

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. W. C. Bell Services, Incorporated, Lumber Promotion of Oregon, Incorporated, Lumber Promotion, Incorporated, W. C. Bell, Roy Wilkinson, and R. D. Torbenson., U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,171, (Oct. 27, 1941)**

[Click to open document in a browser](#)

United States of America v. W. C. Bell Services, Incorporated, Lumber Promotion of Oregon, Incorporated, Lumber Promotion, Incorporated, W. C. Bell, Roy Wilkinson, and R. D. Torbenson.

1940-1943 Trade Cases ¶56,171. U.S. District Court, D. Colorado. Civil Action No. 380. October 27, 1941.

Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act perpetually restraining the defendants from combining and conspiring to restrain interstate trade and commerce in the sale of lumber and allied products. Among the activities enjoined are price fixing; maintaining uniform mark-ups; recommending retail mark-ups; fixing uniform discounts, terms and conditions of sale, rebates and charges for specific operations; allocating sales quotas; operating a bid depository; coercing retail lumber dealers in their acceptance and rejection of orders; and compiling and disseminating information as to sales, orders, shipments, deliveries, inventories, costs and margins of profit of retail lumber dealers.

Thurman Arnold, Assistant Attorney General, Tom C. Clark and James Mcl. Henderson, Special Assistant to the Attorney General, David J. Clarke, A. Andrew Hauk and Charles L. Whittinghill, Special Attorneys, and Thomas J. Morrissey, U. S. District Attorney, Denver, Colo., for plaintiff.

Joseph B. Keenan, Washington, D. C, for defendants.

Before Symes, District Judge.

**Final Judgment**

The complainant, United States of America, having filed its complaint herein on October 27, 1941; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law 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 herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

[ *Jurisdiction* ]

I. That the Court has jurisdiction of the subject-matter and of all the parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Un lawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II. For the purposes of this decree:

[ *"Lumber" and "Allied Products" Defined* ]

(a) The term "lumber and allied products," as used in this decree, shall be deemed to refer to those articles and products which are consumed and used by the public generally for building and construction purposes, and which are customarily distributed, sold, advertised, and offered for sale by retail lumber dealers throughout the United States, including all articles and products used in construction, building, alteration or repair work of any kind or type.

[ *“Retail Lumber Dealer” Defined*]

(b) The term “retail lumber dealer,” as used in this decree, shall be deemed to refer to individuals, partnerships, and corporations engaged in the retail sale and distribution of lumber and allied products to contractors and other consumers.

[ *Activities Enjoined*]

III. Defendants, their directors, officers, agents, employees, their successors, and all persons acting under, through, or for defendants, or their successors, or any of them, be, and they hereby are, perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves, or with any other individual, association or corporation, whether through the collection, compilation, utilization, dissemination; publication of any information or statistics respecting sales, orders, shipments, deliveries, inventories, costs or prices through the auditing of the books of retail lumber dealers, or otherwise.

[ *Price Fixing*]

(a) to raise, fix, maintain or prevent change in the retail prices to be charged for lumber or allied products:

[ *Maintaining Uniform Mark-ups*]

(b) to fix, determine, maintain, make uniform, or prevent changes in mark-ups relating to the retail sale or distribution of lumber and allied products;

[ *Recommending Retail Mark-ups*]

(c) to advise, recommend, or urge retail mark ups or prices for lumber and allied products

[ *Fixing Uniform Discounts, Rebates, etc.*]

(d) to fix, determine, maintain, make uniform or prevent changes in discounts, terms of conditions of sale, rebates or charges for specific operations with respect to lumber and allied products;

[ *Allocating Sales Quotas*]

(e) to fix, determine, designate or maintain sales quotas, or allocations of business, or to formulate, promote, place in effect, or participate in, any plan or policy for the determination or assignment of sales quotas or allocations of business with respect to the sale or distribution of lumber and allied products.

[ *Additional Activities Enjoined*]

IV. Defendants, their directors, officers agents, employees, their successors and all persons acting under, through or for defendants or their successors, or any of them, be and they hereby are individually and perpetually en-joined and restrained from engaging in the following specific acts:

[ *Coercion in the Acceptance or Rejection of Orders*]

(a) restricting, coercing, persuading or influencing any retail lumber dealer in the free acceptance or rejection of orders or in the free and untrammelled individual establishment of prices for lumber and allied products in the conduct of his own business;

[ *Operating Bid Depository*]

(b) 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, quotas or estimates with respect to the sale or distribution of lumber and allied products;

[ *Compiling Statistical Information*]

(c) 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 available to all retail lumber dealers and to the public generally and by mail upon request, at the time of their initial dissemination; and unless such information, data and statistics do not 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;

(d) gathering, compiling, or disseminating information or statistics as to the costs, margins, or profits of retail lumber dealers for items or classes of items of lumber and allied products, if such information or statistics contain information purporting to represent average or typical cost or average or typical elements of cost throughout a market or between competing retail lumber dealers; or if such information or statistics may readily be used as a basis for establishment of uniform prices, uniform price movements, or a uniform formula for pricing between competitors.

*[ Lawful Activities Excepted ]*

V. Except as specifically provided in Paragraph IV of this decree nothing contained herein shall be deemed to affect relations which otherwise are lawful between a defendant, its directors, officers, employees, or agents or its subsidiaries or between subsidiaries of a defendant where such relations do not involve any agreements, combinations or conspiracies enjoined in this decree with any other defendant, its directors, officers, employees or agents or its subsidiaries or with any other company, its directors, officers, employees, agents or subsidiaries;

*[ Examination of Records to Secure [Compliance]*

VI. 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 ]*

VII. Jurisdiction of this action 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 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.