

FOR IMMEDIATE RELEASE
Thursday, September 25, 1941

DEPARTMENT OF JUSTICE

Assistant Attorney General Thurman Arnold today issued the following statement:

Many questions are being put to me concerning the decree and payment of fines in the recent prosecution of Sterling Products.

The settlement of this case was eminently satisfactory to me personally and to all the members of my staff who worked on it. I am therefore glad to make this statement answering a number of the questions which have been raised concerning the case.

The questions and the answers are as follows:

(1) Did Sterling Products receive some sort of preferential treatment from the Department?

Answer: Emphatically No. In fact, Sterling Products cooperated with the Government in the beginning of the drug investigation six months ago by giving free access to its files, thus avoiding the necessity of bringing voluminous documents before the grand jury. It also gave active assistance in permitting the Government to tie up funds which would otherwise have gone to German drug outlets in South America under contracts made in 1926. The entire evidence which was the basis of the criminal information was furnished to the Department voluntarily by Sterling Products. In spite of this, the Department insisted that Sterling Products, its subsidiaries and William Weiss,

its principal officer, who was responsible for the illegal policy, pay maximum fines. The only reason the fines were not larger is that the statute does not permit larger fines to be imposed. This is in line with the consistent policy of the Antitrust Division that it cannot condone past offenses because the defendants have agreed to abandon them in the future.

Mr. Diebold, a subordinate officer of the company, was fined \$1,000.00 because the Department believed he did not initiate the policy but acted under orders.

Several other subordinate officers who conducted the business affairs of the company under orders from their superiors were not fined. This follows our consistent policy of avoiding shotgun indictments of persons not in control of general company policy.

(2) Why was a criminal information filed instead of an indictment?

The criminal information and the indictment are alternative methods for bringing criminal charges. Defendants prosecuted under an information get no advantage whatever. Both information and indictment involve the same penalties. Proceedings by indictment are longer and more expensive than by information. Therefore, they are resorted to only where examination of witnesses under oath is required to complete an investigation. Where evidence is already in possession of the Department, proceeding by criminal information is more convenient. For example, criminal informations instead of

indictments were filed in the case against the tobacco companies and in the case of the Chattanooga News-Free Press Company. It was to avoid the expense and delay of grand jury proceedings where they were unnecessary that the statute allowing the filing of criminal informations was passed.

(3) Why was a nolo contendere plea accepted instead of a plea of guilty?

There is no legal distinction between a plea of nolo contendere - which means that the defendant does not choose to stand trial - and a plea of guilty. Nevertheless, a plea of nolo has always seemed less offensive to defendants because they do not regard it as involving an admission of guilt. Because of this it is often allowed in misdemeanor cases where fines alone are involved.

Since violations of the Sherman Act are not felonies, but misdemeanors, it has been the policy of the Department to allow all defendants to save the Department the expense of a lengthy contested trial by submitting nolo contendere pleas. In no case has the Antitrust Division ever demanded a plea of guilty in advance of trial.

(4) Why was the proceeding terminated by the acceptance of pleas and the entry of a consent decree?

In cases which are terminated without a trial through pleas of nolo contendere, it has been the consistent practice of the Department to enter consent decree in a civil proceeding, enjoining the defendants from repeating the illegal practices which led to the proceeding. The terms of these consent decrees, which are always determined by negotiation with counsel for the defendant, vary from case to case, depending upon the particular facts which are involved.

In this case a consent decree was necessary to invalidate for all future time the illegal contracts on which the criminal information was founded, to prevent the German Dye Trust from relitigating the same questions in civil suits between private parties, and to prevent the reestablishment of any future relationship of the same kind between Sterling and the German Dye Trust.

The proceedings were identical with those taken in the prosecution of Bausch & Lomb, where a nolo contendere plea was accepted, fines were paid and a decree invalidating the contracts was simultaneously entered. This is the habitual procedure of the Antitrust Division in prosecutions based upon illegal contracts.

The decree in this case, however, has many positive advantages in the present emergency. German control of drug outlets in South America has been one of the most effective instruments of propaganda and German influence in this hemisphere. There is an imperative necessity that American concerns build up their own outlets. In spite of the fact that in 1926, in the era of non-enforcement of the antitrust law, Sterling Products was attempting to eliminate competition along with hundreds of other American companies, it still remains an efficient organization for the distribution of drugs. That organization in the present emergency must not be destroyed, nor its efficiency hampered; instead of that, it must receive every assistance in the long and expensive process of establishing American outlets for drugs in this hemisphere.

The illegal contracts which were the basis of the fines in this case were entered into in 1926 for the sole motive of eliminating

competition and long before the Hitler revolution. To attempt to destroy the usefulness of the organization in the present crisis because of this misdemeanor would be the height of stupidity and folly. The decree, therefore, is of great economic importance in freeing this organization from the obstacles which have prevented it in the past from establishing American trade outlets in South America.