

U. S. vs. NATIONAL LUMBER MANUFACTURERS  
ASSOCIATION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF COLUMBIA.

Civil Action No. 11262

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

NATIONAL LUMBER MANUFACTURERS ASSOCIATION,  
DEFENDANT.

CONSENT DECREE

This cause came on to be heard on this 6th day of May, 1941, the complainant being represented by Edward M. Curran, United States Attorney for the District of Columbia, Thurman Arnold, Assistant Attorney General, Tom C. Clark and Harold F. Collins, Special Assistants to the Attorney General, and the defendant being represented by its counsel, said defendant having appeared voluntarily and generally and having waived service of process and filed its answer.

It appears to the Court that the defendant has asserted and does assert its innocence of any violation of law but has consented in writing to the making and entering of this decree, upon condition that neither such consent nor this decree shall be evidence, admission or adjudication that defendant has violated any law of the United States and the United States by its own counsel has consented to the entry of this decree and has moved the court for this injunction.

It further appears to the Court that this decree will provide suitable relief concerning the matters alleged

in the complaint, and that by reason of the consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts.

Now, therefore, upon motion of complainant without taking any testimony or evidence, and without making any adjudication of the facts, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED:

I. The Court has jurisdiction of the parties to this decree; and for the purposes of this decree and proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof; and the complaint states a cause of action against said defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental thereto.

II. For the purposes of this decree:

(a) The term "American Lumber Standards" means Simplified Practice Recommendation R16 as published in 1924 by the National Bureau of Standards of the United States Department of Commerce, and as heretofore and hereafter revised and republished from time to time;

(b) The term "lumber," as used herein, includes all products made wholly or in substantial part of sawn wood which are produced or sold by any subscriber of defendant association or any member or subscriber of any association affiliated therewith.

III. Said defendant, and any officer, director, employee, agent or any other person, when acting as its agent or under its direction or by its authority, be and they hereby are perpetually enjoined and restrained from engaging in any of the following acts and practices:

(a) Advising or recommending or seeking to induce any manufacturer or distributor of lum-

ber or any group or association of manufacturers or distributors of lumber to designate, divide, allocate, limit or otherwise restrict the amount or any increase in the amount, of lumber to be sold, or to divide or allocate markets or sales territories or customers for lumber, or to fix, raise, lower, maintain or stabilize prices, price relationships, discounts, commissions or terms of sale of lumber;

(b) Calling, holding or participating in any meeting or participating in any plan of lumber manufacturers or distributors for the purpose of establishing, agreeing upon or seeking to induce, any limitation or other restriction of the quantity or of any increase in the quantity of lumber to be sold, or any designation, division or allocation of markets or sales territories or customers for lumber, or maintenance or increase of lumber prices, or maintenance or change of price relationships, discounts, commissions or terms of sale of lumber;

(c) Advising or recommending or seeking to induce any timber owner or logger or lumber manufacturer to limit or otherwise restrict the quantity or any increase in the quantity of lumber to be produced, or sponsoring, holding or participating in any meeting therefor, except in furtherance of the adjustment of the cutting of timber to the sustained-yield capacity of the forest lands upon which continuing supplies of raw materials for particular operations are dependent, or in furtherance of sustained forest production in accord with principles of forest management which have been approved by State or Federal conservation agencies, provided that the defendant shall inform the Antitrust Division of the Department of Justice in advance as to any policy or program of sustained yield or sustained forest production thus to be furthered;

(d) Distributing or communicating to any manufacturer or distributor or to any group or association of manufacturers or distributors of lumber any statistics of production, shipments, sales, orders, unfilled orders, stocks or prices of lumber, or other similar market information, or information as to costs of production of lumber collected or compiled by the defendant, unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, such information is made fully and fairly available at not to exceed a reasonable charge to competitors, customers, consumers and all interested persons at the time of its initial dissemination;

(e) Distributing or communicating to manufacturers or distributors of lumber any statistics of production, shipments, sales, orders, unfilled orders, stocks, prices or costs of production of lumber in such form as to identify information about any concern, or about any group of concerns affiliated by ownership or management, provided that this prohibition shall not apply to the reporting of statistics of facts or transactions more than one year past;

(f) Disseminating or causing to be disseminated information compiled and estimates made by the officers, agents or employees of the defendant, or by the Lumber Survey Committee or any subcommittee thereof, of the production stocks and probable consumption of lumber as a whole and as to the several species or groups of species or as to regions of lumber production or as to uses or groups of uses of lumber, unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, at the time of their initial dissemination such information and estimates are made fully and fairly available to all competitors, customers and consumers of lumber and all interested persons, and unless

such estimates cover periods of not less than one month;

(g) Placing in effect, endorsing, participating in or carrying out any system, plan, statement or policy which is designed to or does designate or control the means of transportation or the channels or agencies through or by means of which lumber shall be sold or transported, or restricting or attempting to restrict the sale or distribution of lumber to any particular class or classes of purchasers;

(h) Advising or recommending or seeking to induce public authorities to establish by law or administrative regulation any preference or requirement for the use of lumber which is identified by a lumber manufacturers association grade mark or by a lumber manufacturers association inspection certificate, or advising or recommending or seeking to induce any specifier or purchaser of lumber to require the exclusive use of such lumber; provided that nothing herein shall forbid efforts to persuade public authorities, specifiers or purchasers to give preference to lumber identified by the grade marks or inspection certificates of inspection agencies determined by such impartial agency as may be established or designated with the approval of the Court, to be competent and to be rendering an adequate lumber inspection service;

(i) Recommending to public authorities or specifiers or purchasers of lumber the application of standards or principles for the appraisal of lumber grading and inspection or of agencies conducting lumber grading or inspection services, or the specification or use of lumber graded and identified by marking or certification in accordance with such standards or principles, if such standards and principles are designed to establish a preference for association grading and inspec-

tion agencies or are not designed in good faith to promote competence in rendering grading and inspection services;

(j) Preventing or seeking to prevent recognition or acceptance by manufacturers, distributors or consumers of lumber, of the grade marks, inspection certificates or grading, supervisory or inspection services of any agency, if it is not controlled by any manufacturer or distributor or any other person whose own products would be subject to its inspection and certification, whether such agency is established by an association or group of lumber manufacturers or otherwise, which maintains or conforms to published standards of lumber identity, description, size, shape, pattern, measurement and quality and for the performance of the grade marking, grading, certification, supervisory or inspection services which it undertakes, provides facilities equivalent to those provided by any agency in the same species and region the recognition or acceptance of whose similar services is advocated by the defendant;

(k) Seeking to induce manufacturers of lumber of any species in any region, as a means of certifying conformance to standards of lumber identity, description, size, shape, pattern, measurement and quality such as are contained in American Lumber Standards, or as a means of certifying any other assurance or guaranty useful as a protection to purchasers or consumers, to apply on such lumber a common mark or brand owned or controlled or used by the defendant, or by an association of manufacturers or distributors of lumber unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, the use of such mark or brand is available without discrimination and on equal terms and conditions to all manufacturers of

lumber of the same species in the same region;

(l) Promoting the use by grading and inspection agencies, for the grading and inspection of any species of lumber in any producing region, of uniform standards of identity, description, size, shape, pattern, measurement and quality of lumber such as are contained in American Lumber Standards, or advising, recommending or seeking to induce public authorities, specifiers, purchasers and consumers to give preference to lumber identified, described, measured and graded in accord with such standards, unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, the use of such standards is fully and fairly available on equal terms and conditions to all agencies grading or inspecting lumber of the same species in the same region;

(m) Promoting public acceptance of published uniform rules for the grading and measurement of lumber of any species within any lumber producing region based on standards of identity, description, size, shape, pattern, measurement and quality such as are contained in American Lumber Standards, unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, such rules are fully and fairly available to all manufacturers, distributors and consumers of such lumber on equal terms and conditions and without discrimination, or discouraging or preventing or seeking to prevent the formulation, publication or public acceptance of rules for the grading or measurement of lumber of any species in any region unless, within the limitations prescribed in subsection (n) hereof to the extent applicable, published rules applicable thereto based on standards as aforesaid are already fully and fairly available to all manufacturers, distributors and consumers

of such lumber on equal terms and conditions and without discrimination.

(n) Rendering any service or supplying any information to any association subscribing to services of defendant for the purpose of furthering any act or practice by such subscriber which is known by defendant to be forbidden by a decree under the antitrust laws to which such subscriber is subject, or with the knowledge on the part of defendant that such information or service is to be so used by such subscriber, or for the purpose of assisting such subscriber in any of the following activities:

(1) Collusive fixation of prices, discounts, commissions, rebates, price differentials, working charges, or amounts to be included in or deducted from prices;

(2) Collusive restriction of production or sale;

(3) Collusive allocation of business or assignment of quotas to be produced or sold by individual enterprises;

(4) Collusive determination of the channels or agencies through which lumber shall be sold or shipped or of the classes of customers to whom it shall be sold;

(5) Exclusion of competitors or potential competitors from any market; provided that nothing herein shall prevent assistance in promoting such discrimination between lumber graded by different grading agencies as defendant may engage in under section III (h) of this decree;

Provided that no obligation is hereby imposed upon defendant to seek as to any such act or practice by such subscriber any information other than that which is obtained in its ordinary course of business, or upon any employee or agent of defendant to report to defendant any information outside the ordinary scope of his activities.

IV. That for the purpose of facilitating the carrying out of the provisions of subdivisions (h), (i), (j), (k), (l), and (m) of paragraph III, the defendant undertake to seek:

(a) Such modifications of American Lumber Standards and the establishment of such further facilities or agencies as will facilitate the approval of rules for the grading and measurement of lumber and the administration of lumber inspection, grade marking and other certification services in a manner conformable to the provisions of this decree;

(b) The inclusion in American Lumber Standards of suitable additional standards by which the adequacy of any system, service, plan or method of lumber inspection and of the competence of any agency to conduct such inspection may be determined; and

(c) The establishment or designation and authorization of an impartial agency available for the determination, in accordance with such standards, of the adequacy of any system, service, plan or method of lumber inspection and of the competence of any lumber inspection agency; and for these purposes the defendant will seek the cooperation of agencies publishing rules for the grading and measurement of lumber.

V. Nothing in this decree shall be construed to require conformance therewith by any association or any individual manufacturer or distributor or consumer of lumber subscribing to the services, or any of them, of the defendant, or by any other person, except when acting as its agent, under its direction or by its authority; or to impose on the defendant any legal obligation to supervise the activities of or to secure conformance to this decree or any provision thereof by any person, corporation, group or association except when acting as its agent, under its direction or by its authority.

VI. For the purpose of securing compliance with this

decree, authorized representatives of the Department of Justice shall, upon the written request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendant, and upon reasonable notice to the defendant, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendant, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendant, be permitted to interview officers or employees of the defendant, without interference, restraint, or limitation by the defendant, provided, however, that any such officer or employee may have counsel present at any such interview. Defendant, upon the written request of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the purpose of enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

VII. Jurisdiction of this action is retained for the purpose of enabling either of the parties to this decree to apply, and either party may apply, to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof and for the enforcement of compliance therewith and the punishment of violations thereof.

Any application by either party hereto under the provisions of this paragraph shall be made in open court upon reasonable notice to the other party hereto, and the other party hereto, upon such application, shall

have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining or cross-examining such witnesses in accordance with the rules of the Court.

Dated at Washington, District of Columbia, this 6th day of May, 1941.

JAS. W. MORRIS,  
*Justice.*