FILED IN DISTRICT COURT
OKLAHOMA COUNTY

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.* E. Scott Pruitt, in his official capacity as Attorney General of Oklahoma Plaintiff,	)	
v.	)	Case No. CJ-2014-
NEWAY VALVE CO.; NEWAY INDUSTRIAL MATERIAL (SUZHOU), CO., LTD.; NEWAY OIL EQUIPMENT CO., LTD.; NEWAY INDUSTRIAL MATERIAL (DAFENG) CO., LTD.; NEWAY VALVE INTERNATIONAL, INC.; and NEWAY VALVE (SUZHOU) CO., LTD. Defendants.	)	CJ - 2014 - 1482

PETITION

Plaintiff State of Oklahoma ("Plaintiff"), by E. Scott Pruitt, the duly elected Attorney General of the State of Oklahoma, commences this action on behalf of the State of Oklahoma under the Oklahoma Deceptive Trade Practices Act ("ODTPA"), 78 O.S. § 51 *et. seq.*, the Oklahoma Antitrust Reform Act ("OARA"), 79 O.S. § 201 *et seq.*, and such other causes of action that exist at common law against Defendants Neway Valve Co., Neway Industrial Material (Suzhou) Co., Ltd., Neway Industrial Material (Dafeng) Co., Ltd., and Neway Valve International, Inc. (collectively, "Neway" or "Defendants"). Plaintiff alleges on information and belief as follows:

INTRODUCTION

1. Plaintiff brings this action to remedy violations of Oklahoma statutory and common law in connection with Defendants' unfair, deceptive and anti-competitive business practices.

2. Defendants produce a variety of valves and other equipment for sale to the petroleum industry and, in doing so, compete directly with several Oklahoma-based companies for the business of oil and natural gas producers in Oklahoma.

3. However, instead of engaging in legitimate competition, Defendants have illegally utilized unlicensed software in the production and distribution of their valves. As set forth in detail herein, in an industry characterized by thin margins, Defendants have illegitimately and unlawfully reduced their production costs by illegally obtaining copyrighted software that is crucial to the production and sale of their products. Defendants' unlawful conduct has created an uneven playing field that favors Defendants' products over comparable products sold by Oklahoma manufacturers.

4. Generally, federal laws and international treaties do not address the pernicious downstream effects of such acts in the Oklahoma valve manufacturing sector. The Defendants' use of stolen software to gain a competitive advantage over domestic valve manufacturing companies, including those in Oklahoma, can be remedied, however, by proscribing such tactics as unfair, deceptive and anti-competitive methods of commerce under Oklahoma law.

5. Plaintiff asks this Court to enjoin Defendants unlawful business practices, impose civil fines and penalties, and award restitution, monetary damages, investigative costs and fees, and attorney fees, as well as such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

6. This Court has jurisdiction to hear the claims alleged in this Petition and it is a court of competent jurisdiction to grant the relief requested.

7. This Court has jurisdiction over Defendants pursuant to 12 O.S. § 2004, the Constitution of the United States and the Constitution of the State of Oklahoma because the

Defendants, at all relevant times, produced or manufactured goods that were transported to and sold in the State of Oklahoma, including from and through the Defendants' Stafford, TX sales office. In addition, the Defendants knew, or reasonably should have known, that their valves would enter the stream of commerce and compete in an unfair and deceptive manner with valves produced by Oklahoma-based manufacturers. Moreover, Defendants' acts and omissions subjected the State of Oklahoma, individual Oklahoma valve purchasers, Oklahoma valve manufacturers and natural persons residing in Oklahoma to an unfair, deceptive and anti-competitive marketplace and all or some were injured as a result.

8. Venue is proper in this Court because the Defendants' acts and/or omissions harmed at least one business located in Oklahoma County and numerous Oklahoma citizens who reside in Oklahoma County.

PARTIES

9. The State of Oklahoma is the Plaintiff represented by E. Scott Pruitt, Attorney General of the State of Oklahoma. The Attorney General is the chief law officer for the State and is authorized to commence this action pursuant to 78 O.S. § 54 and 79 O.S. § 205 and as *parens patriae* on behalf of natural persons residing in the state.

10. Defendants are corporations organized under the laws of the People's Republic of China with their principal place of business in China. Defendants maintain a sales office and do business from Stafford, TX. Defendants use their Texas office to facilitate sales to the U.S. petroleum industry including businesses and persons residing and doing business in Oklahoma.

11. Defendant Neway Valve (Suzhou) Co., Ltd. is China's largest valve manufacturing company and specializes in valve research, development and production along with a number of

holding subsidiaries that specialize in the sale and services of its valves. As alleged above, the valves are delivered to, transported in, and sold in the State of Oklahoma.

FACTUAL ALLEGATIONS

12. Oklahoma's economy is built on the foundation of the oil and natural gas industry. With an abundance of Oklahoma-based, industry-leading companies, Oklahoma provides petroleum products to consumers around the world. The Oklahoma oil and natural gas industry accounts for over $52 billion in gross state product and $28 billion in state personal income, along with providing 344,503 jobs, employing one out of every six people employed in the state.

13. The oil and natural gas industry is Oklahoma's defining industry, with each segment driving important spillover activity into the manufacturing service sector. Each segment of this robust industry – upstream, midstream, and downstream – relies on valve manufacturing companies to design, manufacture and ship the components necessary to produce, transport and process Oklahoma's natural resources.

14. One such Oklahoma valve manufacturer is Kimray, Inc. ("Kimray"). Kimray is a family-run business, founded in 1948, and is located in Oklahoma City, Oklahoma. The company manufactures a variety of valves, regulators, controllers, meters and other control equipment designed for use in the oil and natural gas industry. Kimray employs approximately seven hundred (700) employees in and around Oklahoma City, Oklahoma.

15. In addition to Kimray, several other valve manufacturers are located in Oklahoma and service the oil and gas industry. They include CIRCOR, Cameron and Balon Industries. Collectively, these Oklahoma companies employ several thousand employees.

16. As in any other high-tech industry, valve manufacturing companies such as Kimray have become increasingly reliant on software for the design, manufacture, marketing, shipping

and post-sale servicing of valves used in the petroleum industry. Indeed, software and information technology are used in virtually all aspects of the valve manufacturing process, from initial design and programming machines to assembling valves and overseeing quality control. Computer-aided design programs such as AutoCAD are particularly important to valve manufacturers' design processes.

17. Valve manufacturers spend substantial capital to license the software that enables them to run their businesses and compete effectively in the highly competitive petroleum service industry.

Defendants' Business and their Unlawful Use of Unlicensed Software

18. Defendants are vertically integrated valve manufacturers that produce globe valves, check valves, ball valves, butterfly valves, safety valves, wellhead equipment and a variety of specialty valves that are widely used in the oil and natural gas industry. Established in 1996, Defendants have seven facilities in China that serve petroleum industry customers such as Exxon-Mobil, Shell, and Chevron. Defendants estimate that the volume of their sales to United States customers generates approximately 34.4 percent of their total worldwide revenue.

19. In addition to three production plants and four casting plants, Defendants also maintain a Research and Development facility in China that is engaged in the design of valves and other petroleum industry-related products.

20. Based on suspicions that Defendants were illegally under-licensing software for use in their business, a firm called Rouse and Company of Hong Kong commissioned an investigation. This investigation, which entailed interviews with Neway employees as well as on-site visits to two of their Suzhou, China facilities, was completed in April 2013 and a report was issued. The investigation confirmed that (1) Defendants report that they provide their

customers with "one-stop" service that includes design, research and development, manufacturing, production, logistics and after-sales service; (2) Defendants' customers include major oil and gas suppliers such as Shell, Exxon-Mobile and Chevron; (3) Defendants use multiple software programs in their business processes, including Windows XP and AutoCAD; and (4) at least 100 computers were observed in one Neway facility.

21. Based on statements made by some of Defendants' employees during the investigation, it is believed that Neway uses between 1,300 and 1,400 desktop computers and laptops in its Chinese facilities. Despite this number, one U.S. software company confirms that that Defendants had purchased only 380 software licenses for use in their computers. By purchasing only 380 licenses for an estimated 1,300-1,400 computers, rather than purchasing one license per computer as required by law, Defendants are believed to have avoided purchasing an estimated $280,000 to $367,000 worth of licenses for just that one piece of software.

Effects of Defendants' Unlawful Conduct on Competition in the Petroleum Valve Market

22. As with any other "input" in the manufacturing process, information technology costs, including those associated with licensing computer software programs, impact the profit margins of competitors in the valve manufacturing sector.

23. Valve manufacturing is a competitive sector of the oil and natural gas industry that functions on thin margins. The financial costs of maintaining software licenses impacts the operating expenses and profit margins of Oklahoma valve manufacturers that pay to license the software programs used in their companies.

24. Companies that use unlicensed software in their business and manufacturing processes unlawfully and unfairly lower their costs of production, allowing them to lower prices for their products while maintaining their profit margins.

25. In the short term, these price reductions based on the unlawful use of unlicensed software give those companies an unfair competitive advantage over law-abiding companies that purchase software and other intellectual property legitimately. In the longer term, earnings obtained though unfair methods of competition can be leveraged to widen the unlawful competitive advantage because these earnings can be reinvested into research and development, increased hiring, and increased production volume. This effect is further exacerbated when the illegal advantage is obtained by companies located in countries where the production inputs, like the costs of labor, are significantly less expensive than they are in the U.S. This is the case in China where Defendants are located.

Defendants' Contacts with Oklahoma

26. Defendants' products are delivered to, transported in, and/or sold in Oklahoma. At least two of Defendants' products – cage guided control valves and single seated control valves – are sold in the State of Oklahoma and are in the regular stream of commerce in direct competition with products manufactured by Kimray

27. A cost analysis of Defendants' valves and comparable valves manufactured by Kimray, CIRCOR, Cameron and Balon Corporation, among others, reveals that Defendants are able to charge significantly less for their products. For instance, Defendants' 1-inch, 1,500-pound ball valve sells for $86.00 in Oklahoma, while the Kimray-manufactured valve sells for $99.20 in Oklahoma, even after a 20 percent discount. Defendants are able to sell comparable products for approximately 13 percent less than the Oklahoma manufacturers' discounted price, and some of this amount must be attributed to the Defendants' lowering their costs of production by illegally using unlicensed software.

28. Over time, valve manufacturing companies that are unable to compete due to an illegally skewed marketplace could be forced to downsize or perhaps even relocate overseas to reduce costs, resulting in the permanent loss of jobs and manufacturing revenue in Oklahoma.

29. The State of Oklahoma, Kimray and other valve manufacturers and individual Oklahoma valve purchasers have been harmed by the Defendants' unfair and deceptive acts or restraints of trade.

30. Additionally, the citizens of Oklahoma are harmed by Defendants' unfair and deceptive acts. Sales tax revenue derived from the sale of goods in Oklahoma is used to fund vital state services, including public health, education and welfare programs. By offering lower prices based on its unfair and deceptive conduct, Neway has deprived the state of local sales tax income on each sale of its valves in Oklahoma. As a result, the sales tax paid to the State of Oklahoma is lower than what it would be had the true cost of bringing Defendants' goods to market been lawfully, and accurately, captured.

COUNT I
Violations of the Oklahoma Deceptive Trade Practices Act (78 O.S. § 51 *et seq.*)

31. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Petition.

32. In committing the acts alleged herein, each of the Defendants engaged in unfair and deceptive trade practices within the meaning of the ODTPA.

33. Oklahoma valve manufacturers such as Kimray have been operating at a competitive disadvantage because of Defendants' deceptive trade practices and have been harmed as a result.

COUNT II
Violations of the Oklahoma Antitrust Reform Act (79 O.S. § 201, *et seq.*)

34. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Petition.

35. Defendants have engaged in acts that unreasonably restrained trade in the market for oil and natural gas valves in Oklahoma and natural persons have been harmed as a result.

36. Defendants' conduct threatens the proper, fair and just operation of the Oklahoma economy in that Defendants are able to artificially lower their operating costs by using unlicensed software that competitors, including Kimray, have purchased legitimately. Such conduct enables Defendants to sell their valves more cheaply than Oklahoma-based manufacturers.

37. There are no pro-competitive virtues that justify Defendants' conduct. Accordingly, Defendants' conduct is *per se* unlawful under the OARA.

38. Oklahoma manufacturers such as Kimray have been operating at a competitive disadvantage because of Defendants' anti-competitive acts.

39. Oklahoma valve purchasers and other natural persons have been subjected to restraint of trade because of Defendants' unfair, deceptive and anti-competitive acts and they have been harmed as a result.

COUNT III
Unfair Competition

40. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Petition.

41. Oklahoma law recognizes a common law action for unfair competition. *See Schonwold v. Ragains,* 122 P. 203 (Okla. 1912); *Royer v. Stoody Co.*, 192 F. Supp. 949 (W.D. Okla. 1961).

42. As alleged herein, Defendants' unlawful use of unlicensed software has created unfair competition in the marketplace for valves used in the oil and gas industry and has therefore harmed competitors such as Kimray that have lawfully licensed their software.

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations set forth herein, the State of Oklahoma prays for the following relief:

A. That the Court adjudge and decree that Defendants' conduct as alleged in this Petition is in violation of the Oklahoma Deceptive Trade Practices Act, 78 O.S. § 51 *et seq.*

B. That the Court adjudge and decree that Defendants' conduct as alleged in this Petition is in violation of the Oklahoma Antitrust Reform Act, 79 O.S. § 201 *et seq.*

C. That the State of Oklahoma be permitted to recover all money unlawfully obtained from aggrieved parties and awarded its investigative costs, fees, attorney fees and such other remedies available pursuant to 78 O.S. § 54(B) & (C).

D. That the Court award to the State of Oklahoma, as *parens patriae,* threefold the total damages sustained and the cost of the suit, including a reasonable attorney fee, for injury sustained to competition as a result of Defendants' violations of the OARA.

E. That Defendants and their employees, agents, successors, assignees, and representatives and all persons, corporations, or other entities acting under, by, through or on behalf of Defendants, or acting in concert or participation with or for Defendants with actual or constructive notice of this matter, be permanently enjoined and restrained from engaging in or performing, directly or indirectly, any and all acts and practices in violation of the ODTPA and the OARA.

F. That Defendants and their employees, agents, successors, assignees, and representatives and all persons, corporations, or other entities acting under, by, through, or on behalf of Defendants, or acting in concert or participation with or for Defendants with actual or constructive notice of this matter, be enjoined and restrained from distributing or receiving any of Defendants' products in the State of Oklahoma until such time as Defendants certify to the Court that they are in compliance with the licensing requirements of all software programs that are used in connection with the production or manufacture of goods sold or transported in or delivered to Oklahoma.

G. That Defendants be ordered to provide to the Office of the Oklahoma Attorney General a certified inventory under penalty of perjury of all software titles and corresponding licenses for all software used in the operations of their business every six months for a period of five (5) years.

H. That the Court appoint a trustee with the power to verify Defendants' compliance with the Court's orders and who, upon application to the Court by the Oklahoma Attorney General, shall be granted full access to Defendants' computer systems in order to verify Defendants' software deployment and proof of licensing. The cost associated with such Trustee shall be charged to Defendants.

I. That the Court grant all other legal and equitable relief as it may deem just and proper.

Date: March 13, 2014

E. SCOTT PRUITT
ATTORNEY GENERAL

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