Industrials

Steel boycott defendants exit case; ‘rare’ USD 156m verdict pending appeal

Since 1890, only 25 final verdicts not overturned on appeal
Settlement with “most culpable” defendants could increase pressure on remaining defendants to settle
Nucor, JSW staying in the case suggests they think they can win—law professor

Two steel service centers settled with Houston-based steel boycott plaintiffs MM Steel late last month, leaving only steel producers Nucor and JSW in the appeal pending before the US Fifth Circuit Court of Appeals.

The case stems from a pair of industry insiders, Mike Hume and Matt Schultz, opening shop in an intensely competitive business environment against Reliance Steel & Aluminum/Chapel Steel and American Alloy Steel, companies where Hume and Schultz formerly had worked. In March, a federal jury in Houston decided at the end of a five-week trial that the defendants conspired in a boycott against MM Steel and awarded the plaintiffs USD 52m. The court trebled the USD 52m jury award to USD 156m and finalized the judgment in April.

Court papers show that Reliance Steel & Aluminum/Chapel Steel and American Alloy Steel entered into confidential settlements with principals of the since-defunct MM Steel late last month. Former defendant SSAB left the case with a confidential settlement in February as the parties were picking a jury for trial.

Robert Lande, an antitrust professor at University of Baltimore School of Law and former Federal Trade Commission official, told PaRR that “rare” does not begin to describe the number of verdicts affirmed on appeal, because these cases nearly always settle. He said that in his research, of the thousands of cartel cases filed since 1890, he had found only 25 final verdicts not overturned on appeal.

“It will be really interesting if this survives appeal. Only 25 since 1890 have. Pretty extraordinary,” Lande said. “Now plaintiffs have to make a decision: What are the odds of it being upheld on appeal?”

Recalling his days in private practice, Lande said that a settlement can mean absolutely anything, and sometimes there is just no way for an outsider to have even a chance of guessing what motivated a particular settlement.

“Is it possible that the steel service centers settled to do a favor to the producers, because they have to do business with the producers in the future? ‘We’ll settle on favorable terms because we’re the real bad guys, so it’ll weaken the case against you, and we’ll do business in the future?’” Lande asked.

On the other hand, Lande said that what the US Department of Justice and plaintiffs often do is “to settle for less with the most culpable party, and the rest are left holding the bag for most of it, which really ratchets the pressure up on them. So maybe it’s a plaintiffs’ strategy.”

John Kirkwood, a law dean at Seattle University School of Law, said the fact that the steel producers are still in the case suggests that they think they’ll ultimately prevail.

“On the other hand, if it’s a substantial settlement, that would suggest merit to the case, and the steel producers might feel they’re being treated unfairly because the bad guys would be the service companies in an economic as well as antitrust theory. But unfortunately under American antitrust law, if you were coerced into participating in a conspiracy, you’re not excused,” Kirkwood said.

“Perhaps the steel producers think that they could convincingly show that they weren’t part of a conspiracy, they were acting unilaterally. It’s hard to speculate about a settlement whose terms we don’t know,” Kirkwood said.
Mo Taherzadeh, an attorney representing the plaintiffs, declined to comment about the case. Counsel for Nucor and JSW did not respond to messages seeking comment.

MM Steel is represented by Yetter Coleman, the Taherzadeh Law Firm and the Tate Young Law Firm. Reliance Steel & Aluminum and Chapel Steel are represented by Vinson & Elkins; American Alloy Steel and Arthur J Moore are represented by Fulbright & Jaworski and Boyar Miller; JSW Steel (USA) represented by Thompson & Knight; Nucor is represented by Arnold & Porter and Winston & Strawn.

The case is: MM Steel v. Reliance Steel & Aluminum, et al., case no. 12cv1227 US District Court for the Southern District of Texas.

by Peter Geier in Washington, DC

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