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NEWS NOTES

SUIT FILED AGAINST PLUMBING FIXTURE FIRMS

June 12, 1969: The Department of Justice has filed a damage claim against the nation's leading manufacturers of plumbing fixtures to recover overcharges on government purchases. Attorney General John N. Mitchell said the damage claim was filed in the U.S. District Court in Pittsburgh, Pennsylvania, in a pending civil antitrust suit accusing eight manufacturers of conspiring to raise and fix prices of enameled cast iron and vitreous china plumbing fixtures.

Between September 1962 and 1966, the period of the alleged conspiracy, the government was compelled to pay "substantially higher prices" for plumbing fixtures, the damage action said. The amount of damages claimed by the government was not specified.

INJUNCTION SOUGHT TO DISCONTINUE DUAL PUBLIC SCHOOL SYSTEM

June 12, 1969: The Department of Justice sought a court order to discontinue operation of a dual public school system in Columbia County, Florida, and require full desegregation for the 1969-70 school year. Attorney General John N. Mitchell said the request was made in a Justice Department petition filed in the U.S. District Court in Jacksonville, Florida, to intervene in a private suit against the Columbia County Board of Public Instruction. It was the first time the Department of Justice has intervened in a private school desegregation case--under Title IX of the Civil Rights Act of 1964--by the present Attorney General.

CIVIL ANTITRUST SUIT FILED AGAINST RECIPROCAL PURCHASE ARRANGEMENTS

June 13, 1969: The Department of Justice has filed a civil antitrust suit against U.S. Steel Corporation charging the use of reciprocal purchase arrangements with suppliers and customers in violation of the Sherman Act. At the same time, the Department filed a proposed consent judgment, to become final in 30 days, in U.S. District Court in Pittsburgh, Pennsylvania. Attorney General John N. Mitchell said the complaint charges that U.S. Steel has since 1955 entered into combinations with various suppliers to restrain trade by reciprocating purchases in violation of Section 1 of the Act.

The complaint also charges that U.S. Steel has used its purchasing power since 1955 to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for steel and steel products,

as well as cement, chemicals, and other products, in violation of Section 2 of the Act.

SINCLAIR OIL CASE CONSENT ORDER FILED

June 13, 1969: The Department of Justice has filed a consent order enjoining Sinclair Refining Division of Atlantic Richfield Company and the Oil, Chemical, and Atomic Workers Union from discriminating against Negroes and Spanish-Americans at the company's Houston, Texas refinery. Under the order, Sinclair and the International Union and its Local 4-227 agree to comply with the provisions of Title VII of the Civil Rights Act of 1964, which prohibits employment practices that discriminate against a person because of race, color, religion, sex, or national origin.

FIRST PUBLIC ACCOMMODATION SUIT FILED IN THE NORTH

June 16, 1969: The Department of Justice has filed its first public accommodations suit in the North, charging a Rhode Island motel with discriminating against Negroes. Attorney General John N. Mitchell said the civil suit was filed in U.S. District Court in Providence, Rhode Island against James E. Gray, owner and operator of Gray's Motel in North Kingston, Rhode Island.

The suit, the first ever filed outside the Southern and Border States, accused Gray's Motel of refusing to honor confirmed reservations held by Negroes "when they appeared to claim accommodations reserved in their names".

SEPARATE SCHOOL SYSTEM SUIT FILED IN N.C.

June 16, 1969: The Department has challenged a 1969 North Carolina law on grounds that it perpetuates racial segregation of public schools in Halifax County. The 1969 law, the suit said, created a special school system in Scotland Neck, a town in Halifax County, separate from the previous county-wide school system. The new system was approved at a special election on April 8, 1969. The suit charged that the separate school system "has no educational justification", is contrary to North Carolina school consolidation policy, and denies equal opportunity to Negro children residing in the county outside the town of Scotland Neck.

INTERNAL REVENUE SERVICE EMPLOYEE INDICTED

June 19, 1969: A federal grand jury has indicted a former Internal Revenue Service employee and three other persons in connection with attempted bribery of an IRS agent in New Jersey. Attorney General John N. Mitchell

said the four were named in two separate indictments returned in U.S. District Court in Newark.

Named in the indictments were:

Peter C. Ciolino, 50, a group supervisor in the audit division of IRS, whose office was in Hackensack, N.J.

Vincent R. Liberatore, 48, president of the Trodyne Corp., of Teterboro, N.J.

John Mania, president and general manager of Taral Mason Contractors, Inc., of Hackensack.

Morton Lesser, a certified public accountant with offices in Clifton, N.J.

All four were named in three separate counts charging bribery and conspiracy. The maximum sentence for violation of Section 201 or 371 of Title 18, U.S. Code, is a five-year prison term and a $10,000 fine.

Liberatore was accused of attempting to influence Ciolino in an audit of the Trodyne Corporation's tax returns for 1965 and 1966. Ciolino was accused of accepting a $3500 bribe from Liberatore September 12, 1968, and both were indicted for conspiracy to bribe. In addition, the two were accused of offering another IRS agent $1250 March 28, 1968, for a favorable audit for the company's returns.

Mania and Lesser were charged in a separate indictment with conspiracy to bribe, and with offering $500 to an IRS agent December 22, 1967, and $1000 to the agent March 7, 1968, in an attempt to obtain a favorable audit of the Taral Mason firm's tax returns for 1965 and 1966.

* * *

POINTS TO REMEMBER

ENFORCEMENT OF ADMINISTRATIVE SUMMONS

In two recent actions to judicially enforce Internal Revenue Service summonses, attorneys for the Government have represented to two courts, in one instance that the summoned information would not be used in any criminal prosecution, and in the other that an investigation by a special agent of the Intelligence Division was a purely civil investigation. Both of these representations were incorrect and misleading.

In one degree or another any revenue investigation has criminal potential as, indeed, does any federal investigation, and the anticipatory assurance given the court in the first instance above has apparently immunized two ex-convicts from any consequences of criminal activities revealed by their compliance with the summons.

As to the second representation, it should suffice to point out that special agents of the Intelligence Division of the Internal Revenue Service are investigators and law enforcement agents of the Treasury Department specially trained in the detection and investigation of revenue crimes, and ordinarily assigned to investigations wherein there is an indicium of tax fraud or evasion. The investigations they conduct are neither purely civil nor purely criminal, but rather purely federal tax investigations with possible civil and criminal consequences.

Every Court of Appeals which has considered the question of whether a special agent can issue an Internal Revenue summons has upheld the power so long as a tax matter is under investigation and no criminal case is already in esse. See e.g., Boren v. Tucker, 239 F.2d 767 (C.A. 9, 1956); Tillotson v. Boughner, 333 F.2d 515 (C.A. 7, 1964), affirming 225 F. Supp. 45 (N.D. Ill., 1964), cert. denied 379 U.S. 913 (1964); In re Magnus, Mabee & Reynard, Inc., 311 F.2d 12 (C.A. 2, 1962), cert. denied 373 U.S. 902 (1963); Siegel v. v. Tyson, 331 F.2d 604 (C.A. 5, 1964); Wright v. Detwiler, 345 F.2d 1012 (C.A. 3, 1965); United States v. Bowman, 358 F.2d 421 (C.A. 4, 1966), affirming 236 F. Supp. 548 (M.D. Pa., 1964); Sanford v. United States, 358 F.2d 685 (C.A. 5, 1966); Wild v. United States, 362 F.2d 206 (C.A. 9, 1966); McGarry v. Riley, 363 F.2d 421 (C.A. 1966), cert. denied 385 U.S. 969 (1966); United States v. Zudick, 405 F.2d 929 (C.A. 3, 1969), cert. denied ___ U.S. ____ (1969); United States v. DeGrosa, 405 F.2d 926 (C.A. 3, 1969); United States v. Bank of Commerce, 405 F.2d 931 (C.A. 3, 1969); Justice v. United States, 365 F.2d 32 (C.A. 6, 1966) (dictum); United States v. Foster, 309 F.2d 8, at pp. 13-14 (C.A. 4, 1962 (by implication)); United States v. Hayes, _____ F.2d _____ (C.A. 7; No. 16878; decided February 19, 1969); and Ahmanson v. United States, ___ F.2d ___ (C.A. 9; No. 22,602; decided March 19, 1969).

DELEGATED CIVIL CLAIMS

STATUTE OF LIMITATIONS
(Title 28 U.S.C. 2415, 2416)

This is a further reminder that the general period of limitations enacted on July 18, 1966, will commence to take effect respecting certain type of actions by the United States on July 18, 1969. Reference should be had to the earlier note on this subject which appeared in Volume 16, No. of this Bulletin (May 10, 1968).

It is recommended that a review be made of all matters referred to your office for handling under your delegated authority (Department Memo 374) to determine whether suit has been initiated, and if not, whether such action should be taken prior to July 18, 1969 to protect the Government's interests. As mentioned in the earlier note, the types of claims which appear particularly vulnerable to foreclosure after July 18 are those in which the gravamen of the claim is bribery, conflict of interests, violation of the Anti-Kickback Act (41 U.S.C. 51), violation of the fraud provisions of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 489(b)) and other such civil remedies sounding in tort. Of course, where the False Claims Act, 31 U.S.C. 231-235, is applicable, the individual limitations period (six years) embodied in that statute governs. Similarly, claims arising under Commodity Credit Corporation programs, are subject to a six-year statute of limitations. 15 U.S.C. 714(b).

28 U.S.C. 2415(b), limiting the time within which tort actions of the United States must be brought to three years, specifically provides that "an action for conversion of property of the United States may be brought within six years after the right of action accrues". However, numerous cases are referred for suit in which a third party has auctioned off or has purchased chattels which are mortgaged to the United States or one of its agencies. Since 28 U.S.C. 2415(b) does not contain an express exception for this type of conversion case, care should be taken to file suits in such cases by July 18, 1969, or within three years of the sale of the mortgaged property, whichever is later.

We have been and will be communicating with certain offices regarding those matters that may be subject to the new limitations statute as to which supervisory control remains vested in the Department.

If you have any questions in this regard, or you require assistance in the drafting of complaints to avert the running of limitations, please contact the Frauds Section or the General Claims Section of the Civil Division promptly.

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ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

JURY RETURNS VERDICT OF GUILTY IN PLUMBING CASE.

United States v. American Radiator & Standard Sanitary, Inc., et al. (Cr. 66-295; May 2, 1969; D. J. 60-3-154)

On May 2, 1969, after a 72-day trial, guilty verdicts were returned by the jury against American Standard Inc. (formerly named American Radiator & Standard Sanitary Inc.), Kohler Co., Borg-Warner Corporation and three individuals who, along with eleven other defendants, had been charged with fixing prices at the manufacturers level on enameled cast iron and vitreous china plumbing fixtures from September 1962 until 1966. All of the other defendants: five corporations, five individuals, and the Plumbing Fixture Manufacturers Association (PFMA), had pleaded nolo contendere prior to trial.

The Government's case consisted mainly of the testimony of four substantive witnesses, and of numerous documents obtained from the companies during the grand jury investigation. The documentary proof consisted mostly of price sheets, travel records, and minutes of trade association meetings.

The prosecution's order of proof began with the introduction of documents. This was done without having to call authenticating witnesses because of a pretrial stipulation and order. The stipulation provided for the business record character of most of the documents used by the Government. They had been assigned GX numbers and distributed prior to trial. The stipulation also provided titles and tenures of position both within their corporations and within PFMA of all of the participants in the conspiracy; the corporate identity; sales figures for the products involved for each of the years of the conspiracy; and the interstate character of the trade and commerce. The stipulation also provided for the accuracy of transcriptions of certain tape recorded telephone conversations which had been made by former secretary of PFMA. The stipulation also provided for the waiver of the best evidence rule as to copies of the tape recordings. This would permit the use of re-recordings that were electronically balanced to make them more audible.

Defendants were provided copies of the grand jury testimony and Jencks statements for each prosecution witness five days prior to his taking the

stand. For each substantive witness an offer of proof was demanded by defense counsel. At the time of the offer on the first witness, defendants moved for the suppression of his testimony on the grounds that it was the product of "impermissible suggestion" claiming that it had been molded by the Government lawyers during the grand jury proceedings. They argued that the testimony had been coerced to fit the Government's theory of the case and was not the free recollection of the witnesses. Judge Rosenberg denied the motion and permitted the witnesses to testify.

In general, the witnesses were old friends and associates of the defendants who were extremely reluctant to attribute any wrongdoing to the activities related. Some required constant refreshment of recollection through the use of grand jury minutes. The procedure followed was to permit the witness to read silently his previous testimony.

In his defense testimony, the defendant who was an officer and director of Kohler Co., over our objection, testified about the history of his company, its community relations, its interest in steady employment for its workers, and its civic responsibility as the major employer in Sheboygan County, Wisconsin. On cross-examination, he was questioned about the notorious Kohler strike with specific reference to findings by the National Labor Relations Board as sustained by the Court of Appeals as to Kohler's strike-breaking and other unfair labor practices. Vigorous objections were raised by the other defendants. However, the questions were allowed because the history and reputation of Kohler Co. had been put in issue and the subject opened on direct examination. The jury, however, was admonished not to consider it as to any of the other defendants.

Kohler also produced the testimony and studies of an expert economist, Dr. Theodore N. Beckman. Dr. Beckman had analyzed realized prices taken from Kohler invoices spanning a period from 1960 through 1967 for some of the more important plumbing fixtures. Dr. Beckman testified that prices fell during the eight year period and that the market had chaotic and wildly fluctuating prices which in his expert opinion were completely inconsistent with conspiratorial action. He also compared prices with costs which purported to show that the realized prices, and even some of the published prices, were below cost. The court sustained objections as to those years which were not included in the period of the indictment. Dr. Beckman also qualified himself as an expert on antitrust, having written on the subject. On cross-examination, he admitted that as a matter of law, if there had been a conspiratorial agreement, his studies and analysis would be meaningless. Through him there was admitted before the jury without objection the familiar quote from Adam Smith's Wealth of Nations that:

> **People of the same** trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.

The court's instructions to the jury followed generally those set forth in Federal Jury Practice and Instructions, Mathes and Devitt, with certain modifications to suit the facts of this case. One step in the price conspiracy was collective action by the manufacturers to have the Department of Commerce publish a new commercial standard calling for acid resistant enamels only. One charge given by Judge Rosenberg was that the jury could not find a crime from joint solicitation for governmental action, in accordance with the Supreme Court decisions in Noerr and Pennington.

The jury deliberated for about five hours before returning guilty verdicts against each defendant. The date for sentencing has not yet been set.

Staff: John C. Fricano, Rodney O. Thorson, Joel Davidow, J. N. Raines and S. Robert Mitchell (Antitrust Division)

CRIMINAL DIVISION

Assistant Attorney General Will Wilson

COURT OF APPEALS

BANKRUPTCY

CONCEALMENT OF ASSETS IN CONTEMPLATION OF BANKRUPTCY.

United States v. Martin, et al. (C.A. 7, April 3, 1969; D.J. 49-85-199)

Appellants were convicted of violating Section 152 of Title 18 in that they knowingly and fraudulently transferred and concealed assets in contemplation of bankruptcy and with the intent to defeat the bankruptcy laws. Appellants were directors and officers of Market Men's Management, Inc. whose sole business was operating the Market Men's Mutual Insurance Company pursuant to a management contract between the firms. Both companies were in a precarious financial position and on April 18, 1962 appellants attended a conference with the State Insurance Commissioner at which time it became apparent that a cease and desist order forbidding further business by the Insurance Company would be forthcoming. Following the meeting, on April 19, 1969 the appellants transferred $63,000 from the insurance firm to the Management Corporation bank account. Half of this amount was subsequently disbursed to two other corporations under appellants' control with the balance being paid to an accountant and an attorney. Appellants caused to be prepared minutes of a fictitious board meeting purporting to reflect board approval of these disbursements. On May 10, 1962, after a cease and desist order was issued barring further business by the Insurance Company, Management Corporation was petitioned into involuntary bankruptcy. During the Insurance Company's liquidation under state law, the liquidator claimed the $63,000 and recovered a portion of the funds. The Trustee in Bankruptcy made claim to the $63,000 as constituting a part of the bankruptcy estate of Management Corporation and a settlement was effected whereby the estate received approximately $18,000.

On appeal appellants attacked inter alia the sufficiency of the evidence with respect to the ownership of the concealed assets. Citing as authority the decision in United States v. Camp, 140 F. Supp. 98, the Court of Appeals held that 18 U.S.C. 152 does not limit, in a concealment case, an illegal concealment to property of a prospective bankrupt that is ultimately determined to be the property of a bankrupt estate. Moreover, the Court noted that upon the transfer of the assets to the bankrupt the funds became an asset of the corporation within the meaning of 18 U.S.C. 152 and at least $18,000 of the $63,000 charged in the indictment was legally concluded to be the property of Management Corporation.

Staff: United States Attorney Robert J. Lerner (E.D. Wisc.)

DISTRICT COURT

OBSCENITY

SENDING OF OBSCENE FILM IN REPLY TO ADVERTISEMENT INSERTED IN MAGAZINE BY POSTAL INSPECTOR CONSTITUTED ENTRAPMENT. (18 U.S.C. 1461).

United States v. William Kros (E.D. Pa., Cr. 23185, March 5, 1969; D.J. 97-62-104)

William Kros was found not guilty of violating 18 U.S.C. 1461 when he sent obscene films to a postal inspector's test name on the ground that the action of the inspector constituted entrapment.

This case arose where a postal inspector placed an advertisement in a correspondence club magazine, "Swingers Life", in an effort to determine if obscene material was being exchanged. The defendant answered the advertisement and after exchanging a series of letters, he sent the film for which he was subsequently indicted and tried.

The Court ruled that the placing of the advertisement by postal inspector along with the subsequent exchange of correspondence constituted an active inducement on the part of the Government to have the defendant send the material through the mail and thereby commit an offense.

Staff: Former United States Attorney Drew J. O'Keefe and Assistant United States Attorney Anthony F. List (E.D. Pa.)

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