

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Retail Lumber Dealers Association, Arizona Retail Lumber & Builders Supply Association, Carolina Lumber and Building Supply Association, Illinois Lumber & Material Dealers Association, Indiana Lumber and Builders Supply Association Iowa Retail Lumbermen's Association, Kentucky Retail Lumber Dealers Association Louisiana Building Material Dealers Association, Michigan Retail Lumber Dealers Association, Mountain States Lumber Dealers Association, Middle Atlantic Lumbermen's Association, New Jersey Lumbermen's Association, New York Lumber Trade Association, Northeastern Retail Lumbermen's Association, Northwestern Lumbermen's Association, Ohio Association of Retail Lumber Dealers, Southwestern Lumbermen's Association, Tennessee Lumber, Mill work & Supply Dealers Association, Utah: Lumber Dealers' Association, Western Retail Lumbermen's Association, West Virginia Lumber & Builders' Supply Dealers Association, and Wisconsin Retail Lumbermen's Association, U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,181, (Jan. 3, 1942)**

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United States v. National Retail Lumber Dealers Association, Arizona Retail Lumber & Builders Supply Association, Carolina Lumber and Building Supply Association, Illinois Lumber & Material Dealers Association, Indiana Lumber and Builders Supply Association Iowa Retail Lumbermen's Association, Kentucky Retail Lumber Dealers Association Louisiana Building Material Dealers Association, Michigan Retail Lumber Dealers Association, Mountain States Lumber Dealers Association, Middle Atlantic Lumbermen's Association, New Jersey Lumbermen's Association, New York Lumber Trade Association, Northeastern Retail Lumbermen's Association, Northwestern Lumbermen's Association, Ohio Association of Retail Lumber Dealers, Southwestern Lumbermen's Association, Tennessee Lumber, Mill work & Supply Dealers Association, Utah: Lumber Dealers' Association, Western Retail Lumbermen's Association, West Virginia Lumber & Builders' Supply Dealers Association, and Wisconsin Retail Lumbermen's Association

1940-1943 Trade Cases ¶56,181. U.S. District Court, D. Colorado. January 3, 1942.

**Upon consent of all parties a decree is entered in proceedings under the Sherman Anti-trust Act restraining the defendants from combining and conspiring to restrain interstate commerce in the retail sale of lumber, lumber products, and other building materials. Among the activities enjoined are price fixing; determining uniform mark-ups, price differentials, allowances, discounts and terms and conditions of sale; distributing price lists; operating a bid depository; establishing sales territories; allocating markets, customers and orders; classifying dealers; inducing legislative or administrative adoption of grade marks or inspection certificates; coercing manufacturers to sell or refrain from selling to particular purchasers compiling and disseminating statistical information as to sales, orders shipments deliveries, inventories, costs and prices; publishing suggested future retail prices; and conducting meetings for the purpose of carrying out the unlawful activities enjoined.**

For the plaintiff: Thurman Arnold. Assistant Attorney General, Thomas J. Morrissey, U.S. Attorney, Denver, Colo., Tom C. Clark, James Mcl. Henderson and Wallace Howland, Special Assistant to the Attorney General.

For the defendants Charles M. Price Gene S. Cunningham, Basil M. Boyd, Joseph W. Townsend, Edward O. Snethen, Neill Garrett, P. McKinley Harris, Ben L. Johnston, Donald P. Schurr, James Quigg Newton, Jr., J. Frederick Martin, Raymond D. Torbenson, John J. McCloskey, Verne Foley, Fred N. Furber, Ralph M. Lucas, Frank E. Tyler, Louis H. Hibbits, Beverly S; Clendenin, William P. Lehman, and, Ralph J. Drought.

Before Symes, District Judge

### Final Judgment

The complainant, United States of America, having filed its complaint herein on the 3d day of January, 1942, all of the defendants having appeared and severally filed their answers to such complaint denying the substantive allegation thereof, all parties hereto by their, respective attorneys having severally consented to the entry of this final decree herein and without admission by any party in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein and upon consent of all parties here-to it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

#### I

##### [ *Jurisdiction* ]

The Court has jurisdiction of the subject matter and of the parties; the complaint states a cause of action against said defendants, and each of, them, 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 the acts amendatory thereof and supplemental thereto.

#### II

##### [ "*Lumber and Lumber Products*" and "*Other Building Materials*" Defined ]

The term "lumber and lumber products" as used, in this decree shall be deemed to refer to all the products manufactured from the tree commonly used for building and construction purposes including but not limited to board splanks, dimension timbers, shingles, and such fabricated products and by products as millwork, plywood, wall board and shredded wood or bark wool insulation; the term other building materials as used in this decree shall be deemed to refer to other products and materials commonly used for building and construction purposes including but,not limited to asphalt, asbestos and otheir composition roofing materials, building paper, wire products, metal lath, cement, plaster and lime.

##### [ "*Retail Lumber Dealer*" Defined ]

The term "retail lumber dealer" as used in this decree shall be deemed to refer to all corporations; partnerships and individuals engaged in the business of purchasing procuring, and receiving lumber, lumber products and other building materials from manufacturers and wholesalers for the pose of supplying the demand therefor by contractors, industrial concerns and other consumers.

##### [ "*Manufacturer*" Defined ]

The term "manufacturer" as "used in this decree shall be deemed to refer to all saw-mill, planing-mill, or factory owner who manufactures or converts timber into lumber and lumber products or who manufactures or fabricates the said building materials from raw materials.

##### [ "*Wholesaler*" Defined ]

The term "wholesaler" as used in this decree shall be deemed to refer to all corporations, partnerships or individuals engaged in the business of purchasing, procuring, or ordering lumber; lumber" products and other buildihg material's from the manufacturers thereof for sale, shipment, and delivery to retail lumber dealers, an to include all concerns known to the trade as, wholesalers, jobbers, commission men and brokers.

### III

#### [ *Activities Enjoined* ]

Each of the defendants, their successors, officers, directors, agents and employees, and all persons acting under, through, or for them, or any of them, be and they are hereby enjoined and restrained from doing or attempting to do, or inducing others to do the, following acts or practices, or any of them:

#### [ *Price Fixing* ]

(a) Formulating, promoting, or participating in any plan or program to raise lower fix, adhere to or maintain prices of lumber, lumber products or other building materials:

#### [ *Determining Uniform Mark-Ups, etc.* ]

(b) Formulating, promoting or participating in any plan or program to fix, determine adhere to or to bring about the use of uniform mark-ups price differentials, allowances, discounts, or terms and conditions of sale with respect to lumber, lumber products, or other building materials:

#### [ *Distributing Price Lists, etc.* ]

(c) Preparing or distributing any price list, or statement of terms or conditions of sales, or of shipping practices, or any discount sheet, or any statement of agreed arbitrary or average weights;

#### [ *Sponsoring Bid Depository* ]

(d) Formulating, promoting, operating, sponsoring, participating in or carrying out any bid depository or other system or program for the filing or listing of invoices, bids, or estimates with respect to the present or future sale or distribution of lumber, lumber products or other building materials, for the purpose or with the effect of fixing prices, or allocating business, or making available to any competitor, or representative thereof, such invoices, bids, or estimates with respect to the present or future sale or distribution of lumber, lumber products, or other building materials;

#### [ *Establishing Sales Territories* ]

(e) Designating or establishing any geographical line or boundary beyond which or within which one or more retail lumber dealers shall or shall not sell or shall sell only at certain prices or on certain terms or conditions of sale;

#### [ *Allocating Markets* ]

(f) Formulating, promoting or participating in any plan or program for defining, limiting, or allocating markets, customers, or orders among retail lumber dealers;

#### [ *Classifying Dealers* ]

(g) Classifying or designating certain retail lumber dealers as the only dealers entitled to purchase or deal in lumber, lumber products, or other building materials, or as entitled to any preferential treatment, or as dealers to be discriminated in favor of, whether such dealers shall be termed as "ethical," "recognized," members of associations, or otherwise; or coercing, compelling, advising, or persuading any manufacturer or wholesaler to sell or to refrain from selling, or to discriminate in favor of or against, or to grant preferential treatment to any purchaser or dealer on the basis of any such designation or classification.

#### [ *Inducing Legislative or Administrative Adoption of Grade Marks* ]

(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 and non-discriminatory lumber inspection service;

[ *Coercing Manufacturers and Wholesalers*]

(i) Formulating, promoting or participating in any plan or program to intimidate, coerce, compel, or exert undue pressure upon manufacturers or wholesalers of lumber, lumber products or other building materials, to sell or to refrain from selling, or to discriminate in favor of, or against any particular purchaser or purchasers, or any particular class or classes of purchasers;

[ *Disseminating Information on Sales, etc*]

(j) Gathering, compiling, or disseminating information or statistics as to the sales, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers unless all such information, data and statistics are openly and fairly gathered and disseminated; are fairly and accurately ascertained from actual past and completed transactions; are readily, fully and fairly made available to all retail lumber dealers and the public generally at the time of their initial dissemination and by mail upon request; and unless such information, data and statistics do not consist of mere averages or disclose to competitors information as to the amount of sales, orders, shipments, deliveries, inventories, costs or prices of any individual retail lumber dealer or invoices or data as to individual transactions or sales to named customers ;

[ *Publishing Suggested Future Retail Prices*]

(k) Gathering, publishing or disseminating to sellers of lumber, lumber products, or other building materials information as to suggested future retail prices on lumber, lumber products or other building materials;

[ *Conducting Meetings*]

(1) Authorizing, sponsoring, or participating in any meetings or conferences of any associations, or committees or organizations for the purpose or with the effect of engaging in any of the activities prohibited by this paragraph III.

#### IV

[ *Activities Permitted to Secure Compliance*]

For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however, that the 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.

[ *Retention of Jurisdiction*]

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