

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Antitrust Division
Washington, D.C. 20530,

Plaintiff,

CASE NUMBER 1:97CV00302

v.

JUDGE: Stanley Sporkin

Figgie International Inc.
4420 Sherwin Road
Willoughby, Ohio 44094

DECK TYPE: Antitrust

DATE STAMP: 02/13/97

and

Harry E. Figgie, Jr.
37001 Shaker Blvd.
Hunting Valley, Ohio 44022,

Defendants.

**COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF
PREMERGER NOTIFICATION REQUIREMENTS OF HART-SCOTT-RODINO ACT**

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain relief in the form of civil penalties against the defendants named herein, and alleges as follows:

JURISDICTION

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the HSR Act" or "the Act"), to recover civil penalties for defendants' failure to comply with the premerger notification and waiting period requirements of the HSR Act.

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 18a(g) and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

3. Venue in this District is proper by virtue of the defendants' consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANTS

Figgie International Inc.

4. Figgie International Inc. ("FII"), is made a defendant herein. FII is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 4420 Sherwin Road, Willoughby, Ohio, 44094.

5. At all times relevant to this complaint, FII was engaged in the manufacture and sale of a variety of consumer and industrial products. At all times relevant to this complaint, FII had annual net sales in excess of \$100 million.

6. At all times relevant to this complaint, defendant FII was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1).

Harry E. Figgie, Jr.

7. Harry E. Figgie, Jr. ("Figgie"), an individual, is made a defendant herein. Defendant Figgie resides at 37001 Shaker Blvd., Hunting Valley, Ohio, 44022.

8. Harry E. Figgie, Jr., founded FII in 1963 and at all times relevant to this complaint was the single largest shareholder of FII. At all times relevant to this complaint, Figgie held less than 50% of the outstanding voting securities of FII and did not control FII for purposes of the HSR Act. At all times relevant to this complaint, Figgie was Chairman and Chief Executive Officer of FII.

9. At all times relevant to this complaint, defendant Figgie held 50% or more of the outstanding voting securities of

Clark-Reliance Corporation, a corporation that had total assets or annual net sales in excess of \$10 million. For purposes of the HSR Act, Figgie controlled Clark-Reliance and Figgie thus had total assets or annual net sales in excess of \$10 million.

10. At all times relevant to this complaint, Figgie was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a) (1) of the Clayton Act, 15 U.S.C. § 18a(a) (1).

THE HART-SCOTT-RODINO ACT AND THE PREMERGER NOTIFICATION RULES

11. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are being acquired to file notifications with the Federal Trade Commission and the Department of Justice ("antitrust enforcement agencies") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the antitrust enforcement agencies prior notice of, and information about, proposed transactions. The waiting period is also designed to provide the antitrust enforcement agencies an opportunity to investigate proposed transactions and determine

whether to seek an injunction to prevent consummation of transactions that may violate the antitrust laws.

12. The notification and waiting period requirements of the Act apply when the Act's "size-of-person," "commerce," and "size-of-transaction" tests are met. 15 U.S.C. § 18a(a). The size-of-transaction test is met if, as a result of an acquisition, an acquiring person would hold an aggregate total amount of voting securities of an acquired person in excess of \$15 million.

13. The premerger notification rules, 16 C.F.R. Parts 800 et seq., define "hold" to mean "beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means." Rule 801.1(c), 16 C.F.R. § 801.1(c).

14. The premerger notification rules require parties subject to the notification obligations of the HSR Act to comply with the requirements of the HSR Act prior to meeting or exceeding the \$15 million threshold noted in Paragraph 12 and three additional notification thresholds for acquisitions of voting securities. These thresholds are: (1) 15% of the outstanding voting securities of an issuer; (2) 25% of the outstanding voting securities of an issuer; and (3) 50% of the outstanding voting securities of an issuer. 16 C.F.R.

§ 801.1(h). The acquiring person in a reportable transaction identifies on the premerger notification and report form the highest threshold for which notification is being filed. The acquiring person then has one year from the expiration of its waiting period to cross that threshold without having to file HSR notification again for that threshold, and may continue to acquire voting securities of the same entity up to but not crossing the next notification threshold without filing new notification for five years from the expiration of the waiting period. 16 C.F.R. §§ 803.7, 802.21. If a higher notification threshold would be crossed as a result of an acquisition, a new premerger notification must first be filed. Accordingly, parties that file for the \$15 million threshold must again provide notification under the HSR Act before the acquiring person increases its holdings to over 15% of the issuer's outstanding voting securities.

VIOLATION ALLEGED

15. On or about July 1, 1988, Figgie acquired voting securities of FII that, when combined with voting securities previously held by Figgie, brought the value of his holdings above \$15 million but not above 15%.

16. In December, 1988, Figgie purchased restricted voting securities pursuant to FII's 1988 restricted stock purchase plan. At that time, he obtained the right to vote the shares, and he obtained the right to receive any dividends attributable to the shares. The shares were restricted in that Figgie was not entitled to sell or otherwise dispose of any voting securities acquired pursuant to FII's 1988 restricted stock purchase plan until all restrictions listed in the plan were lifted. By the terms of the plan, the restrictions on disposal of the voting securities automatically lifted in July of 1993.

17. At the time that Figgie purchased the restricted voting securities pursuant to the 1988 restricted stock purchase plan, Figgie acquired beneficial ownership of those voting securities. Thus, for purposes of the HSR Act, Figgie held the restricted voting securities at the time he purchased them pursuant to FII's restricted stock purchase plan.

18. Including the voting securities purchased pursuant to the 1988 restricted stock purchase plan as well as the unrestricted voting securities previously acquired, prior to August 3, 1992, Figgie held 13.3% of the outstanding voting securities of FII.

19. On or about August 3, 1992, Figgie acquired approximately 100,000 additional shares of unrestricted voting securities of FII. As a result of the August 3, 1992, acquisition, Figgie held 15.2% of the outstanding voting securities of FII valued at approximately \$28 million.

20. The August 3, 1992, acquisition, described in Paragraph 19, was subject to the reporting and waiting period requirements of the HSR Act because it resulted in Figgie holding in excess of 15% of the outstanding voting securities of FII, a higher notification threshold than the \$15 million threshold for which Figgie had previously filed notification under the HSR Act.

21. The HSR Act and Rules required defendant Figgie and defendant FII to file premerger notification forms and observe the Act's waiting period before completing the August 3, 1992, acquisition, described in Paragraph 19 above. Based on prior dealings with the Commission's premerger notification office in reporting Figgie's previous acquisition of FII voting securities, defendants Figgie and FII knew or should have known that the acquisition described in Paragraph 19 was subject to the reporting requirements of the HSR Act.

22. Defendants Figgie and FII did not comply with the notification and waiting period requirements of the Act before

the August 3, 1992, acquisition described in Paragraph 19 above was made.

23. Figgie filed his completed premerger notification for the 15% notification threshold with respect to his acquisition of FII voting securities on October 13, 1993. FII filed its premerger notification for the 15% notification threshold on October 13, 1993. The waiting period in connection with these premerger notifications expired on November 12, 1993.

24. Defendants Figgie and FII were in continuous violation of the HSR Act each day during the period beginning on or about August 3, 1992, and ending on or about November 12, 1993.

25. Section 7A(g) (1) of the Act, 15 U.S.C. § 18a(g) (1), states: "Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section."

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants violated the HSR Act, 15 U.S.C. § 18a, by completing the

acquisition described in Paragraph 19 above, without first complying with the Act's notification and waiting period requirements, and that defendants were in violation of the HSR Act each day during the period beginning on or about August 3, 1992, and ending on or about November 12, 1993;

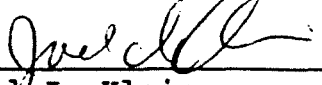
2. That defendants be ordered to pay to the United States Treasury appropriate civil penalties provided by Section 7A(g) (1) of the Clayton Act, 15 U.S.C. § 18a(g) (1);

3. That plaintiff have such other and further relief as the Court shall deem just and proper; and


4. That the Court award plaintiff its costs of this suit.

Dated: _____.

FOR PLAINTIFF UNITED STATES OF AMERICA:

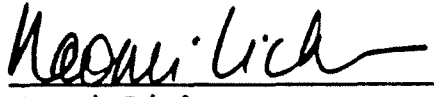


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