

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK,
CONNETQUOT CENTRAL SCHOOL DISTRICT, and
all other similarly situated
public purchasers

Plaintiffs,

v.

CV-94-2705 (DRH)

URETHANE APPLICATORS, INC.,
J.J.D. URETHANE CO., INC.,
HYGRADE INSULATORS, INC.,
F.J. DAHILL CO., INC.
S.D. CARRUTHERS SONS, INC.,
HENDERSON-JOHNSON CO., INC.,
DONALD FREEMAN, JOHN J. DINENNA,
GERARD CARRUTHERS, and ROBERT PICCIONE,

Defendants.
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PARTIAL SETTLEMENT AGREEMENT AND CONSENT DECREE
BETWEEN PLAINTIFFS AND HENDERSON-JOHNSON

WHEREAS, plaintiff, the State of New York, through its Attorney General, Dennis Vacco, on its own behalf and on behalf of Connetquot Central School District, and all other similarly situated public purchasers, filed its Complaint on June 6, 1994, and served its Complaint upon defendant Henderson-Johnson Co., Inc. ("Henderson Johnson"); and

WHEREAS, plaintiffs and Henderson Johnson, by their attorneys, consent to the entry of this Consent Decree and Partial Final Judgment without trial or adjudication of any issue of fact or law and without this Consent Decree and Partial Final Judgment constituting any evidence against or an admission by any party with respect to any such issue, or any judgment or finding of a civil

offense, or creating any civil liability for any wrongful act complained of in this action;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties hereto, and the Court having determined, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I. Scope of Consent Decree and Partial Final Judgment

This Consent Decree and Partial Final Judgment applies to all claims that were or could have been asserted by plaintiffs against Henderson Johnson in this litigation that are related to the facts, matters, or conspiracies alleged in the complaint.

II. Jurisdictional Clause

This Court has jurisdiction of the subject matter of this action and over each of the parties consenting to the entry of this Order. The Complaint states a claim upon which relief may be granted against Henderson Johnson under section 1 of the Sherman Act, 15 U.S.C. § 1, and the Donnelly Act, N.Y. Gen. Bus. Law § 340.

III. Applicability Clause

This Consent Decree and Partial Final Judgment applies to Henderson Johnson and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other

persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree and Partial Final Judgment by personal service or otherwise.

IV. Payments

Henderson Johnson shall pay to the State of New York the amount of nine thousand dollars (\$9,000). Contemporaneously with its execution of this Consent Judgment, Henderson Johnson shall pay the State of New York the sum of three thousand dollars (\$3,000), another three thousand dollars (\$3,000) within one year of execution of this Consent Judgment, and a final three thousand dollars (\$3,000) within two years of execution of this Consent Judgment. The State shall deposit these amounts into an escrow account. The monies in the escrow account shall be distributed as directed by the Court.

V. Injunctive Relief

Henderson Johnson is enjoined from:

- A. entering into or participating in any contract, combination, arrangement, or conspiracy to rig bids or allocate territories for the sale or application of urethane roofing;
- B. discussing the particulars of prospective work with competing bidders for the sale or application of urethane roofing. Notwithstanding this ¶ V.B., nothing shall prevent Henderson Johnson from discussing specifications and other

non-price characteristics of contemplated work at pre-bid meetings sponsored by the owner or developer as part of soliciting bids or proposals; and

C. soliciting, obtaining from, or granting to competing bidders intentionally high or complementary bids for the sale or application of urethane roofing.

VI. Cooperation and Inspection

Henderson Johnson shall assist plaintiffs in the further prosecution of this and related litigation, such as efforts to enforce judgments obtained in this litigation. For that purpose and for the purpose of determining or securing compliance with this Consent Decree and Partial Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Attorney General shall, upon written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York State Attorney General's Office, and on reasonable notice to Henderson Johnson made to its principal office, be permitted:

1. Access during office hours of Henderson Johnson to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Henderson Johnson, who may have counsel present, relating to this or related litigation, including this Consent Decree and Partial Final Judgment; and

2. Subject to the reasonable convenience of Henderson Johnson and without restraint or interference from it, to interview officers, employees and agents of Henderson Johnson, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York Attorney General's Office, made to Henderson Johnson's principal office, Henderson Johnson shall submit such written reports, under oath if requested, with respect to any of the matters contained in this or related litigation, including this Consent Decree and Partial Final Judgment, as may be requested.

VII. Expiration of Judgment

This Consent Decree and Partial Final Judgment will expire on the fifth anniversary of its date of entry.

VIII. Retention of Jurisdiction

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree and Partial Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree and Partial Final Judgment, for the modification of any of its provisions, for the enforcement of compliance, and for punishing any violation.

IX. Direction for Entry

Pursuant to Rule 54(b), this Court directs the entry of this Consent Decree and Partial Final Judgment forthwith.

Dated: New York, New York
September 26, 1995

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State of New York

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So ordered:

Dennis Hurley
United States District Judge

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