda Lead Products Company's first method of selling dry white lead in oil?

A. Well in the beginning we sold it to industrial accounts. We sent it to industrial accounts, and for the most part it was sold of white lead in oil by such a method.

Consequently, we began to sell white lead in oil in certain sections of the country.

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the offers made by respective

respondent producers whose names were affixed to such
consignment or agency agreements?

A. No, I do not.

Q. Do you know if International ever agreed with the
other respondents previously named or with any one of them
to fix or fixed and included in offers to sell, the prices,
3510 terms and conditions at which said lead pigments were
sold or offered for sale in commerce?

A. No, I do not.

Q. When did International first commence the produc-
tion of white lead in oil?

A. During the latter part of 1936.

Q. Where was this material produced?

A. At East Chicago, Indiana.

Q. Had it previously been manufactured at that plant?

A. Yes.

Q. By what company?

A. By the Anaconda Lead Products Company.

Q. When did Anaconda Lead Products Company first
produce white lead in oil, if you know?

A. In the first part of 1931.

Q. You have previously testified that the Anaconda
Lead Products Company went out of the business of manu-
facturing dry white lead upon its dissolution in 1936, and
the acquisition by International of its assets and properties.

Did the Anaconda Lead Products Company continue to
produce white lead in oil up to the time of its dissolution?

A. Yes.

Q. Were these activities taken over and carried on by
the respondent International at that time?

A. Yes.

3511 Q. Will you describe the Anaconda Lead Products
Company's first methods to sell white lead in oil and
the pricing methods that were employed?

A. Well in the beginning we knew practically nothing
about the white lead in oil market. At first we thought we
would confine our activities to selling white lead in oil to
industrial accounts. We sent out at least one man to survey
industrial accounts, and found out that the consumption
of white lead in oil by such accounts was practically negli-
gible.

Consequently, we began to promote the sale of white
lead in oil in certain sections of the country through dis-

tributors who were given a defined territory. In other areas, we contacted the dealer trade direct.

In the beginning we did not have any regular pricing system, and we left it pretty much up to the salesmen to get the most that they could for our unknown product.

Q. At the time the Anaconda Lead Products Company went into the white lead in oil business, what was your position so far as sale of this product was concerned?

A. I was district salesmanager in the midwestern area.

Q. District salesmanager of what?

A. Of dry white lead, white lead in oil, and zinc oxide.

Q. Did I understand you to say that initially your sales were limited to the Midwest area, of white lead in oil?

A. Our sales were not limited to that area, no.

3512 Q. Were you in charge of these preliminary activities when the Anaconda Lead Products Company was first starting to sell white lead in oil?

A. When I was district salesmanager in the Midwest area, I really, from the beginning, devised the promotional methods for selling white lead in oil in all territories.

Q. And you were intimately familiar with the Anaconda Lead Products' sales problems so far as the sale of white lead in oil was concerned?

A. I would say that I spearheaded the thing.

Q. For that company?

A. Yes.

Q. Now, you previously testified as to the sales practices or methods when this material was first manufactured.

Were these pricing methods subsequently changed?

A. Yes, they were.

Q. What price policy was subsequently adopted by the Anaconda Lead Products Company?

A. For sales to the dealers, we established a price for our white lead in oil that was one-quarter of a cent per pound under the price for the National Lead Company's agents.

Q. Were there any other changes made in your pricing methods at about that time?

A. I believe at about that time we began to sell white lead in oil on a zone basis.

3513 Q. What was the reason that prompted you to decide to sell white lead in oil at a quarter cent under the price charged by National Lead for a similar commodity?

A. Well we could not expect to get the same price for a comparatively unknown product that the National Lead Company got for their product which had been very well advertised for many years. The business from the beginning was not too profitable, and consequently we felt we could not get very far under the National Lead Company's price, and so we adopted a method of selling at a quarter cent under the National Lead Company's price, that additional quarter of a cent per pound being considered by us as additional compensation for the dealer for promoting sale of our unknown product.

Q. Trial Examiner Norwood: When was that? After International took over?

The Witness: No, that was before International took over.

Q. Trial Examiner Norwood: About when was it?

The Witness: I don't recall when it was, but I believe probably was about 1933.

Q. Mr. Gardiner:

Q. You have testified you adopted a practice of underbidding National's Lead price of a quarter cent per pound. How did you determine what National Lead's price was?

A. It was very easy for us to find out the National Lead Company's price by contacting our customer and prospective customers.

Q. How did you get information from your customers? How did they know? Who were your customers?

A. Well, our customers to a limited extent were distributors in certain areas, but generally they were dealers.

Q. Were they also dealers of competing products?

A. The class of trade we termed dealers were both white National called their selling agents and the dealers that purchased from the National Lead Company's selling agencies.

Q. Did National Lead sell its white lead in oil by a particular trade name?

A. Dutch Boy.

Q. Was there any resistance in the trade to a low price white lead in oil?

A. When we began to market white lead in oil, and for a considerable period after that, there were so many substitute products on the market. The substitute products would have a name that would be similar to the Dutch Boy.

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Trial Examiner Norwood: When was that? After International took over?

The Witness: No, that was before International took over.

Trial Examiner Norwood: About when was it?

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By Mr. Gardiner:

Q. You have testified you adopted a practice of under- selling National's Lead price of a quarter cent per pound. How did you determine what National Lead's price was?

A. It was very easy for us to find out the National 3514 Lead Company's price by contacting our customers and prospective customers.

Q. How did you get information from your customers? How did they know? Who were your customers?

A. Well, our customers to a limited extent were dis- tributors in certain areas, but generally they were dealers.

Q. Were they also dealers of competing products?

A. The class of trade we termed dealers were both what National called their selling agents and the dealers that purchased from the National Lead Company's selling agencies.

Q. Did National Lead sell its white lead in oil by any particular trade name?

A. Dutch Boy.

Q. Was there any resistance in the trade to a low priced white lead in oil?

A. When we began to market white lead in oil, and in fact for a considerable period after that, there were some substitute products on the market. The substitute products would have a name that would be similar to the Dutch Boy

name, and the containers were sometimes an imitation of the Dutch Boy containers. Any white lead in oil would be sold at a very low price would be viewed with suspicion and probably would be considered a substitute of inferior quality.

Q. Could you have sold white lead in oil produced by Anaconda Lead Products Company, and subsequently 3515 by International, at a price equal to National Lead's?

A. No, I don't think we could.

Q. Could you have sold the material at a price lower than a quarter of a cent a pound below National Lead's price?

A. If we had, we would run into the danger of having it considered a substitute of inferior quality.

Mr. Gardiner: May we have a recess, Mr. Examiner?

Trial Examiner Norwood: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Norwood: Go ahead.

By Mr. Gardiner:

Q. Did Anaconda Lead Products sell white lead in oil on a zone basis?

A. Yes.

Q. When did International first adopt the policy of selling on a zone basis?

A. During the latter part of 1936.

Q. Was that at the time that International went into the white lead in oil business?

A. That was at the time that International took over the assets and properties of the Anaconda Lead Products Company.

Q. Why was a zone system adopted by these companies as a means of selling white lead in oil?

A. We adopted it because it seemed to be the competitive practice.

Q. Would you describe generally what this zone system was?

A. Well, the country was divided in certain areas called zones. There was a par zone, one-eighth, one quarter, three-eighths, one-half, three-quarters and one cent. The zones in which there were higher differentials took higher freight rates.

Q. You just described the par and certain fractions, and then you said previous fractions refer to fraction

A. Those fractions that I mentioned went over the par zone price, with just one I mentioned, which was a zone price.

Q. You made some reference to freight being charged in addition

A. No.

Q. What was the situation on freight

A. What I mentioned was that the par zone, for which differentials carried a higher freight rate.

Q. That is all white lead in oil (Chicago, freight allowed)?

A. That is correct.

Q. And these price differentials 3517 zones in which the material was

A. That is right.

Q. How did you determine what practice was as to the zone system material?

A. We contacted customers and to find out what our competitors were

Q. Was any record made of what their practice was?

A. Well, I believe that occasionally put information to that effect in the may have dropped us letters to tell price-wise by our competitors.

Mr. Wright: I object, Your Honor answer be stricken. It was based on witness' knowledge. He stated that reported these things. It is obvious his own knowledge from his answer

Trial Examiner Norwood: Did that kind of information?

The Witness: It was customary to write out a report on every call from a new or prospective customer, and would put any information they picked would be of interest to me as sales activities of our competitors.

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iners. Any white lead in oil would be
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Norwood: We will take a five minute

(taken.)

Norwood: Go ahead.

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Q. You just described the par zones as consisting of
certain fractions, and then you said one cent. Do those
previous fractions refer to fractions of one cent?

A. Those fractions that I mentioned are fractions of one
cent over the par zone price, with the exception of the
last one I mentioned, which was a full cent over the par
zone price.

Q. You made some reference to freight. Do I understand
that freight was charged in addition to these prices?

A. No.

Q. What was the situation on freight?

A. What I mentioned was that the zones other than the
par zone, for which differentials were charged, usually
carried a higher freight rate.

Q. That is all white lead in oil was sold f. o. b. East
Chicago, freight allowed?

A. That is correct.

Q. And these price differentials related to the
3517 zones in which the material was delivered?

A. That is right.

Q. How did you determine what your competitor's
practice was as to the zone system for the sale of this
material?

A. We contacted customers and prospective customers
to find out what our competitors were doing in this respect.

Q. Was any record made of what you determined as to
what their practice was?

A. Well, I believe that occasionally our salesmen would
put information to that effect in their sales reports. They
may have dropped us letters to tell us what was going on
price-wise by our competitors.

Mr. Wright: I object, Your Honor, and move that that
answer be stricken. It was based on belief rather than the
witness' knowledge. He stated that the salesmen may have
reported these things. It is obviously not a matter within
his own knowledge from his answer.

Trial Examiner Norwood: Did they usually report
that kind of information?

The Witness: It was customary for our salesmen to
write out a report on every call that they made on a custo-
mer or prospective customer, and in these reports they
would put any information they picked up that they thought
would be of interest to me as salesmanager regarding the
activities of our competitors.

3518 Trial Examiner Norwood: Do you know that that information came to you in that way?

The Witness: Yes, I do.

Trial Examiner Norwood: Objection overruled.

By Mr. Gardiner:

Q. Did you keep a map outlining these zone systems?

A. Yes.

Q. Was this map prepared at the suggestion or request or instigation of the representatives of any of the respondents heretofore named in this case?

A. No.

Q. Did you ever discuss with any representatives or official of any of the respondents heretofore named in this proceeding the use of such a map as the price pattern or the use of such a map in the sale of white lead in oil?

A. No, I did not.

Mr. Gardiner: I ask that this be marked Respondent's Exhibit for Identification No. 193.

(The document referred to was marked Respondent's Exhibit No. 193 for identification.)

By Mr. Gardiner:

Q. I show you Respondent's Exhibit for Identification 193 and ask you if you have seen this document before?

A. Yes, I have seen these figures before.

Q. Do you know anything about their preparation?

3519 A. They were prepared under my supervision.

Q. Who requested that you have these figures prepared?

A. Our legal counsel.

Q. What was the basis on which these figures were calculated?

A. The figures showing the total production of white lead in oil in the United States for the years listed were taken from figures supplied by the Lead Industries Association.

The figures showing the production of white lead in oil by International for the years listed were taken from the records in our accounting department at East Chicago, Indiana.

Mr. Gardiner: I should like to offer at this time in evidence Respondent's Exhibit No. 193, subject to the same qualifications as the previous exhibits have been submitted.

Mr. Wright: Subject to that qualification objection.

Trial Examiner Norwood: It is so received. (The document referred to, heretofore marked Respondent's Exhibit 193, evidence.)

Mr. Gardiner: I ask that this be marked Exhibit No. 194 for identification.

(The document referred to was marked Exhibit 194 for identification.)

3520 By Mr. Gardiner:

Q. I show you Respondent's Exhibit N and ask if you have seen this document before?

A. Yes, I have seen these figures before.

Q. What do you know about their preparation?

A. The figures showing the sale of white lead for the years listed were supplied by the Lead Industries Association.

The figures showing the sales of white lead by International for the years listed were taken from our sales department at East Chicago, Indiana.

Q. Were you requested to prepare these figures?

A. Yes, I was.

Q. By whom?

A. By our legal counsel.

Q. What was the basis on which these figures were calculated?

A. (No response.)

Q. Did I ask you that?

A. Yes.

Q. I say, from what sources were these figures taken?

A. The figures showing the sale of white lead that is, in the United States for the years listed were taken from figures supplied by the Lead Industries Association.

Those figures showing the sale of white lead by International for the years listed were taken from the records in our sales department at East Chicago, Indiana.

3521 by International for the years listed were taken from the records in our sales department at East Chicago, Indiana.

Mr. Gardiner: I should like to offer at this time Respondent's Exhibit marked No. 194 subject to the same qualifications as the previous exhibits have been accepted.

Mr. Norwood: Do you know that that
me to you in that way?
Yes, I do.

Norwood: Objection overruled.

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Respondent's Exhibit for Identification
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sales department at East Chicago,

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Exhibit No. 193, subject to the same
qualifications as the previous
exhibits have been submitted.

Mr. Wright: Subject to that qualification, I have no
objection.

Trial Examiner Norwood: It is so received.
(The document referred to, heretofore marked for identi-
fication RESPONDENT'S EXHIBIT 193, was received in
evidence.)

Mr. Gardiner: I ask that this be marked Respondent's
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Q. I show you Respondent's Exhibit No. 194 for Identi-
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A. Yes, I have seen these figures before.

Q. What do you know about their preparation?

A. The figures showing the sale of white lead in oil for
the years listed were supplied by the Lead Industries
Association.

The figures showing the sales of white lead in oil by Inter-
national for the years listed were taken from the records
in our sales department at East Chicago, Indiana.

Q. Were you requested to prepare these figures?

A. Yes, I was.

Q. By whom?

A. By our legal counsel.

Q. What was the basis on which these figures were
calculated?

A. (No response.)

Q. Did I ask you that?

A. Yes.

Q. I say, from what sources were these figures taken?

A. The figures showing the sale of lead in oil, total sales,
that is, in the United States for the years listed were taken
from figures supplied by the Lead Industries Association.

Those figures showing the sale of white lead in oil
3521 by International for the years listed were taken from
the records in our sales department at East Chicago,
Indiana.

Mr. Gardiner: I should like to offer into evidence at
this time Respondent's Exhibit marked for identification
No. 194 subject to the same qualifications as the previous
exhibits have been accepted.

Mr. Wright: I have no objection to its being received subject to those qualifications.

Trial Examiner Norwood: It is so received.

(The document referred to, heretofore marked for identification RESPONDENT'S EXHIBIT No. 194, was received in evidence.)

By Mr. Gardiner:

Q. In what manner was white lead in oil sold? That is, how was it packaged?

A. In metal containers.

Q. What were the sizes of these containers?

A. 100 pounds, 50, 20, 12 and 1/2, 5, and 1.

Q. Did these containers carry a different price?

A. Yes.

Mr. Gardiner: I ask that this document be marked for identification Respondent's Exhibit 195.

(The document referred to was marked Respondent's Exhibit 195 for identification.)

By Mr. Gardiner:

3522 I show you Respondent's Exhibit marked No. 195 for identification and ask you if you have seen that before?

A. Yes, I have seen these figures before.

Q. Do you know anything about this document's preparation?

A. It was prepared under my supervision.

Q. What was the basis upon which these figures were calculated?

A. The price per 100 pound keg was taken from our regular price schedule which was in effect as of the date. The average freight per 100 pounds was arrived at by taking the total freight costs for the period and dividing it by the number of pounds shipped during that period. The net was the mill net. The decrease in net over East Chicago shows the decrease in mill net.

Trial Examiner Norwood: Does this relate entirely to white lead in oil?

Mr. Gardiner: Yes, Your Honor, this relates to white lead in oil.

By Mr. Gardiner:

Q. At whose request did you prepare this document?

A. At the request of our legal counsel.

Q. Why was the year 1942 selected?

A. As I recall it, that was what the sales department I as salesmanager, considered the last normal year prior to the end of the last war.

3523 Mr. Gardiner: I should like to submit at in evidence Respondent's Exhibit marked for identification purposes No. 195, subject to the same qualifications as obtained with regard to the previously submitted Exhibits.

Mr. Wright: Your Honor, this is a piece of evidence, in that it was prepared at the request of this witness for the purpose of being offered in evidence. It purports to show that the price differential between the par zone and the other zones, during the year 1942, were more than offset by the costs that were involved in these shipments. In this regard, this does to the heart of the issue.

It has been improperly identified to make it admissible at this point, because we do not know what records were used in making this; nor do we know the means by which the records were processed to arrive at these averages.

There has been no basis shown here to the effect of means of working it out and making this piece of evidence which is thought to be admissible are of the nature in which it could be admitted as evidence of facts which it purports to show.

Now, this cannot exist outside of the original. So I must strenuously object to its admission.

I would object to its being admitted subject to the production of documents later to me, because I think it is an improper method of handling this matter.

3524 burden on Commission's counsel of going through records of this company for the year 1942 to ascertain whether this thing was prepared and whether the records, after all, are the evidence, have been accurate in this piece of evidence.

Mr. Gardiner: If your Honor please, so far as evidence is concerned, it is true, as brought on for examination, that this was prepared at the request of the respondent. These figures were taken from records which were or are available, or are available. They are not available here at this point. They represent averages which were arrived at.

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wood: It is so received.

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Q. Why was the year 1942 selected?

A. As I recall it, that was what the sales department, or
rather I as salesmanager, considered the last nearly nor-
mal year prior to the end of the last war.

3523 Mr. Gardiner: I should like to submit at this time
in evidence Respondent's Exhibit marked for identi-
fication purposes No. 195, subject to the same qualifications
as obtained with regard to the previously submitted ex-
hibits.

Mr. Wright: Your Honor, this is a piece of made
evidence, in that it was prepared at the request of counsel
by this witness for the purpose of being offered in this
matter. It purports to show that the price differences
made between the par zone and the other zones, apparently,
during the year 1942, were more than offset by the freight
costs that were involved in these shipments. In other
words, this does to the heart of the issue.

It has been improperly identified to make it admissible
at this point, because we do not know what records were
used in making this; nor do we know the means by which
the records were processed to arrive at these averages.

There has been no basis shown here to the effect that the
means of working it out and making this piece of artificial
evidence which is thought to be admissible are reliable, or
the nature in which it could be admitted as evidence of the
facts which it purports to show.

Now, this cannot exist outside of the original records.
So I must strenuously object to its admission. And I also
would object to its being admitted subject to submission
of documents later to me, because I think it is a highly
3524 improper method of handling this matter to put the
burden on Commission's counsel of going through all
records of this company for the year 1942 to ascertain how
this thing was prepared and whether the records, which,
after all, are the evidence, have been accurately reflected
in this piece of evidence.

Mr. Gardiner: If your Honor please, so far as making
evidence is concerned, it is true, as brought out on direct
examination, that this was prepared at the request of
counsel for the respondent. These figures were prepared
from records which were or are available, or can be made
available. They are not available here at this present time.

They represent averages which were arrived at, accord-

ing to the witness who can elaborate as to the detail which was used in their preparation.

There is no question but what this represents a summary, and that should be the value in it showing in a simple manner the difference between the net realized in these various zones with relation to the zone price, and I submitted it subject to the same qualifications as these others were submitted, which was that complete records should be submitted to counsel for check.

Mr. Wright: I submit that this witness has not testified that these things were made up from any record which would be admissible in this case. He said we took 3525 average freight costs. Now, what did he take average freight costs from? We have no idea.

Trial Examiner Norwood: Where did you get these freight costs?

The Witness: We took the freight charges for each zone for the period specified from the records in our accounting department, and divided that by the pounds—

Trial Examiner Norwood: Was that the actual freight charges on the shipments actually made?

The Witness: Yes, sir.

Trial Examiner Norwood: There wasn't any average for a zone, was there?

The Witness: It was an average for a zone inasmuch as we divided the total freight charges actually paid for that period by the total number of pounds shipped into that zone during that period.

Mr. Wright: Your Honor, if we are going to get into the question of further identification of this, I would like the right of preliminary cross-examination.

Trial Examiner Norwood: Yes, go right ahead.

Mr. Wright: Certainly on the basis of the record as it is, this thing is inadmissible, because the records of the accounting department do not make something admissible unless it is the type of record which is sufficiently reliable that it could be admitted in evidence here.

3526 Trial Examiner Norwood: Go ahead.

Mr. Wright: Mr. Hurless, does this purport to cover the sales for the entire year of 1942?

The Witness: Yes, it does.

Mr. Wright: How did you determine the proportion of your sales which fell within the par zone and the various differential zones?

The Witness: We determined that by the shipments.

Mr. Wright: Now, just what mechanism you go through, what records did you consult means did you use?

The Witness: I had the records for the

Mr. Wright: What records were they?

The Witness: The records of the ship kept in our accounting department.

Mr. Wright: Were they invoices?

The Witness: This information was taken and freight bills.

Mr. Wright: You mean this document up directly from invoices?

The Witness: And freight bills.

Mr. Wright: And original freight bill

The Witness: Or copies of the original don't know that we retained the 3527 bill.

Trial Examiner Norwood: It represents the freight actually paid, does it?

The Witness: That is right.

Mr. Wright: Now, I notice you have up here "East Chicago" with a net of line there. You did not take into account that might have been involved in deliveries.

The Witness: Well, any deliveries to the city limits of East Chicago would be shipped by public carrier. Such deliveries likely be made by our own truck.

Mr. Wright: By your own truck, but in either event?

The Witness: Yes.

Mr. Wright: So that your net cost would be reduced by the cost of that cartage?

The Witness: That is right.

Mr. Wright: Do you know what the 1942 on an average basis?

The Witness: No, I don't.

Mr. Wright: As I understand it from sales of white lead in oil during 1942 a tons?

The Witness: That is correct.

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Norwood: Go ahead.

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in the par zone and the various

The Witness: We determined that by determination of
the shipments.

Mr. Wright: Now, just what mechanical process did
you go through, what records did you consult, and what
means did you use?

The Witness: I had the records for the year 1942—

Mr. Wright: What records were they?

The Witness: The records of the shipments that were
kept in our accounting department.

Mr. Wright: Were they invoices?

The Witness: This information was taken from invoices
and freight bills.

Mr. Wright: You mean this document here was made
up directly from invoices?

The Witness: And freight bills.

Mr. Wright: And original freight bills?

The Witness: Or copies of the original freight bills. I
don't know that we retained the original freight
3527 bill.

Trial Examiner Norwood: It represents the aver-
age of the freight actually paid, does it?

The Witness: That is right.

Mr. Wright: Now, I notice you have included in the
top here "East Chicago" with a net of 10.50 on your first
line there. You did not take into account the local cartage
that might have been involved in deliveries there?

The Witness: Well, any deliveries to customers within
the city limits of East Chicago would not necessarily be
shipped by public carrier. Such deliveries would very
likely be made by our own truck.

Mr. Wright: By your own truck, but at your expense
in either event?

The Witness: Yes.

Mr. Wright: So that your net correspondingly would
be reduced by the cost of that cartage?

The Witness: That is right.

Mr. Wright: Do you know what that cost might be in
1942 on an average basis?

The Witness: No, I don't.

Mr. Wright: As I understand it from Exhibit 194, your
sales of white lead in oil during 1942 amounted to 1,813.9
tons?

The Witness: That is correct.

3528 Mr. Wright: You had the original invoices for that entire 1,813.9 tons?

The Witness: We had copies of the originals.

Mr. Wright: Or copies of the originals, and you segregated them all by the geographical zones?

The Witness: That is correct.

Mr. Wright: Does it appear on the invoice as to what zone the shipment was to?

The Witness: No, it did not appear on the invoices, marked, for example, one-eighth zone or one-quarter zone, but that could be determined by the price.

Mr. Wright: Now, did all of these invoices include just 100 pound containers?

The Witness: No. In exhibit 195 we gave the price per 100 pound keg to indicate the base price to the par and other zones, but the total shipment would be made up of the total amount of lead in oil shipped, which would be in 100 pound containers, and containers of other sizes.

Mr. Wright: In other words, these invoices from which you made it up might not have had 100 pound kegs? It might have had 12-1/2 pound cans, or 5 pound cans, or 1 pound cans?

The Witness: That is right.

Mr. Wright: So that your net in this column here was not derived from those invoices in any way. Your net 3529 just shows what would have been the case had this invoice been for hundred pound containers?

The Witness: Will you repeat that question, please?

Mr. Wright: The column under "net" in this exhibit that we are talking about now shows the net which would have applied had that shipment been in hundred pound kegs?

The Witness: Yes.

Mr. Wright: But it might not have been in one hundred pound kegs?

The Witness: That is correct.

Mr. Wright: Well, now, did you separate these invoices by geographical location?

The Witness: Yes.

Mr. Wright: Who did that, what employees did that?

The Witness: A clerk in our accounting department who handled the accounting matters in connection with the white lead in oil sales.

Mr. Wright: Now, how did you keep your freight

records from which you got this average rate?

The Witness: Well, as I remember ledger in which we entered the complete freight bill, and then a copy of the freight bill was sent to the accounting department at East

3530 Mr. Wright: Now, from what figures? Was it from the ledger or from the freight bill?

The Witness: I don't know whether from the ledger or from the freight bill.

Mr. Wright: Would those freight bills show shipments?

The Witness: We could locate the freight charges for each zone.

Mr. Wright: Could you tell the invoice from the freight bill or from the entry in the ledger?

The Witness: Yes, we could do that.

Mr. Wright: Well, was that done in the ledger?

The Witness: It is my understanding.

Mr. Wright: Do you know yourself?

The Witness: Well, I did not do the instructions were to carry out the work.

Mr. Wright: Well, just what were the instructions? Can you recall exactly how you instructed him to make this up?

The Witness: I don't know that I did, but in general the instructions were to determine the amount of lead in oil for this period in

each zone, and to determine the cost of the freight 3531 by dividing the cost of the freight by the lead in oil shipped.

Mr. Wright: You did not tell them to do that, but just told them to do it.

The Witness: That is correct. I would go to the proper records and make the calculations from them.

Mr. Wright: Do you know whether the records are still preserved in the form of invoices and freight bills?

The Witness: When we closed our office it is my understanding that such records were kept at Perth Amboy, New Jersey, for storage.

You had the original invoices for 100 tons?

and copies of the originals.

Copies of the originals, and you segregated them by geographical zones?

is correct.

It appears on the invoice as to what zone?

It did not appear on the invoices, one-eighth zone or one-quarter zone, determined by the price.

Did all of these invoices include these items?

In exhibit 195 we gave the price per barrel the base price to the barrel and all shipment would be made up of lead in oil shipped, which would be in 100 pound containers of other sizes.

In other words, these invoices from which you did not have had 100 pound kegs? It was 100 pound cans, or 5 pound cans, or 1

is right.

your net in this column here was these invoices in any way. Your net could have been the case had this been hundred pound containers?

Can you repeat that question, please? The column under "net" in this exhibit now shows the net which would have been in hundred pound

might not have been in one hundred

correct.

Now, did you separate these invoices

that, what employees did that? In our accounting department who handled matters in connection with the

how did you keep your freight

records from which you got this average 100 pound freight rate?

The Witness: Well, as I remember it, we had a large ledger in which we entered the complete data from the freight bill, and then a copy of the freight bill was filed in the accounting department at East Chicago, Indiana.

3530 Mr. Wright: Now, from what did you get these figures? Was it from the ledger or from the freight bill?

The Witness: I don't know whether they came from the ledger or from the freight bill.

Mr. Wright: Would those freight bills be keyed to the invoices which showed shipments?

The Witness: We could locate the freight bill that would cover the freight charges for each invoice.

Mr. Wright: Could you tell the invoice that was involved from the freight bill or from the entry in the ledger?

The Witness: Yes, we could do that without any trouble.

Mr. Wright: Well, was that done in preparing this?

The Witness: It is my understanding that it was.

Mr. Wright: Do you know yourself that it was?

The Witness: Well, I did not do it myself, but the instructions were to carry out the work along that line.

Mr. Wright: Well, just what were your instructions? Can you recall exactly how you instructed the employees to make this up?

The Witness: I don't know that I can recall exactly, but in general the instructions were to determine the amount of lead in oil for this period that was shipped to each zone, and to determine the average freight cost 3531 by dividing the cost of the freight by the pounds of lead in oil shipped.

Mr. Wright: You did not tell them just how you wanted that done, but just told them to do it. Is that correct?

The Witness: That is correct. I assumed that they would go to the proper records and make the proper entries from them.

Mr. Wright: Do you know whether or not all of these records are still preserved in the form of invoices or copies of invoices and freight bills?

The Witness: When we closed our plant during 1946, it is my understanding that such records were shipped to Perth Amboy, New Jersey, for storage.

Mr. Wright: Are you able to state whether they are in existence at this time and can be made available?

The Witness: I cannot definitely state that, because I had nothing to do with the packing and shipping of the records.

Mr. Wright: Your Honor, I want to renew my objection now on two additional grounds: One, that this gentleman is not acquainted with the details in which these figures were compiled, but turned the job over to subordinates, and this can only be properly identified by the people who actually did the work, since he only assigned the task in a general way; and for the additional reason that the 3532 basic data may no longer be available. According to this witness, he cannot state whether it is or whether it is not.

Mr. Gardiner: If your Honor please, this was submitted with the same qualifications as these previous exhibits, which was, as I understand Your Honor's ruling, that they would be stricken—

Trial Examiner Norwood: I will sustain the objection for the time being until it appears that it is possible for the basic data to be made available. Inasmuch as those are invoices, and just one year's invoices, that would not be a very large book. I should think counsel could bring those in.

Mr. Wright: It covers almost 2,000 tons of this material.

Trial Examiner Norwood: Well, tons—you could put many tons on one little invoice, you know.

Mr. Wright: Furthermore, there has been no direct evidence on the part of the respondent, who has the burden of supporting this document, showing the technique and means by which it was made up. This witness does not know what records were used to make any of this up, the freight record.

Trial Examiner Norwood: That point is well taken also, but it should appear here that there are basic data which can be produced, and also that somebody who brings them can explain the thing to us. It is not in satisfactory 3533 condition now, anyway, but counsel may present that again when he meets those objections. I will sustain the objection for the time being. That is exhibit 195, is it?

Mr. Wright: Yes.

By Mr. Gardiner:

Q. Was white lead in oil ever sold by Products or International on consignment?

A. No.

Q. Were there any exceptions to that?

A. One.

Q. What was that exception?

A. The State of Wisconsin.

Q. Why was consignment contract used in Wisconsin?

A. It is my understanding that the contract was used in the State of Wisconsin because the State of Wisconsin provide that in case consigned stock cannot be returned to the consignor there is a written agreement to cover it.

Mr. Wright: I move the answer be stricken on the witness' understanding. He is not competent as to the reason for the company policy. I have no knowledge that they may be required to do so by hearsay.

Trial Examiner Norwood: He cannot 3534 Did you establish that policy? Is it within your province to determine it?

The Witness: That policy was determined by counsel.

Mr. Wright: He testified only to that. Your Honor. I think a re-examination is warranted to show that he did not state of his own knowledge.

Trial Examiner Norwood: That would be your understanding, if he made the policy. I have no considerations.

But I think probably your objection is sustained.

By Mr. Gardiner:

Q. Were you ever instructed to prepare contracts for the use of sale of material?

A. Yes.

Q. Were you ever instructed to prepare contracts for the sale of white lead in the States?

A. No.

Q. At the time you received these contracts you told the reason why you were required to prepare consignment contracts for Wisconsin?

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That is exhibit 195, is it?

By Mr. Gardiner:

Q. Was white lead in oil ever sold by Anaconda Lead
Products or International on consignment contract?

A. No.

Q. Were there any exceptions to this practice?

A. One.

Q. What was that exception?

A. The State of Wisconsin.

Q. Why was consignment contract used in the State of
Wisconsin?

A. It is my understanding that the consignment contract
was used in the State of Wisconsin because the laws of the
State of Wisconsin provide that in case of insolvency, a
consigned stock cannot be returned to the consignor unless
there is a written agreement to cover it.

Mr. Wright: I move the answer be stricken. It concerns
the witness' understanding. He is not competent to testify
as to the reason for the company policy on the basis of
knowledge that they may be required from others. It is
hearsay.

Trial Examiner Norwood: He can give us his reason.

3534 Q. Did you establish that policy or fail to establish
it? Is it within your province to determine that policy?

The Witness: That policy was determined by our legal
counsel.

Mr. Wright: He testified only to his understanding,
Your Honor. I think a re-examination of the answer would
show that he did not state of his own knowledge.

Trial Examiner Norwood: That would be all right, his
understanding, if he made the policy. He can tell us the
considerations.

But I think probably your objection should be sustained.

By Mr. Gardiner:

Q. Were you ever instructed to prepare consignment
contracts for the use of sale of materials in Wisconsin?

A. Yes.

Q. Were you ever instructed to prepare consignment
contracts for the sale of white lead in oil in any other
States?

A. No.

Q. At the time you received these instructions, were
you told the reason why you were required to prepare
consignment contracts for Wisconsin?

A. Yes.

Q. What was the reason?

A. The reason was the laws of the State of Wisconsin provide that in case of insolvency, the consigned stock cannot be returned to the consignor unless there is a written agreement to cover it.

Q. Did either Anaconda Lead Products or International ever use any type of consignment arrangement in other States for the sale of white lead in oil?

A. They used the consignment arrangement.

Q. When was that arrangement first used, and describe its operation.

A. I cannot give the date when it was first used, but I believe that it probably was about 1932.

An order for shipment on consignment would be taken by our salesmen and forwarded to the main office at East Chicago, or would be sent indirect to that office by the customer. The shipment would be made and invoiced on memo billing.

About the 20th or 25th of every month we would send a form to the customer to be filled out. On it the customer would insert the amount of consigned stock on hand on the 25th or the preceding month, the amount of lead in oil received since that date, and the amount on hand on the present date, the difference being the amount that had been sold from the consigned stock.

Then the customer would be invoiced for that amount at current prices.

Q. Do you know who devised that procedure, or method of sale?

A. I mainly devised it, with the assistance of members of our sales department and accounting department.

Q. Was the arrangement you have just described put into effect at the instigation of, or through the agreement with, any of the respondents heretofore named, with any one or with an official representative of any one of these respondents?

A. No.

Q. How much business did the Anaconda Lead Products and International do by means of this consignment arrangement in the sale of white lead in oil?

A. Generally, the sales from consigned stocks accounts for 50 to 60 percent of our total sales of white lead in oil.

Q. Did Anaconda Lead Products or International ever

supply dealers with price cards showing white lead in oil?

A. Yes.

Q. Why were these cards given to dealers?

A. Those cards were informative and giving value for us.

Q. Did Anaconda Lead Products or International require dealers to resell white lead in oil listed on such cards?

A. No.

Q. Did Anaconda Lead Products ever have any arrangements with dealers to the terms and conditions of resale materials resold?

A. Will you repeat that question, please?

Q. Did Anaconda Lead Products or International have any arrangements or any agreements with respect to the terms and conditions of prices of the materials as such to be resold?

A. No.

Q. Did International, in selling and dry white lead and lead in oil in commerce, require its customer dealers for resale, require its customer products at prices and terms of sale fixed and published by it?

A. No.

Q. Will you state again how many years connected with the International Smelting Company?

A. 25 years.

Q. What relationship does that correspond to Anaconda Copper Mining Company?

A. It is a subsidiary.

Q. Are you familiar generally with the International Smelting & Refining Company of the United States?

A. I believe that I am.

Q. Are you familiar generally with the Anaconda Copper Mining Company of the United States?

A. I believe so.

Q. Do you know whether the Anaconda Company has ever engaged in the production of lead pigments?

the laws of the State of Wisconsin of insolvency, the consignment to the consignor unless to cover it.

Lead Products or International consignment arrangement in other than in oil?

consignment arrangement. consignment first used, and describe

when it was first used, but I about 1932.

consignment would be taken direct to the main office at East direct to that office by the consignment be made and invoiced on

every month we would send a bill out. On it the customer signed stock on hand on the amount of lead in oil the amount on hand on the bill being the amount that had been stock.

invoiced for that amount

devised that procedure, or

with the assistance of memorandum accounting department. you have just described put or through the agreement heretofore named, with any assistance of any one of these

the Anaconda Lead Products this consignment arrangement in oil?

consigned stocks accounts sales of white lead in oil. Lead Products or International ever

supply dealers with price cards showing retail prices for white lead in oil?

A. Yes.

Q. Why were these cards given to dealers?

A. Those cards were informative and contained advertising value for us.

Q. Did Anaconda Lead Products or International ever require dealers to resell white lead in oil at these prices listed on such cards?

A. No.

Q. Did Anaconda Lead Products or International 3537 ever have any arrangements with dealers with respect to the terms and conditions of resale or the prices of materials resold?

A. Will you repeat that question, please?

Q. Did Anaconda Lead Products or International ever have any arrangements or any agreements with dealers with respect to the terms and conditions of the resale or the prices of the materials as such to be resold?

A. No.

Q. Did International, in selling and offering to sell dry white lead and lead in oil in commerce to agents or dealers for resale, require its customers to resell such products at prices and terms of sale fixed and determined and published by it?

A. No.

Q. Will you state again how many years you have been connected with the International Smelting & Refining Company?

A. 25 years.

Q. What relationship does that company have with respondent Anaconda Copper Mining Company?

A. It is a subsidiary.

Q. Are you familiar generally with the operations of the International Smelting & Refining Company throughout the United States?

A. I believe that I am.

Q. Are you familiar generally with the operations 3538 of the Anaconda Copper Mining Company throughout the United States?

A. I believe so.

Q. Do you know whether the Anaconda Copper Mining Company has ever engaged in the production and sale of lead pigments?

A. It has not.

Q. Do you know whether the Anaconda Copper Mining Company ever gave any directions through its officers or agents to the Anaconda Lead Products Company or to the International Smelting & Refining Company as to the operations of those companies or to the prices to be charged for lead pigments and the terms or conditions under which they were to be sold?

A. No, I do not.

Q. Do you know if the Anaconda Copper Mining Company ever exercised any control over Anaconda Lead Products or International beyond that which a stockholder would ordinarily be expected to exert?

A. No, I do not.

Q. In advertising their products, did Anaconda Lead Products and International use a common name and trade-mark?

A. Yes.

Q. What was it?

A. It was the Anaconda trade-mark.

Q. Do you know if there was any arrangement with the Anaconda Copper Mining Company for such use?

A. I do not know of it.

3539 Q. Why was that particular trade-mark used?

A. Well, we used it to help us to sell our white lead in oil, which was a comparatively unknown product at that time.

Q. Do you know of any agreement on the part of International with the National Lead Company, the Eagle-Picher Lead Company, the Eagle-Picher Sales Company, the Sherwin-Williams Company, or the Glidden Company for the adoption and maintenance of a system of delivered price quotations for white lead in oil?

A. No, I do not.

Q. Do you know of any agreement between International and any of the other respondents in this proceeding heretofore named for the adoption and maintenance of a plan whereby the United States is divided into zones for the purpose of selling white lead in oil?

A. No, I do not.

Q. Do you know of any arrangement whereby International sought and secured advice, assistance and cooperation of the Lead Industries Association, its officers, employees and agents, along with the other respondents

heretofore mentioned, or any one of them, publishing and using non-competitive quotations of sale in connection with the sale of white lead in oil?

A. No, I do not.

Q. Do you know if International's 1940 office of the Lead Industries Association cooperation of the officials of the same of exchanging price factors and information price factors to be used at times by the other respondents heretofore named in calculating, determining and announcing the price of white lead in oil?

A. No, I do not.

Q. Do you know if International ever adopted, maintained and used terms of sale embodied in the so-called consignment agreements under the leadership of the Lead Company, for the purpose of preventing the sale of white lead in oil and from making products at levels lower than the respective respondent producers heretofore named were affixed to such consignments?

A. No, I do not.

Mr. Wright: Your Honor I am with this witness will testify that he does not know the truth of this complaint, if it will save the time of this court.
Trial Examiner Norwood: Off the record.
(There was a discussion off the record.)
Trial Examiner Norwood: On the record.
Overruled.

By Mr. Gardiner:

3541 Q. Mr. Hurless, you have asked a series of questions about the existence of agreements between the other respondents in this case covering the distribution of dry white lead. I have asked the same questions with relation to the other respondents.

Is your answer the same as to the other respondents who have previously been asked as to the same questions?

Mr. Wright: You mean, with re

the Anaconda Copper Mining Company through its officers or Products Company or to the refining Company as to the price or to the prices to be charged for the same or conditions under which

the Anaconda Copper Mining Company over Anaconda Lead Products that which a stockholder can exert?

Products, did Anaconda Lead have a common name and trade-

mark. Was any arrangement with the Company for such use?

particular trade-mark used? To help us to sell our white lead, a previously unknown product at

agreement on the part of International Lead Company, the Eagle-Picher Sales Company, or the Glidden Company for the use of a system of delivering white lead in oil?

agreement between International Lead Company and respondents in this proceeding for the sale and maintenance of a system divided into zones for the sale of white lead in oil?

arrangement whereby International Lead Company, assistance and cooperation, its officers, employees and the other respondents

heretofore mentioned, or any one of them, in fixing, adopting, publishing and using non-competitive terms and conditions of sale in connection with the sales and offers to sell of white lead in oil?

A. No, I do not.

Q. Do you know if International ever used the 3540 office of the Lead Industries Association with the cooperation of the officials of the same for the purpose of exchanging price factors and information concerning price factors to be used at times by the International and the other respondents heretofore named or any one of them in calculating, determining and announcing their offers to sell white lead in oil?

A. No, I do not.

Q. Do you know if International ever agreed to adopt or adopted, maintained and used terms and conditions of sale embodied in the so-called consignment or agency agreements under the leadership of respondent, National Lead Company, for the purpose of preventing dealers from selling white lead in oil and from making offers to sell such products at levels lower than the offers made by the respective respondent producers heretofore named, whose names were affixed to such consignment or agency agreements?

A. No, I do not.

Mr. Wright: Your Honor I am willing to stipulate that this witness will testify that he does not know of any violation of this complaint, if it will save time.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record. Objection overruled.

By Mr. Gardiner:

3541 Q. Mr. Hurless, you have previously been asked a series of questions about your knowledge of the existence of agreements between International and the other respondents in this case covering the sale and distribution of dry white lead. I have also asked you some of the same questions with relation to white lead in oil.

Is your answer the same as to those questions which you have previously been asked as to dry white lead—

Mr. Wright: You mean, with regard to agreements?

By Mr. Gardiner:

Q. With regard to agreements which have not been asked you with regard to white lead in oil?

A. The answer would be the same.

Mr. Gardiner: Off the record.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Gardiner:

Q. Is the respondent International now engaged in either the production or sale of any of the lead pigments heretofore described as included within the definition of the amended complaint?

A. No.

Q. When did International stop the production of dry white lead and lead in oil?

3542 A. Is the question, when did they stop?

Q. When did International stop the production of dry white lead and lead in oil?

A. In July of 1946.

Q. When did International make the last sale of those materials?

A. August, 1946.

Q. Does International have on hand at the present time any of such products?

A. No.

Q. What use is being made of the plant where these products were previously manufactured?

A. The plant where these products were previously manufactured was sold to the Eagle Picher Company of Cincinnati, and it is my understanding that they are using a part of it for the manufacture of dry white lead and white lead in oil.

Q. When was this property sold to the Eagle Picher Company?

A. On October 1, 1946.

3543 Q. When was the first public announcement made that International was going out of the white lead and oil business?

A. On June 20, 1946.

Q. What was the nature of this announcement?

A. Substantially the same as the one for dry white lead.

Q. Are the personnel who were engaged in the pro-

duction and sale of these lead pigments of International?

A. Only two.

Q. Who are they?

A. My secretary, Miss Helen Ohr, and

Q. Are you familiar generally with the International Smelting & Refining Anaconda Copper Mining Company in

A. Yes, generally.

Q. Do you know of any facilities of this country or any other country that converted to production of dry white in oil?

A. I would say that there are no su

Q. Would it be a correct statement back into dry white lead or white lead would be necessary to purchase or co that purpose?

A. Yes.

Q. Do you know if International 3544 of resuming the production of t

A. I believe that they have n ever.

Mr. Wright: I move that that answe Honor. This witness is obviously in the intention of the board of directors a of the corporation.

Trial Examiner Norwood: Motion

By Mr. Gardiner:

Q. In view of your familiarity Copper Mining Company's operation any plan that it has to enter the pro cials through any of its subsidiaries?

A. I know of no such plans.

Q. Can you elaborate on the reaso decided to go out of the lead pigmer

A. Well, the reasons they decided pigment business are briefly indic announcement that was sent to the tr

Q. Was international influenced way by the action of its competitors?

A. No.

Q. With relation to the time that

agreements which have not been
to white lead in oil?
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erty sold to the Eagle Picher

1946.

first public announcement made
is going out of the white lead

of this announcement?

as the one for dry white lead.
who were engaged in the pro-

duction and sale of these lead pigments still in the employ
of International?

A. Only two.

Q. Who are they?

A. My secretary, Miss Helen Ohr, and myself.

Q. Are you familiar generally with the operations of
the International Smelting & Refining Company and the
Anaconda Copper Mining Company in the United States?

A. Yes, generally.

Q. Do you know of any facilities of the properties in
this country or any other country that could be readily
converted to production of dry white lead or white lead
in oil?

A. I would say that there are no such properties.

Q. Would it be a correct statement to say that to go
back into dry white lead or white lead in oil business, it
would be necessary to purchase or construct a plant for
that purpose?

A. Yes.

Q. Do you know if International has any intention
3544 of resuming the production of these lead pigments?

A. I believe that they have no intention whatso-
ever.

Mr. Wright: I move that that answer be stricken, Your
Honor. This witness is obviously in no position to know
the intention of the board of directors and governing officers
of the corporation.

Trial Examiner Norwood: Motion allowed.

By Mr. Gardiner:

Q. In view of your familiarity with the Anaconda
Copper Mining Company's operations, do you know of
any plan that it has to enter the production of these mat-
erials through any of its subsidiaries?

A. I know of no such plans.

Q. Can you elaborate on the reasons why International
decided to go out of the lead pigment business?

A. Well, the reasons they decided to go out of the lead
pigment business are briefly indicated in the letter of
announcement that was sent to the trade on June 1, 1946.

Q. Was international influenced in its decision in any
way by the action of its competitors?

A. No.

Q. With relation to the time that the decision was made

to discontinue these operations, do you know when it was decided to sell the plant?

A. I believe it was about four to six weeks afterwards.

3545 Q. That is, it was four to six weeks after the decision was made to discontinue the operations that it was decided to sell the plant?

A. Well, I would put it this way: I heard about the decision to discontinue the operations about the middle of May, 1946, and about four to six weeks after that we began to make efforts to sell the plant.

Q. Were there other parties interested in its purchase besides the Eagle-Picher Company?

A. Yes.

Q. Do you know what the names of any of these prospective purchasers were?

A. The Metal and Thermit Company of East Chicago, Indiana; the American Zinc, Lead & Smelting Company of St. Louis, Missouri; and the Calumet Iron & Supply Company of East Chicago, Indiana. Those were the principal ones.

Mr. Gardiner: Your Witness.

Mr. Wright: I suggest that counsel has finished his direct examination that we recess for lunch.

Trial Examiner Norwood: Is counsel through now?

Mr. Gardiner: I am through with this witness, Your Honor.

Trial Examiner Norwood: What is your pleasure, gentlemen?

Mr. Wright: Two o'clock.

3546 Trial Examiner Norwood: We will recess until 2 o'clock.

(Whereupon, at 12:10 p. m., a recess was taken until 2 p. m., this day.)

Afternoon Session

3547 Trial Examiner Norwood: The hearing order.

Mr. Hurlless will resume the stand.

FRANK H. HURLESS resumed the stand further as follows:

Trial Examiner Norwood: Proceed with examination.

Cross-Examination by Mr. Wright

Q. Mr. Hurlless, will you state again with the International Smelting & Refining Company back in the beginning?

A. I was employed by the International Refining Company in 1922 as a checker of a zinc oxide plant at Akron, Ohio. I handled materials and supplies and the amount of construction since the construction was on a basis.

Subsequently I had charge of the sales at Akron, Ohio.

Q. That is still International Smelting & Refining Company?

A. That is right.

3548 About 1927 I began part-time sales work. In 1929 I began full-time sales work transferred to the main office at East Chicago, Indiana.

Q. That is, sales work for International Refining Company?

A. That is right.

In 1930 I was made district salesman for the Midwest area and had charge of the sales of zinc oxide in the Midwestern area.

In 1936, I was made assistant sales manager in charge of the sale of dry white lead, white lead, and zinc oxide. While assistant sales manager in charge of the sales, since our official sales office was in Ohio, had other duties that did not permit me to devote all my time to sales work.

In 1938, I was made sales manager in charge of the sale of dry white lead, white lead in all territories.

operations, do you know when it was
halt?

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to sell the plant?

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about four to six weeks after that we
to sell the plant.

her parties interested in its purchase
her Company?

what the names of any of these pro-
were?

Thermit Company of East Chicago,
n Zinc, Lead & Smelting Company of
and the Calumet Iron & Supply
ago, Indiana. Those were the prin-

ir Witness.

uggest that counsel has finished his
it we recess for lunch.

rwood: Is counsel through now?
m through with this witness, Your

orwood: What is your pleasure,

Two o'clock.

rwood: We will recess until 2

10 p. m., a recess was taken until

3547

Afternoon Session

2:00 p. m.

Trial Examiner Norwood: The hearing will come to
order.

Mr. Hurless will resume the stand.

FRANK H. HURLESS resumed the stand and testified
further as follows:

Trial Examiner Norwood: Proceed with the cross-
examination.

Cross-Examination by Mr. Wright.

Q. Mr. Hurless, will you state again your employment
with the International Smelting & Refining Company, be-
ginning back in the beginning?

A. I was employed by the International Smelting &
Refining Company in 1922 as a checker on the construction
of a zinc oxide plant at Akron, Ohio. I checked the mat-
erials and supplies and the amount of labor used in that
construction since the construction was on a cost-plus
basis.

Subsequently I had charge of the small plant office at
Akron, Ohio.

Q. That is still International Smelting Company?

A. That is right.

3548 About 1927 I began part-time sales work and about
1929 I began full-time sales work and was trans-
ferred to the main office at East Chicago, Indiana.

Q. That is, sales work for International Smelting?

A. That is right.

In 1930 I was made district salesmanager. I was in the
Midwest area and had charge of the sale of dry white lead
and zinc oxide in the Midwestern area.

In 1936, I was made assistant salesmanager and had
charge of the sale of dry white lead, white lead in oil, and
zinc oxide. While assistant salesmanager, I actually had
charge of the sales, since our official salesmanager in Akron,
Ohio, had other duties that did not permit him to give full
time to sales work.

In 1938, I was made salesmanager in full charge of the
sale of dry white lead, white lead in oil and zinc oxide in
all territories.

Q. What was your position when the International Smelting & Refining Company left the business of marketing these lead pigments? Were you still salesman at that time?

A. Yes, sir.

Q. What is your present position with the International Smelting Company?

A. I am a special representative for the International Smelting & Refining Company in the Midwestern area.

3549 Q. That is, sales representative?

A. No, not a sales representative; a sort of general representative.

Q. Who is the president of International Smelting & Refining Company?

A. It is my understanding that Mr. C. F. Kelly is president of International Smelting & Refining Company.

Q. Was he president of it back in 1936, do you recall?

A. I do not know.

Q. What office does Mr. Kelly hold in the Anaconda Copper Mining Company?

A. I understand that he is chairman of the board.

Q. Is Mr. Kelly also a director of International Smelting & Refining Company?

A. I believe that he is.

Q. Who are the other directors of International Smelting & Refining Company?

A. I believe that Mr. Frederick Laist is.

Q. That is L-a-i-s-t?

A. Yes. And Mr. E. O. Sowerwine is a director, I believe.

Q. Who are the other directors, do you recall?

A. I do not know who they are.

Q. Is Mr. Laist or Mr. Sowerwine connected with the Anaconda Copper Mining Company in any way?

3550 A. I believe Mr. Laist is the vice-president of the Anaconda Copper Mining Company.

Q. Does he have any official position with International Smelting aside from being a director?

A. I believe he is vice-president of International Smelting & Refining Company.

Q. What is Mr. Sowerwine's position with International beyond that, for the record?

A. I am not sure, but I think he is secretary-treasurer.

Q. You mean, you have difficulty in knowing who the officers of this corporation are?

A. Yes, sir, I do.

Q. What is his position with Anaconda Company?

A. Mr. Sowerwine is the vice-president.

Q. How many members of the Board of Directors of International Smelting & Refining Company?

A. I do not know.

Q. Do you know whether those members of Directors are also members of the Board of Directors of the Anaconda Copper Mining Company?

A. I believe that Mr. Kelly is a director. As regards the others, I do not know.

Q. And those three are the only ones you recall who are members of the board?

A. Those that I believe are members.

3551 Q. Of International Smelting & Refining Company?

A. Yes.

Q. What other corporate officers are there besides those three men? Of International, I am speaking.

A. Well, let us see. We have touched vice-president, and—

Q. Secretary-treasurer?

A. Secretary-treasurer.

I do not know that there are any other officers.

Q. Have you ever attended a meeting of the Board of Directors of the International Smelting & Refining Company?

A. No, sir.

Q. Do you recall ever receiving invitations to meetings of the Board of Directors of the International Smelting & Refining Company?

A. No, sir.

Q. Have you ever heard of a meeting of the Board of Directors of International Smelting & Refining Company as such?

A. I cannot recall that I have.

Q. Who is the president of the Anaconda Company?

A. I believe that Mr. C. F. Kelly is.

Q. Is Mr. Laist an officer and director of the Anaconda Sales Company?

A. I don't believe that he is.

Q. Who are the other officers and directors of the Anaconda Sales Company?

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any left the business of market.
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?

A. Yes, sir, I do.

Q. What is his position with Anaconda Copper Mining
Company?

A. Mr. Sowerwine is the vice-president, I believe.

Q. How many members of the Board of Directors are
there of International Smelting & Refining Company?

A. I do not know.

Q. Do you know whether those members of the Board
of Directors are also members of the Board of Directors
or officers of the Anaconda Copper Mining Company?

A. I believe that Mr. Kelly is a director of both, but as
regards the others, I do not know.

Q. And those three are the only ones that you can
recall who are members of the board?

A. Those that I believe are members of the board.
3551 Q. Of International Smelting & Refining Com-

pany?

A. Yes.

Q. What other corporate officers are there besides those
three men? Of International, I am speaking now.

A. Well, let us see. We have touched on the president,
vice-president, and—

Q. Secretary-treasurer?

A. Secretary-treasurer.

I do not know that there are any other officers.

Q. Have you ever attended a meeting of the Board of
Directors of the International Smelting & Refining Com-
pany?

A. No, sir.

Q. Do you recall ever receiving instructions from the
Board of Directors of the International Smelting & Refi-
ning?

A. No, sir.

Q. Have you ever heard of a meeting of the Board of
Directors of International Smelting & Refining Company,
as such?

A. I cannot recall that I have.

Q. Who is the president of the Anaconda Sales Com-
pany?

A. I believe that Mr. C. F. Kelly is president.

Q. Is Mr. Laist an officer and director of the Anaconda
Sales Company?

A. I don't believe that he is.

Q. Who are the other officers and directors of the Ana-
conda Sales Company?

3552 A. I believe that Mr. Clarence Glass is vice-president.

Q. What is Mr. Glass' connection with Anaconda?

A. Well, so far as I know his only connection is that he is vice-president of the Anaconda Sales Company.

Q. He has no independent office or no other office in the Anaconda Copper Mining Company?

A. Not that I know of.

Q. Who are the other officers of the Anaconda Sales Company?

A. Mr. Kennedy is vice-president of the Anaconda Sales Company.

Q. What is Mr. Kennedy's full name?

A. I don't know.

Q. What did you say his office was?

A. Vice-president of the Anaconda Sales Company.

Q. And Mr. Kelly, Mr. Glass and Mr. Kennedy are the three officers you know of in the Anaconda Sales Company?

A. Mr. Dohrman, I believe, is either secretary or secretary-treasurer.

Q. Do either Mr. Dohrman or Mr. Kennedy have any connection that you know of with the Anaconda Copper Mining Company?

A. I don't know of any such connection.

Q. As far as you know, they devote their full time to the operations of the Anaconda Sales Company?

A. That is my understanding.

Q. When did the International Smelting & Refining Company first engage in the production of lead pigments?

A. In the latter part of 1936.

Q. So that at the time you say you had to do with the sales of dry white lead, from the period 1930 to 1936, that company was not engaged in the production or sale of white lead. Is that correct?

A. No.

Q. What was the arrangement? I withdraw that question.

As I understand it, during that period from 1930 to '36, the production was by Anaconda Lead Products, and the sales were by Anaconda Lead Products and Anaconda Sales Company. Is that correct?

A. That is right.

Q. Well, how did you, as an employee of International

Smelting & Refining Company, have contact at that time?

A. Well, in my capacity—for example, district sales manager—I simply sold the products produced by the Anaconda Lead Products Company.

Q. Well, were you acting for Anaconda Smelting & Refining Company, or did one begin and the other left off?

A. They were pretty much overlapped.

Q. Did they have common office employees during that period of time?

A. Well, the main office of the Anaconda Sales Company at that time was in New York City. The main sales office at East Chicago, Indiana, was the point I operated.

Q. Were employees of Anaconda Smelting & Refining Company at that office too, or were they employees of the Sales Company?

A. No.

Q. Were employees of the Anaconda Smelting & Refining Company at that office?

A. You mean in the sales office?

Q. Occupying joint offices?

A. Well, the operating, sales and accounting departments all had their offices in East Chicago, Indiana, building.

Q. Was it the same department work or were they physically separated?

A. Will you state that question?

Q. Was it a single office with both the sales and accounting offices physically separated?

A. No, the offices were not physically separated. There were different accounts, Anaconda Sales Company and the Anaconda Lead Products Company.

Q. For bookkeeping purposes?

A. That is right.

Q. Now, when you sold dry white lead, that transferred on the books from the Anaconda Lead Products Company to Anaconda Sales Company?

3555 Q. International Smelting & Refining Company, you know how that was handled?

A. If a sale was effected through the Anaconda Sales Company, I would say that there was no transfer from the Anaconda Lead Products Company to the Anaconda Sales Company.

ever that Mr. Clarence Glass is vice-presi-

Mr. Glass' connection with Anaconda?
As I know his only connection is that he
of the Anaconda Sales Company.
Independent office or no other office in the
Mining Company?
I know of.

Are other officers of the Anaconda Sales

Company is vice-president of the Anaconda

Kennedy's full name?

What was his office was?
What of the Anaconda Sales Company.
Mr. Glass and Mr. Kennedy are the
know of in the Anaconda Sales Company?
I, I believe, is either secretary or sec-

Mr. Dohrman or Mr. Kennedy have any
know of with the Anaconda Copper

of any such connection.
I know, they devote their full time to
Anaconda Sales Company?
Understanding.

Did the International Smelting & Refin-
ing first engage in the production of lead

part of 1936.
At the time you say you had to do with the
lead, from the period 1930 to 1936, that
engaged in the production or sale of
correct?

Arrangement? I withdraw that ques-

During that period from 1930 to '36,
Anaconda Lead Products, and the
Anaconda Lead Products and Anaconda
is correct?

Now, as an employee of International

Smelting & Refining Company, have charge of those sales
at that time?

A. Well, in my capacity—for example in 1930 I was
district salesmanager—I simply sold the products that were
produced by the Anaconda Lead Products Company.

Q. Well, were you acting for Anaconda Sales Company,
Anaconda Lead Products Company, or International
Smelting & Refining Company, or could you tell where
one began and the other left off?

A. They were pretty much overlapping.

Q. Did they have common officers and common em-
ployees during that period of time?

A. Well, the main office of the Anaconda Sales
Company at that time was in New York City. We had our
main sales office at East Chicago, Indiana, from which
point I operated.

Q. Were employees of Anaconda Sales Company opera-
ting that office too, or were they employed in that office?

A. No.

Q. Were employees of the Anaconda Lead Products in
that office?

A. You mean in the sales office?

Q. Occupying joint offices?

A. Well, the operating, sales and accounting depart-
ments all had their offices in East Chicago in the same
building.

Q. Was it the same department with different accounts,
or were they physically separated?

A. Will you state that question again, please?

Q. Was it a single office with different accounts, or
were the sales and accounting offices of the three companies
physically separated?

A. No, the offices were not physically separated, but
there were different accounts, Anaconda Sales Company
and the Anaconda Lead Products Company.

Q. For bookkeeping purposes?

A. That is right.

Q. Now, when you sold dry white lead at that time, was
that transferred on the books from Anaconda Lead
Products Company to Anaconda Sales Company to
International Smelting & Refining Company, or do
you know how that was handled?

A. If a sale was effected through the Anaconda Sales
Company, I would say that there would be a transfer from
Anaconda Lead Products Company to the Anaconda Sales
Company.

Q. How, would you effect such a sale in the name of the Anaconda Lead Products Company in your capacity as salesmanager in that district?

A. I would not effect it, no. I would simply sell the material.

Q. You were the one who would make the sale?

A. That is right.

Q. Would you know in advance for which account it would be sold?

A. To some extent that would depend upon the immediate shipping point to the customer.

Q. In other words, there were certain territories in which accounts were for the Anaconda Sales Company?

A. That is right.

Q. Anybody located in that territory?

A. That is right.

Q. But that was the only basis of division?

A. That is right.

Q. Now, was part of your compensation paid by Anaconda Sales Company, part by Anaconda Lead Products, or were you an employee solely of International Smelting & Refining?

A. I understand that I was an employee solely of the International Smelting & Refining Company.

Q. You don't know whether the other two companies were compensated for your services in selling for their account?

A. I don't know about the Anaconda Lead Products Company. I don't think the Anaconda Sales Company was, but I am not sure of it.

Q. Now, when the International Smelting & Refining Company acquired the plant of the Anaconda Lead Products Company in 1936, will you tell us just what changes of organization were made necessary as a result of that, what shifts of personnel, changes in methods of handling business?

A. Well, as I recall it there were practically no changes. I don't remember any that were made at the time.

Q. In other words, business was continued on. It was largely a bookkeeping transaction?

A. That is right, pretty much the same as before.

Q. Didn't you consider yourself an employee of the Anaconda organization, I mean disregarding the technicalities now?

A. Well, I think that I am a direct employee of the International Smelting & Refining Company.

Q. Did you ever attend any meeting of the Directors of the Anaconda Sales Company?

A. No, sir.

3557 Q. Did you ever see any minutes of the Board of Directors of that company?

A. I don't recall that I ever did.

Q. Do you know whether there has ever been to your knowledge?

A. I don't know of any actual meetings, but there have been.

Q. Do you know Mr. F. O. Case?

A. Yes, I do.

Q. What was Mr. Case's position in 1933?

A. In 1933, I believe—I am not too sure—I believe he was general salesmanager.

Q. Of what company?

A. Of the International Smelting & Refining pigment division.

Q. In other words, he was your superior at that time?

A. That is correct.

Q. He was not an employee of the Anaconda Company or of the Anaconda Lead Products Company?

A. I don't believe so.

Q. Is he still with the Anaconda organization?

A. Mr. Case is with the Anaconda organization.

Q. What is his position now, do you know?

A. I understand his position at the present time is assistant to the president of the Anaconda Company.

3558 Q. How long has he been in that position?

A. I think since about October of 1936.

Q. For how long a period of time did he work for International?

A. I believe Mr. Case originally went with International about 1920 or 1921.

Q. How long did he remain?

Mr. Gardiner: If your Honor please, I don't know what counsel has in mind here by this line of questioning, but we are perfectly willing to stipulate that the Anaconda Lead Products, Anaconda Sales Company and International Smelting & Refining Company were all subsidiaries of the Anaconda Copper Company, and the Anaconda Lead Products Company and the Anaconda Sales Company, if the matters.

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Refining Company.

Q. Did you ever attend any meeting of the Board of
Directors of the Anaconda Sales Company?

A. No, sir.

3557 Q. Did you ever see any minutes of a meeting of
the Board of Directors of that company?

A. I don't recall that I ever did.

Q. Do you know whether there has ever been a meeting,
to your knowledge?

A. I don't know of any actual meetings, but I presume
there have been.

Q. Do you know Mr. F. O. Case?

A. Yes, I do.

Q. What was Mr. Case's position in 1933?

A. In 1933, I believe—I am not too sure of the date—
I believe he was general salesmanager.

Q. Of what company?

A. Of the International Smelting & Refining Company,
pigment division.

Q. In other words, he was your superior officer at that
time?

A. That is correct.

Q. He was not an employee of the Anaconda Sales
Company or of the Anaconda Lead Products Company?

A. I don't believe so.

Q. Is he still with the Anaconda organization now?

A. Mr. Case is with the Anaconda organization.

Q. What is his position now, do you know?

A. I understand his position at the present time is
assistant to the president of the Anaconda Copper Mining
Company.

3558 Q. How long has he been in that position?

A. I think since about October of 1946.

Q. For how long a period of time did he remain with
International?

A. I believe Mr. Case originally went with International
about 1920 or 1921.

Q. How long did he remain?

Mr. Gardiner: If your Honor please, I don't know just
what counsel has in mind here by this line of examination,
but we are perfectly willing to stipulate that these com-
panies—Anaconda Lead Products, Anaconda Sales Com-
pany and International Smelting & Refining Company—
were all subsidiaries of the Anaconda Copper Mining Com-
pany, and the Anaconda Lead Products Company is today,
and the Anaconda Sales Company, if that will facilitate
matters.

Trial Examiner Norwood: Is that satisfactory?

Mr. Wright: I appreciate that there is no issue there, but counsel has raised the issue that the acts of these subsidiaries could be placed in a separate compartment, and neither had any responsibility for either of the others might have done. I think I have a right to bring out, since this question of this witness' relationship to the Anaconda Copper Mining Company was brought out on direct examination, this relationship on cross-examination.

Trial Examiner Norwood: Yes, this is cross-examination.

Mr. Gardiner: I am not objecting, but I did not know what he was after.

Trial Examiner Norwood: Counsel may except that offer to stipulate in whole or in part, and be governed accordingly.

Mr. Wright: Well, there never was any issue as to whether there was a relationship of principal to subsidiary.

Trial Examiner Norwood: All right.

By Mr. Wright:

Q. When did Mr. Case leave International and go with Anaconda?

A. I believe that was about October of 1946. Correction. Mr. Case left International, I believe, about two years before the war ended to go to Las Vegas, Nevada, as general manager of Basic Magnesium, Incorporated.

Q. But up until that point he still had a connection with International?

A. That is my understanding, yes.

Q. So during the period from 1930 to '36, he was in charge of sales policies on these pigments of International?

A. I believe that is correct.

Q. From whom did he get his authority to act in determining sales policies in that period?

A. Well, I believe that Mr. Case pretty much developed his own policy as regards things.

Q. In other words, he was directly subordinate to the officers and directors of the International Smelting & Refining Company?

Mr. Gardiner: If Your Honor please, I do not want to object to each question, but I think the witness testified here as to his belief in these matters rather than what he knows.

Mr. Wright: Your Honor, this witness has testified, we did this and we did that, all morning, with regards to

the period from 1930 to 1936, that he has no sales policies were in the period of his direct testimony.

Trial Examiner Norwood: state his views.

Mr. Gardiner: his instructions.

Mr. Wright:

Mr. Gardiner: other words, he may

Trial Examiner Norwood: statement whether he has knowledge.

By Mr. Wright:

Q. Mr. Case,

3561 whom you were in charge of during that period?

A. That is right.

Q. And you were in charge with Mr. Case; is that correct?

A. Yes.

Q. And you were in charge of that correct?

A. I would not say so.

G. Duncan, who was in charge of Ohio.

Q. Salesman?

A. That is right.

manager.

Q. Who in that period was responsible to?

A. I do not know.

Q. You know that period, then, and Mr. Case?

& Refining?

A. I cannot say.

reported on these matters, he handled himself.

Q. You do not know from the board?

the company?

3562 A. I do not know.

Q. Now did you know that?

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the period from 1930 on. Now, if counsel wants to urge
that he has no authority to state what the company's
policies were in that period, I am going to move to strike
his direct testimony.

Trial Examiner Norwood: I think he may go ahead and
state his views.

Mr. Gardiner: He was asked, where did Mr. Case get
his instructions. Is that correct?

Mr. Wright: That is correct.

Mr. Gardiner: And his answer was, "He believes." In
other words, he must know that.

Trial Examiner Norwood: He may make his own
statement whether it be belief or whether it be direct
knowledge.

By Mr. Wright:

Q. Mr. Case was your immediate superior from
3561 whom you took your instructions, I take it, during
that period from 1930 to 1936?

A. That is right.

Q. And you discussed the policies of the organization
with Mr. Case; is that correct?

A. Yes.

Q. And you and Mr. Case determined those policies; is
that correct?

A. I would not say Mr. Case and I alone. We had Mr. L.
G. Duncan, who was salesmanager with his office at Akron,
Ohio.

Q. Salesmanager for International?

A. That is right, up until the time I was made sales-
manager.

Q. Who in the corporate organization was Mr. Case
responsible to?

A. I do not know.

Q. You know of no one between the officers and directors,
then, and Mr. Case in authority in International Smelting
& Refining?

A. I cannot name any individual to whom he directly
reported on these matters. That is something that Mr. Case
handled himself.

Q. You do not know of his getting any instructions
from the board of directors or the corporate officers as to
the company policy?

3562 A. I do not recall any specific instructions he got
that would affect the sales policy.

Q. Now did you in the period from 1933 to 1944 partici-

pate in any of the Lead Industries Association pigment division meetings?

A. No.

Q. Who handled that?

A. Well, if there was any participation on our part, I presume that Mr. Case would do it.

Q. So you were not present at any of those discussions to know what matters were discussed at those meetings between 1933 and 1944; is that correct?

A. That is correct.

Q. I believe you mentioned in your direct testimony this morning that there is a quarter of a cent differential, or discount, for carload purchases of dry white lead.

A. Under the less-carload price.

Q. Under the less-carload price; is that correct?

A. That is correct.

Q. Can you tell me how long that differential has been in force?

A. No, I cannot.

Q. Did you ever discuss that differential with Mr. Case, that you recall?

A. I do not recall it.

3563 Q. You do not recall Mr. Case's having any interest in adopting such a differential?

A. I do not recall anything about it, either way.

Q. What is the International Lead Refining Company?

A. I think the International Lead Refining Company was a subsidiary of the International Smelting & Refining Company.

Q. I show you a document in evidence as Commission's Exhibit 508-B, which has been identified as a letter written by Mr. F. O. Case, Manager of the Anaconda Zinc Oxide Department, International Lead Refining Company, under date of July 24, 1933.

Does that refresh your recollection as to that?

A. As to what?

Q. As to the relationship of International Lead Refining Company?

A. I believe that when we built our Zinc Oxide Plant at Akron, Ohio, it was under the name of International Lead Refining Company, Anaconda Zinc Oxide Department.

Q. In other words, it was known as the Anaconda Zinc Oxide Department, even though it was part of the International Smelting & Refining Company; is that right?

A. That is correct.

Q. I call your attention to that paragraph beginning with the words "I am not called upon to read that."

3564 Mr. Gardiner: I believe this is in here.

You are asking him to read it to him.
Mr. Wright: Yes, sir.

By Mr. Wright:

Q. Do you recall discussing the matter in the last paragraph of Commission's Exhibit 508-B, Mr. Case?

A. Apparently this applies to the fact that I believe that in my capacity as district manager, I have nothing to do with the Pacific Coast and the Pacific Coast.

Q. I want to call your attention to the fact that they are going to charge one quarter of a cent for all shipments of dry white lead which is in addition to the Pacific Coast differential.

Do you recall that matter?

A. I do not know that I understand that.

Q. Do you recall any discussion of the advisability of adopting that differential in the letter, July of 1933, a less than one quarter of a cent on dry white lead?

A. For shipments under five tons.

Q. Yes, sir.

A. I do not recall that at all. I do not remember hearing or seeing a 3565 ton differential.

Q. There is a five-ton differential.

A. There is not at the present time when he went out of the business in 1933.

Q. Would you explain again for the record why you called your consignment arrangement?

A. Orders would be taken from customers and sent on our consignment arrangement. We would mail the orders direct to our customers on the consignment arrangement.

Q. Did you offer that to any other company?

A. No, I do not think we offered it. We would try to rest our case on the thought would sell a reasonable price.

Q. You say, there was no competition?

A. Not except in the State of Ohio.

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company; is that right?

Q. I call your attention to that paragraph of this letter
beginning with the words "I am not certain," and ask you
to read that.

3564 Mr. Gardiner: I believe this is a matter of record.
It is in here.

You are asking him to read it to himself, are you not?

Mr. Wright: Yes, sir.

By Mr. Wright:

Q. Do you recall discussing the matters mentioned in
the last paragraph of Commission's Exhibit 508-B with
Mr. Case?

A. Apparently this applies to the Pacific Coast. I
believe that in my capacity as district salesman, I had
nothing to do with the Pacific Coast at that time.

Q. I want to call your attention to the fact, "And I
understand that they are going to charge a differential of
one quarter of a cent for all shipments under five tons,"
which is in addition to the Pacific Coast situation.

Do you recall that matter?

A. I do not know that I understand the question.

Q. Do you recall any discussion with Mr. Case about
the advisability of adopting that about the date of that
letter, July of 1933, a less than carload differential of a
quarter of a cent on dry white lead?

A. For shipments under five tons?

Q. Yes, sir.

A. I do not recall that at all. In fact, I do not ever
remember hearing or seeing anything about that five-
3565 ton differential.

Q. There is a five-ton differential, is there not?

A. There is not at the present time, or there was not
when he went out of the business in 1946.

Q. Would you explain again for me Mr. Hurless, what
you called your consignment arrangement on direct exami-
nation?

A. Orders would be taken from our salesmen for ship-
ment on our consignment arrangement, or the customer
would mail the orders direct to our office for shipment on
the consignment arrangement.

Q. Did you offer that to any dealer that wanted it?

A. No, I do not think we offered it to any dealer that
wanted it. We would try to restrict it to dealers who we
thought would sell a reasonable amount of lead in oil.

Q. You say, there was no contract involved?

A. Not except in the State of Wisconsin.

Q. How did you bill your shipments of that lead?

A. The shipment was billed to the Anaconda Sales Company or the International Smelting & Refining Company in care of the account that was purchasing the lead in oil or that would purchase it eventually from consigned stock.

Q. Now, then, the customers who had that arrangement would file reports monthly showing what they sold in various sized containers; is that correct, during the month?

A. Our report had the different sized containers 3566 listed with a separate column for each one, from 100 pounds down to 1 pound.

Q. What did the dealer fill in those columns with? What sort of figure did he put in those columns? Simply pounds sold, or what?

A. As I recall it, we would put on the report before it was mailed the amount of stock that our books showed was on hand with the dealer and the amount of lead in oil that had been shipped since the date of the last report. The dealer would insert his present stock on hand, which would be the number of different sized containers.

Q. Then what was the billing transaction that followed that report?

A. When the report was received from the dealer, it went to the accounting department for processing; that is, issuance of invoice to him.

Q. And you billed him then for the dealer's net price on what was sold; is that correct?

A. We billed the dealer for the amount shown as shipped during the period at the current price.

Q. The current dealer price?

A. That is right.

Q. Over how long of a period of time did that arrangement obtain?

A. You mean, what period of time did we have 3567 the consigned stock arrangement?

Q. Yes, sir.

A. I do not know when we started it, but I—correction: I believe we started that the latter part of 1932.

Q. And over how long a period did you continue to use it?

A. We continued to use it until we went out of business in 1946.

Q. Did you have any announcements to the trade covering the terms and conditions of that consignment arrangement?

A. Well, when there was a change in the zone map, we always notified the dealers and consigned stock arrangements and gave them the terms of sale.

Q. You supplied those terms as are in the record in the selling schedule, as in Consignment?

A. That is correct.

Q. As well as the dealer's terms?

A. That is right.

Q. Getting back to the terms of selling appeared on what date that was around 1933 or 1934?

A. It was around 1933, I remember.

Q. The latter part of 1932?

3568 A. I do not know.

Q. How did you determine the terms of sale?

A. Well, we really did not have much business of producing a zone map well along in 1932, and I think it was on a hit or miss basis.

Q. How did you first determine the terms of sale?

A. Well, something naturally cause consideration would pick up information from the dealers on whom we were selling.

Q. Did these dealers come from any competitors?

A. I do not believe they came from any competitors.

Q. As I recall it, you determined those terms of sale you picked up in the trade?

A. That is correct.

Q. If the dealers did not get the complete terms of sale on those zones and the terms of sale and the different terms of sale?

3569 We would pick up the terms of sale from the dealer in the so-called zone map, Davenport, and Moline.

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A. Well, when there was a price change either up or
down, we always notified our dealers both on direct sale
and consigned stock arrangement of the new prices, and
gave them the terms of sale.

Q. You supplied those dealers with these price cards,
such as are in the record in evidence here showing dealers'
selling schedule, as in Commission's Exhibit 661-Z-36?

A. That is correct.

Q. As well as the dealers' confidential price list?

A. That is right.

Q. Getting back to the first time that the zone method
of selling appeared on white lead in oil, I believe you said
that was around 1933 or 1944, did you not?

A. It was around 1933, as I recall it. But I do not
remember.

Q. The latter part of 1933?

3568 A. I do not know.

Q. How did you sell white lead in oil prior to that
zone method?

A. Well, we really did not begin to get started in the
business of producing and selling white lead in oil until
well along in 1932, and I think that our methods were pretty
much on a hit or miss basis.

Q. How did you first hear about this zone method of
selling?

A. Well, something like that being instituted would
naturally cause considerable comment initially, and we
would pick up information from the dealers and prospec-
tive dealers on whom we were calling.

Q. Did these dealers have any zone maps or anything
from any competitors?

A. I do not believe that I ever saw or heard of a dealer
having a zone map.

Q. As I recall it, your testimony this morning was that
you determined those zones from the information which
you picked up in the trade from dealers and so forth?

A. That is correct.

Q. If the dealers did not have a zone map, how would
you get the complete information for the whole country
on those zones and the territorial divisions between them,
and the differentials?

3569 We would pick it up piecemeal. For example, a
dealer in the so-called Tri-State area or Rock Island,
Davenport, and Moline, who was any kind or dealer at all

would know that in that territory where the par zone left off and the one-eight zone began. Then we could talk to a dealer or distributor in Richmond, Virginia, or vicinity, who would tell us where the par zone left off and the one-eight zone began in that territory.

Q. Are you telling us how you may have found that information or how you did find it?

A. I am telling you how we did find it, piecemeal, and put it together.

Q. Over how long a period of time did that obtain?

A. I do not know that I can answer that. We did not get it all at once. I know that.

Q. But you recall very well that process of piecing it together?

A. I remember that we had quite a time getting some of the information, and that we spent quite a little time and money doing it.

Q. Mr. Case also participated in that, I take it?

A. That is correct.

Q. Since he was salesmanager at that time?

A. Yes, sir.

Q. You don't recall Mr. Case mentioning that such maps or zones had been discussed at meetings of the Lead Industries Association, do you?

A. No, I do not.

Q. On dry white lead, as I recall your testimony, you stated that you allow freight to the customer. Does that mean that you ship the material freight collect, and allow the amount of freight that the customer shows has been paid on the invoice when billing for the material?

A. No, we prepaid all freight charges.

Q. At all times?

A. That is right.

Q. On all products?

A. That is right.

Trial Examiner Norwood: Now, do you allow the same freight that you paid on every package?

The Witness: Well, for example, if the price of white lead in oil were 10½ cents per pound in hundred pound containers, and we were shipping from East Chicago to Akron, Ohio, we would prepay the actual freight from East Chicago to Akron, Ohio, and bill the customer at 10½ cents a pound.

Trial Examiner Norwood: But in shipping it to dif-

ferent places in a zone, would you charge j freight in every case?

The Witness: We would prepay the freight and the customer did not actually pay as such.

Trial Examiner Norwood: But the freight in that price, was it?

The Witness: Yes, sir.

Trial Examiner Norwood: Was that so freight figured in the price that you paid average figure?

The Witness: Well, our price structure same zone we charged the same price, freight to the point of delivery, whatever it might be.

Trial Examiner Norwood: And then charge freight differential or an average added into the price. Is that right?

The Witness: Well, you mean from a standpoint?

Trial Examiner Norwood: That is right.

The Witness: I believe in figuring out an average figure for freight.

Mr. Wright: May we have a five-minute recess?

Trial Examiner Norwood: We will take recess.

(A short recess was taken.)

Trial Examiner Norwood: Are you ready, gentlemen?

Mr. Wright: Yes.

Trial Examiner Norwood: Proceed.

By Mr. Wright:

Q. Do you recall a representative of the Commission calling on you in March of 1933, the investigation the Commission was conducting?

A. One representative called, but I don't recall the date.

Q. Do you recall Mr. Dunn, attorney for the Commission, calling on you?

A. I remember, he was Mr. Carr.

Q. Do you recall making a statement at that time that the consignment practice was initiated in the fall of '33 rather than

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The Witness: We would prepay the actual freight, 3571 and the customer did not actually pay any freight as such.

Trial Examiner Norwood: But the freight was figured in that price, was it?

The Witness: Yes, sir.

Trial Examiner Norwood: Was that same amount of freight figured in the price that you paid, or was it an average figure?

The Witness: Well, our price structure was that in the same zone we charged the same price, paid the actual freight to the point of delivery, whatever that freight might be.

Trial Examiner Norwood: And then charged an average freight differential or an average freight amount added into the price. Is that right?

The Witness: Well, you mean from a cost accounting standpoint?

Trial Examiner Norwood: That is right.

The Witness: I believe in figuring our costs we used an average figure for freight.

Mr. Wright: May we have a five-minute recess?

Trial Examiner Norwood: We will take a five-minute recess.

(A short recess was taken.)

Trial Examiner Norwood: Are you ready to go ahead, gentlemen?

3572 Mr. Wright: Yes.

Trial Examiner Norwood: Proceed.

By Mr. Wright:

Q. Do you recall a representative of the Federal Trade Commission calling on you in March of 1944 regarding the investigation the Commission was making in this case?

A. One representative called, but I don't recall the date.

Q. Do you recall Mr. Dunn, attorney-examiner for the Commission, calling on you?

A. As I remember, he was Mr. Carmichael.

Q. Do you recall making a statement to Mr. Carmichael at that time that the consignment practice of International was initiated in the fall of '33 rather than '32?

A. No, I don't.

Q. Going back to the parties, the different corporations that were involved here, did the International Smelting & Refining Company make any annual report to the stockholders or balance sheet showing its profit, losses, expenses and earnings?

Mr. Gardiner: If Your Honor please, I object to that question. I do not see the purpose of that, as to what report the International Smelting & Refining Company may have made to its stockholders. I don't see that that has any bearing in this particular case.

Mr. Wright: Well, Your Honor, he has certainly 3573 raised an issue here of the responsibility for the acts of these various subsidiary corporations, and it seems to me that that opens up the field pretty wide for determining their act relationship.

Trial Examiner Norwood: I think you may show it for that purpose. The objection is overruled.

The Witness: Will you read the question, please?

Trial Examiner Norwood: Read the question.

(The pending question was read.)

A. Well, in my capacity in sales, I would really have nothing to do with that sort of thing, and I don't know what was done in that respect, if anything.

By Mr. Wright:

Q. Would your answer be the same if a similar question were asked relating to Anaconda Lead Products Company?

A. Yes.

Q. And Anaconda Sales Company?

A. Yes.

Q. Now, did this office in East Chicago, Indiana, in which you were located, do business for the account of the Anaconda Copper Mining Company?

A. I don't believe it did.

Q. You don't know of any business it had in that regard?

A. No, I do not.

Q. There were no employees of Anaconda, as 3574 such, located in this office?

A. No direct employees of the Anaconda Copper Mining Company, to my knowledge.

Q. But there were employees of the three subsidiary corporations?

A. I don't believe we had Anaconda Sales Company at East

Q. Well, weren't all the sales of these pigment products

A. Well, we made the sales through a sales organization. In the International Smelting & Refining Company business, the sales were made through the Sales Company.

Q. Did you have anything to do with the policies of the company with

A. I would not say I had anything to do with the policies, but I did have considerable influence in the management of advertising.

Q. Where was this advertising done?

A. Are you speaking now of lead or zinc oxide?

Q. If you can make one in oil and dry white lead, it cannot, just separate the

3575 A. I think that we advertised white lead in the American market. We ran advertising on white lead in the American market. Painter and Decorator and in zinc.

Q. Do you recall an advertisement to the effect that its other preparations on the market

A. Our what you might call brighter."

Q. Do you recall advertising to, that your white lead was superior to other products?

A. Yes, we advertised that.

Q. Did you advertise white lead over white lead of a competitor?

Mr. Welch: Your Honor is not a false representation. I don't think that kind of question.

Trial Examiner Norwood: of competition.

Mr. Wright: If Your Honor my purpose will be plain. up, I will be happy to enter

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Read the question.

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A. I don't believe we had any employees of the Ana-
conda Sales Company at East Chicago.

Q. Well, weren't all the sales of Anaconda Sales Com-
pany of these pigment products made through your office?

A. Well, we made the sales, as such, through our regu-
lar sales organization. In those States where the Interna-
tional Smelting & Refining Company was not licensed to
do business, the sales were made through the Anaconda
Sales Company.

Q. Did you have anything to do with the advertising
policies of the company with reference to these pigments?

A. I would not say I had anything to do with the pol-
icies, but I did have considerable to do with the develop-
ment of advertising.

Q. Where was this advertising run principally, in what
media?

A. Are you speaking now of white lead in oil or dry
lead or zinc oxide?

Q. If you can make one answer covering white lead
in oil and dry white lead, that will be all right. If you
cannot, just separate the two.

3575 A. I think that we ran some advertising on dry
white lead in the American Paint Journal, and I think
we ran advertising on white lead in oil in the American
Painter and Decorator and in the National Painters Maga-
zine.

Q. Do you recall an advertising campaign by Interna-
tional to the effect that its white lead was whiter than
other preparations on the market?

A. Our what you might call slogan "Whiter and
brighter."

Q. Do you recall advertisements of the sort I referred
to, that your white lead was brighter and whiter than com-
petitive products?

A. Yes, we advertised that.

Q. Did you advertise showing a spot of Anaconda white
lead over white lead of a competitor?

Mr. Welch: Your Honor, we object to this. This case
is not a false representation case; this is a conspiracy case.
I don't think that kind of question is proper.

Trial Examiner Norwood: I think it goes to the matter
of competition.

Mr. Wright: If Your Honor will bear with me, I believe
my purpose will be plain. If it is not sufficiently connected
up, I will be happy to entertain a motion to strike.

Trial Examiner Norwood: Objection overruled.
Answer the question.

The witness: May I have the question, please?
3576 (The pending question was read.)

A. We advertised that Anaconda white lead will make a white spot on ordinary lead.

By Mr. Wright:

Q. Over what period of time did you advertise that fact?

A. Over a considerable period of time.

Q. Well, can you give me some estimate of what that was?

A. Well, I would say probably a five-year period.

Q. What five years is what I meant.

A. I would estimate that perhaps from 1933 or '34 to 1938 or '39.

Q. In 1938 or '39, did you have anything to do with representing International in the Lead Industries Association, in white lead in oil or pigments?

A. I did not represent International. I believe that I was aware that they were conducting a campaign to further the use of white lead in oil.

Q. Did you attend any meetings of the association?

A. I attended one meeting at which, I believe, we discussed the media for advertising.

Q. Do you know of any discussion ever taking place before any group of the Lead Industries Association with reference to your advertising of your white lead as whiter than competitors' white lead?

A. I don't recall of any.

3577 Q. No discussion of it in your presence?

A. Well, there wasn't any discussion of it in that one meeting at which I was present.

Q. Then you don't know of any other meeting at which some discussion might have taken place?

A. No, I don't.

Mr. Wright: I have no further questions.

Redirect Examination by Mr. Gardiner

Q. Mr. Hurless, referring back to your activities as a salesman at East Chicago, did you sell any products for any of the companies that were mentioned besides white lead in oil and dry white lead?

A. Will you repeat the o
Trial Examiner Norwood
(The pending question wa
A. When I was a sales
white lead in oil, I also sol

By Mr. Gardiner:

Q. Over what period did

A. Well, I sold zinc oxi
that I sold lead pigments.

Q. You have testified, M
sales on behalf of Anaco

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3578 was there any reason
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Mr. Wright: I object
please.

Mr. Gardiner: On cro
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Mr. Wright: The que
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By Mr. Gardiner:

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Testimony of Frank H. Hurless.

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A. Will you repeat the question, please?

Trial Examiner Norwood: Read it.

(The pending question was read.)

A. When I was a salesman selling dry white lead and white lead in oil, I also sold zinc oxide.

By Mr. Gardiner:

Q. Over what period did you sell zinc oxide?

A. Well, I sold zinc oxide for the same period of time that I sold lead pigments.

Q. You have testified, Mr. Hurless, that you have made sales on behalf of Anaconda Sales Company, Anaconda Lead Products and International. So far as you know, 3578 was there any reason why there could not have been a cost accounting arrangement so that your services were charged to any one, segregated and charged to any one or all three of those companies?

Mr. Wright: I object to that question, if Your Honor please.

Mr. Gardiner: On cross-examination the question was raised several times as to whether or not this witness worked for one of these companies, and he testified that he sold material for them. I am merely bringing out the fact or attempting to bring out the fact that he could have worked for those various companies and been compensated by one company.

Mr. Wright: The question wasn't whether or not there was such an arrangement.

Trial Examiner Norwood: I think the question is objectionable for several reasons. One is that you asked him what could have possibly been there, whether or not such a situation could have obtained, and also it was a leading question. I think I will sustain the objection. You may bring out just exactly what the circumstance is by some other question.

By Mr. Gardiner:

Q. Were you at all times at East Chicago paid by International Smelting & Refining Company?

A. As I recall, the pay checks were those of the 3579 International Smelting & Refining Company.

Q. Do you know if there was any allocation as to your salary between the various companies for which you worked?

A. There may not have been any direct allocation of

salary, but my understanding is that we would charge the other—for example, the Anaconda Lead Products Company,—so much selling expense in which there would be some charge for salary.

Mr. Wright: I object to that, Your Honor, as to what his understanding is. He is not testifying as to facts.

Mr. Gardiner: If Your Honor please, there was a lot of testimony by this witness both on direct and cross as to understandings, beliefs, and so forth.

Mr. Wright: We are talking about something which can be ascertained correctly, Your Honor. This is not a matter which needs to be proved by speculation.

Trial Examiner Norwood: Objection overruled.

By Mr. Gardiner:

Q. When you sold white lead in oil in the par zone, what consideration was given to the freight to the points within that zone in computing your price?

A. No consideration was given to it.

Q. How did you arrive at your prices for the par zone?

A. The only way we arrived at our prices for the par zone was by establishing what our competitors' prices were and setting our prices accordingly.

3580 Q. Were your sales of white lead in oil at any time computed on the basis of your freight rates?

A. No.

Q. When you say that you allowed freight to a destination, what did you mean by that?

A. I meant that we actually paid the freight from East Chicago to the point of delivery.

Q. In the par zone, when a customer purchased white lead in oil, what did he pay for it, above the list price?

A. For Example, if the price for white lead in oil in the par zone was 10-1/2 cents per pound for 100 pound containers, that is what he paid, less his cash discount if he took it within the cash discount period.

Q. And was that true in the other zones, with the exception that the differential was applied within those zones?

A. That is correct.

Q. A moment ago in answer to a question, you said that you figured your cost on your freight in computing your prices. What did you mean by that?

A. I misunderstood the question. What I had in mind then was, if we were figuring production costs, for example,

Testimony of Frank H.

for our own use, we would take an average selling cost in figuring those in establishing our prices to the customer.

always based on competitive prices. I figure them by including the freight.

Q. So that when you say you are in computing costs, that was merely determining whether or not you were at a loss or how much of either; is that correct?

A. That is correct.

Mr. Gardiner: May we have a recess of time, Your Honor?

Trial Examiner Norwood: How long?

Mr. Gardiner: Three minutes.

Trial Examiner Norwood: We will have a recess.

(A short recess was taken.)

Trial Examiner Norwood: The order.

By Mr. Gardiner:

Q. In the sale of white lead in oil with a similar material produced in the par zone?

A. Yes.

Q. In your opinion, how did the standpoint of quality?

A. We considered that our material was of the same quality as that of the National Lead Company in our advertising.

Q. Was there any price difference between the 3582 material that you sold and the National Lead Company's?

A. We sold at a quarter of a cent below the National Lead Company's price.

Trial Examiner Norwood: What was the reason?

The Witness: I would say that was fairly well established in the lead market.

By Mr. Gardiner:

Q. And what was the reason for selling a cent below National Lead?

A. We sold our lead in oil at a price of National Lead Company's at that time was a comparatively

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for our own use, we would take an average rate or an
average selling cost in figuring those production costs. But
in establishing our prices to the customers, our prices were
always based on competitive prices, and we did not
3581 figure them by including the freight charges.

Q. So that when you say you figured freight rates
in computing costs, that was merely for the purpose of
determining whether or not you were operating at a profit
or a loss or how much of either; is that correct?

A. That is correct.

Mr. Gardiner: May we have a recess for a short period
of time, Your Honor?

Trial Examiner Norwood: How long do you want?

Mr. Gardiner: Three minutes.

Trial Examiner Norwood: We will take a three minute
recess.

(A short recess was taken.)

Trial Examiner Norwood: The hearing will come to
order.

By Mr. Gardiner:

Q. In the sale of white lead in oil, did you compete
with a similar material produced by National Lead?

A. Yes.

Q. In your opinion, how did those two compare from the
standpoint of quality?

A. We considered that our quality was superior to
that of the National Lead Company, and we played that
up in our advertising.

Q. Was there any price differential between the
3582 material that you sold and that of National Lead?

A. We sold at a quarter of a cent under the price
at which National Lead Company sold. That is for lead in
oil.

Trial Examiner Norwood: When was that? All the time?

The Witness: I would say that it was after we became
fairly well established in the lead in oil field.

By Mr. Gardiner:

Q. And what was the reason you sold for a quarter of
a cent below National Lead?

A. We sold our lead in oil a quarter of a cent below the
price of National Lead Company because we had what at
that time was a comparatively unknown product—

Trial Examiner Norwood: I think we went into that this morning and explained that fully.

Mr. Gardiner: Very well.

Mr. Wright: We have gone into that fully.

By Mr. Gardiner:

Q. Did you compete in the sale of white lead in oil with Eagle-Picher?

A. Yes.

Q. What, in your opinion, was the quality of their product with relation to yours?

A. I do not think the quality of the Eagle-Picher white lead in oil was as good as ours, particularly as regards 3583 color.

Q. Did you sell it on the same basis as Eagle-Picher?

A. No; we sold our lead at a quarter of a cent per pound under the price Eagle-Picher charged for their white lead in oil.

Q. And why was that?

A. For the same reason that we sold under the price of the National Lead Company. The Eagle-Picher product was not as well accepted and as well known as the National Lead Product, but it was a very well known product as compared to our comparatively unknown product.

Mr. Gardiner: That is all.

Recross-Examination by Mr. Wright.

Q. About this understanding that you have that your services can be had by other Anaconda subsidiaries and billed to those subsidiaries, will you go into that further?

A. I cannot say that I know what the arrangement was there. But I think that, for example, the sales department would, each month, assess the white lead department, the lead in oil department and the zinc oxide department with a certain amount of selling expense for each department.

Q. Those are departments of International now that you are speaking of?

A. Yes.

3584 Q. And the same would be true of the Anaconda Lead Products Company.

Q. All right that was done.

A. I could not regard Anaconda definitely I know of International.

Q. But not

A. I cannot definitely say.

Q. Where?

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A. Yes, si

Q. That is such as Comm

A. At the Broadway, but and was in the manufacture.

Q. I call y 1939. It show

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Q. 3585 Mining

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Q. Now, your experience these pigments company is concerned follow what

A. Our p doing.

Q. Yes.

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A. Yes.

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A. That

Q. You of—

Mr. Gardiner conclusion

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Testimony of Frank H. Hurless.

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Q. All right. Is that conjecture, or do you know that
that was done as to Anaconda Lead Products Company?

A. I could not definitely say that I know it was done as
regards Anaconda Lead Products Company, but I can say
definitely I know it was done as far as the other departments
of International were concerned.

Q. But not outside of International?

A. I cannot definitely say. I believe it was, but I cannot
definitely say so.

Q. Where are the main offices of International?

A. In New York City.

Q. 25 Broadway?

A. Yes, sir.

Q. That is the office that is listed here on the price card
such as Commission's Exhibit 661-Z-193, as a district office?

A. At that time, we had a district sales office at 25
Broadway, but later it was moved to the Graybar Building,
and was in the Graybar Building until we discontinued the
manufacture and sale of lead pigments.

Q. I call your attention to 61-Z-194, which is in October,
1939. It shows the district office at 25 Broadway.

A. That is correct.

Q. That is the main office of the Anaconda Copper
3585 Mining Company, is it not?

A. Yes, sir.

Q. Now, do I understand, Mr. Hurless, that it has been
your experience that you have been handling the sale of
these pigments, and that your prices as far as your com-
pany is concerned, are set by your competitors? That is, you
follow what your competitors do?

A. Our prices were based on what our competitors were
doing.

Q. Yes. And those have been the same prices in so far
as the dry product is concerned?

A. Yes.

Q. And the difference between that and white lead in oil
was in effect that you would compensate the dealer 25 cents
per hundred more than your competitors; is that correct?

A. That is correct.

Q. You consider that your company has had freedom
of—

Mr. Gardiner: If Your Honor please, I object to that
conclusion on the part of attorney for the Commission

there. He says that we in effect give the dealer a compensation of 25 cents on the dollar more.

This witness has testified that there is no limitation on what the dealer sold his material for. Whether or not he elected to sell it for the same price as our competitors or at a different price was entirely in his province.

Mr. Wright: I used the words in that question, 3586 Your Honor, that the witness used himself on his direct testimony this morning.

Trial Examiner Norwood: Objection overruled.

By Mr. Wright:

Q. Do you consider that your company has a complete freedom of action in this industry as far as prices are concerned?

A. Well, we set our own prices.

Q. Well, now, you stated with this one exception that they are the prices that are set by your competition.

A. Well, we had the same prices that they were charging, with that one exception.

Q. That is what you mean by freedom of action?

A. We were free to do as we saw fit to do.

Q. In other words, then, you could have set prices lower if you had wanted to, or on a different basis, if you had wanted to, on these various products?

A. Any limitation was really due to conditions such as costs and so forth, not on the part of our competitors.

Mr. Wright: No further questions.

Mr. Gardiner: That is all we have for Mr. Hurley as far as the International Smelting & Refining Company is concerned, and Anaconda. We have no further witnesses at this time.

We would however, like the privilege at a later 3587 date of introducing further testimony.

Mr. Wood: I will have four witnesses tomorrow and Thursday. I would not elect to proceed today.

Trial Examiner Norwood: Is there anything further to come before the Commission today?

(No Response.)

Trial Examiner Norwood: The conclusion is obvious, that we recess until 10 o'clock tomorrow morning.

The hearing is adjourned until that time.

(Thereupon, at 3:20 o'clock p. m., the hearing was recessed until 10 o'clock a. m., Wednesday, September 17, 1947.)

Hearing Room
Federal Trade Commission
Washington
September 17, 1947

3588

Met, pursuant to adjournment, at 10 o'clock a. m.

Before:

J. W. Norwood, Trial Examiner

Appearances:

James D. Ewing and E. Z. D. Wood, Attorneys for the Respondent National Lead Company

(120 Broadway, New York, N. Y.)
Edmund T. Wood and Richard A. Picher, Attorneys for the Respondents Eagle-Picher Sales Company and Eagle-Picher Sales Company

3589 Henry E. Gardiner, Attorney for the Respondent Anaconda Copper Mining Company
(120 Broadway, New York, N. Y.)
James T. Welch, Attorney for the Respondent Sherwin-Williams Company
(815 15th Street, N. W., Washington, D. C.)
Joseph S. Wright and Paul F. Wright, Attorneys for the Federal Trade Commission

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PROCEEDINGS

Trial Examiner Norwood: The hearing is adjourned.

Pursuant to adjournment on yesterday's order, Docket 5253 is now reconvened for the taking of evidence on behalf of respondent National Lead Company, at 10 o'clock a. m. on the 17th day of September, 1947.

The appearances are as follows:

Edmund T. Wood and Richard A. Picher, Attorneys for the Respondent Eagle-Picher Company

James D. Ewing and E. Z. D. Wood, Attorneys for the Respondent National Lead Company.