

1 RESOLUTION NO. 68-14

2 RESOLUTION OF THE COUNCIL
3 of
4 CITY OF HOOD RIVER, OREGON

5 PREAMBLE:

6 WHEREAS, THE CITY OF HOOD RIVER (OREGON)

7 is a plaintiff in one or more lawsuits instituted by it under
8 federal antitrust laws, which lawsuits are commonly described
9 as the West Coast Pipe Cases; and

10 WHEREAS, it has entered into an agreement, known
11 as Western Associated Pipe Plaintiffs Organization, with other
12 public agencies who are also plaintiffs in the same litigation,
13 which agreement provides for the equitable sharing of costs of
14 litigation and recoveries made as a result of litigation or
15 compromise thereof; and

16 WHEREAS, such agreement provides for the retention
17 of special legal counsel and the agreement has been implemented
18 by the employment of the law firm of FERGUSON & BURDELL of
19 Seattle, Washington; and

20 WHEREAS, said special counsel and the defendant,
21 American Pipe & Construction Co., of Monterey Park, California,
22 have reached agreement on the terms of a settlement and compro-
23 mise which will satisfactorily terminate this litigation, as
24 are more fully set out in the attached document entitled
25 MEMORANDUM OF UNDERSTANDING FOR SETTLEMENT OF WEST COAST PIPE
26 CASES BETWEEN ALL PLAINTIFFS AND AMERICAN PIPE & CONSTRUCTION CO.;
27 and

28 WHEREAS, the terms embodied in the MEMORANDUM OF
UNDERSTANDING have been approved by legal counsel for this
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agency and he recommends acceptance thereof as being in the best interests of this agency; and

WHEREAS, such memorandum of understanding provides for the payment to this agency of a pro rata share of the settlement amount of Eight Million, Five Hundred Thousand Dollars (\$8,500,000.00) and interest over a period of seven (7) years; NOW THEREFORE, BE IT RESOLVED THAT:

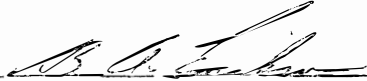
1. The MEMORANDUM OF UNDERSTANDING FOR SETTLEMENT OF WEST COAST PIPE CASES BETWEEN ALL PLAINTIFFS AND AMERICAN PIPE & CONSTRUCTION CO., a copy of which is hereto attached as Exhibit I, is hereby adopted, ratified and confirmed.

2. The City Recorder of this agency is hereby authorized to sign the release of claim against the defendant, attached hereto as Exhibit II, as the official act of this agency.

3. The law firm of Ferguson & Burdell, special counsel retained by Western Associated Pipe Plaintiffs Organization, is hereby authorized by this agency to enter into a stipulation dismissing this litigation with prejudice and without costs in the form and manner as provided in Exhibit III hereto attached.

Adopted this 9th day of December, 1968.


Glen E. McPherrin (Mayor)

Attest: 
B. A. Erickson
City Recorder

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1 MEMORANDUM OF UNDERSTANDING FOR SETTLEMENT OF WEST COAST PIPE
2 CASES BETWEEN ALL PLAINTIFFS AND AMERICAN PIPE AND CONSTRUCTION
3 COMPANY
4

5 Parties:

6 The parties to this memorandum of understanding are the
7 Western Association of Pipe Plaintiffs' Organization, hereafter
8 referred to as "WAPPO", and American Pipe and Construction
9 Company, hereafter referred to as "American."

10 Amount to be Paid:

11 American agrees to pay to the fiscal agent designated by
12 WAPPO the sum of eight million five hundred thousand dollars
13 (\$8,500,000) payable as follows, to wit:

14 The sum of one million two hundred fifteen thousand two
15 hundred dollars (\$1,215,200) on or before January 1, 1969, to
16 the fiscal agent designated by WAPPO which said sum shall be
17 placed in either an interest-bearing savings account or in the
18 purchase of a certificate of deposit at the option of WAPPO and
19 which is to be returned to American in the event of a failure
20 to consummate this settlement within nine months of the date
21 hereof. Said fiscal agent shall not distribute the sum of one
22 million two hundred fifteen thousand two hundred dollars
23 (\$1,215,200) to the plaintiffs until the fiscal agent has received
24 certified copies of the orders of dismissal of all WAPPO Pipe Cases.

25 American further agrees on or before January 1, 1969 to
26 deliver to said fiscal agent its promissory note in the sum of
27 seven million two hundred eight-four thousand eight hundred
28 dollars (\$7,284,800) payable to the order of said fiscal agent
29 at its address in installments as shown on Exhibit "A" and bearing
30 interest at the rate of five percent (5%) per annum on the
31 declining balances of said note, said interest to be payable at
32

1 the same time principal payments are required to be made here-
2 under. Said note shall further provide that if any interest
3 is not paid as it becomes due, it shall be added to the principal
4 and bear a like rate of interest. Said note shall further
5 provide that if any payment of either principal or interest
6 is not made as it becomes due, the entire balance of said note
7 remaining unpaid shall become and be immediately due and payable.
8 Said note shall also reserve to American the right to make pay-
9 ments on account of principal or interest in advance of their
10 due date without penalty. Said note shall further provide
11 that in the event an action is commenced to collect said note
12 or any part thereof, there shall be added to the judgment for
13 any principal or interest found by the court to be due such
14 additional sum by way of attorneys' fees as to the court having
15 jurisdiction of said cause shall seem reasonable, said attorneys'
16 fees to be due on the filing of a complaint. ~~American shall~~
17 ~~provide WAPPO with the written consent of the creditors of~~
18 ~~WAPPO to the execution and delivery of said note and the pay-~~
19 ~~ment of the down payment required herein to be paid~~

20 American by December 16, 1968 shall provide WAPPO with copies
21 of any and all agreements or amendments thereto with creditors
22 of American which authorizes the performance of this
23 memorandum of understanding and shall be in form and substance
24 satisfactory to counsel for WAPPO.

25 American agrees that it will provide such assistance in
26 verifying plaintiffs' transactions as WAPPO shall from time to
27 time require.

28 American and its attorneys agree that the appeal of a
29 taxpayer against the City of San Diego shall be dismissed
30 by December 16, 1968, and to withdraw motions by American
31 attacking the validity of WAPPO, selection of special counsel
32 by the State of California, American's settlement with the

1 City and County of San Francisco, and all other pending motions
2 and challenges in the Western Pipe Cases.

3 American and its attorneys agree to execute a covenant in
4 a form satisfactory to WAPPO covenanting that American and its
5 attorneys shall not further attack in any manner the validity
6 of WAPPO and the selection of special counsel by the State of
7 California.

8 Each plaintiff that is a signatory to WAPPO shall release
9 its claim against American, and special counsel for WAPPO
10 shall stipulate to dismissal with prejudice and without costs
11 of its action against American.

12 Protective Order:

13 No person attending the meeting between counsel on November
14 20 and 21, 1968 concerning the subject matter of this memorandum
15 of understanding shall divulge the nature thereof nor of any
16 of the subjects discussed thereat to any person whose
17 responsibilities or duties to one or more of the parties herein
18 do not require that he be consulted concerning or informed of
19 said discussions in order for one or more of said parties to
20 take action with respect to any of the subjects discussed on
21 said dates, and no officer, employee or agent of any of the
22 parties hereto shall disclose any of the aforesaid subjects to
23 any other person whose responsibilities or duties to one or
24 more of the parties do not require such other person to have
25 knowledge of such subjects in order for one or more of said
26 parties to take action with respect thereto, until:

27 December 2, 1968, or one day following dismissal of the
28 jury in the trial of Washington Public Power System Supply
29 v. American, whichever is later.

30 Consummation of Settlement:

31 The settlement herein referred to resulted from discussions
32 between counsel for plaintiffs and American in proceedings

1 before the Honorable Martin Pence concluded on November 21, 1968
2 in San Diego, California.

3 Counsel for the parties hereto each agree to recommend in
4 good faith, without qualification, and with full measure of
5 support, the settlement set forth herein to their respective
6 client or clients, it being understood that ratification by
7 such clients is necessary.

8 In consideration of the payment of the settlement amount
9 set forth in this memorandum of understanding, plaintiffs
10 shall deliver to American duly executed releases and stipulations
11 to dismiss as above provided, together with duly adopted and
12 certified resolutions or equivalent documents ratifying and
13 confirming this settlement.

14 American agrees to furnish WAPPO with certified copies of
15 the resolution of American Pipe and Construction Company's
16 board of directors, and certified copies of the resolution of
17 Pipe Linings, Inc. (the latter concerning the City of San
18 Diego litigation) authorizing American's officers and attorneys
19 to make this settlement.

20 The documents referred to shall be in such form as shall be
21 agreed to between WAPPO and American.

22 Execution of this Memorandum:

23 This memorandum of understanding may be executed in any
24 number of counterparts with like effect as if all signatures
25 were on the original.

26 DATED: November 21, 1968.

27 FOR WAPPO:

FOR AMERICAN:

28 *Wm. H. Ferguson*
29 Wm. H. Ferguson

George W. Jansen
George W. Jansen

30 *William H. Ferguson*
31 *George W. Jansen*
32 *Hemis Lane*

EXHIBIT "A"

PAYMENT SCHEDULE (NOT INCLUDING INTEREST)

January 1, 1969	\$1,215,200
April 1, 1969	505,800
July 1, 1969	505,800
October 1, 1969	505,800
January 1, 1970	505,800
April 1, 1970	505,800
July 1, 1970	505,800
January 1, 1971	472,300
July 1, 1971	472,300
January 1, 1972	472,300
July 1, 1972	472,300
January 1, 1973	472,300
July 1, 1973	472,300
January 1, 1974	472,300
July 1, 1974	472,300
January 1, 1975	471,600
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Total	\$8,500,000

Handwritten signature/initials

EXHIBIT "A"

1 4. The period of time covered by this release is
2 prior to January 1, 1969, but includes nevertheless any
3 transactions between American and Releasor either directly or
4 indirectly which transactions are still pending as of January 1,
5 1969.

6 5. For and in consideration of the sum of One
7 Dollar (\$1.00) and other valuable consideration paid by
8 American to Releasor, the receipt of which is hereby acknow-
9 ledged, Releasor hereby forever releases, discharges and acquits
10 American of and from each, every and all claims, controversies,
11 actions, causes of action, obligations or liabilities of any
12 nature whatsoever, now or hereafter known, suspected or claimed,
13 which Releasor or any of its agents ever had, now has or here-
14 after can, shall or may have or allege against American based
15 upon allegations of conspiracy, collusion, monopoly or
16 attempted monopoly, which might be asserted under the Clayton
17 Act (15 USC, §§15 and 26), or under any other state or federal
18 antitrust trade regulation or similar law giving rights to
19 relief under the same or similar circumstances; and in connection
20 with the foregoing only, Releasor expressly waives the provisions
21 of Section 1542 of the Civil Code of the State of California,
22 reading:

23 "1542. (Certain Claims Not Affected by
24 General Release.) A general release does
25 not extend to claims which the creditor
26 does not know or suspect to exist in his
27 favor at the time of executing the release,
28 which if known by him must have materially
affected his settlement with the debtor."

page 2, Release

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7. Releasor warrants that the persons executing this document on behalf of Releasor are fully authorized so to do and Releasor makes such warranty in full knowledge that Releasee has no independent knowledge of the authority or lack thereof of such persons but is relying upon Releasor's warranty.

8. Any claim, action or controversy concerning this release shall be determined under the laws of the State of California.

IN WITNESS WHEREOF, Releasor has caused this release to be executed this 9th day of December, 1968.

CITY OF HOOD RIVER
(Full name of Releasor)

By *B. A. Erickson*
B. A. Erickson
Office City Recorder

Attesting Witness *J. B. Coffey*
J. B. Coffey
Office President of the Council

1 FERGUSON & BURDELL
2 929 Logan Building
3 Seattle, Washington 98101
4 Main 2-1711

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6
7
8 UNITED STATES DISTRICT COURT

9 WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION
10 DISTRICT OF OREGON
11 NORTHERN DISTRICT OF CALIFORNIA
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DISTRICT OF CALIFORNIA

14 STATE OF WASHINGTON, et al. C.A. No. 3157, W.D. Wash.,
15 v. S. Div.

16 AMERICAN PIPE AND CONSTRUCTION
17 CO., et al.

18 STATE OF OREGON, et al. C.A. No. 65-266 and related
19 v. pipe case in the D. of Ore.
20 AMERICAN PIPE AND CONSTRUCTION bearing C.A. No. 65-299
21 CO., et al.

22 THE STATE OF CALIFORNIA, et al. C.A. No. 43403 and related
23 v. pipe cases in the N.D. of
24 AMERICAN PIPE AND CONSTRUCTION Calif. bearing C.A. Nos.
25 CO., et al. 43406-43407, 43752-43754,
and 45001

26 THE CITY OF LOS ANGELES, et al. C.A. No. 65-911 and related
27 v. pipe cases in the C.D. of
28 AMERICAN PIPE AND CONSTRUCTION Calif. bearing C.A. Nos.
29 CO., et al. 65-913, 65-914, 66-655, 66-657,
66-658, and 66-1024

30 CITY OF SAN DIEGO, et al. C.A. No. 3396 and related
31 v. pipe cases in the S.D. of
32 AMERICAN PIPE AND CONSTRUCTION Calif. bearing C.A. Nos.
33 CO., et al. 3525 and 3528

34 Title of Pleading: STIPULATION AND ORDER OF DISMISSAL,
35 ALL NAMED ACTIONS

36 DATED:

