

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Retail Lumbermen's Association et al., U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,166, 40 F. Supp. 448, (Oct. 24, 1941)**

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United States of America v. Retail Lumbermen's Association et al.

1940-1943 Trade Cases ¶56,166. U.S. District Court, D. Colorado, Civil Action No. 378. October 24, 1941. 40 FSupp 448

**Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act, perpetually enjoining defendants from combining and conspiring among themselves, or with others, to restrain trade and commerce in the retail sale of lumber and allied products. Among the activities restrained by the decree are price fixing; maintaining uniform mark-ups, discounts, rebates, and terms and conditions of sale; allocating business and sales quotas; classifying dealers; fostering governmental regulation; distributing price lists and discount sheets; compiling and disseminating information or statistics as to sales, costs, orders, shipments, inventories, and profits of retail lumber dealers; operating a bid depository; coercing retail lumber dealers in the free acceptance or rejection of orders; sponsoring price committees; furnishing customer's lists; and conducting meetings for the purpose of engaging in the unlawful activities prohibited. The defendants are further ordered to take necessary steps to dissolve the unlawful association.**

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

Horace Phelps, James D. Benedict and Horace F. Phelps, all of Denver, Colo., for The Hallack & Howard Lumber Co., East Denver Lumber Co., Andrew Kundert and George S. Yates, doing business as Denver Lumber Co., W. B. Barr Lumber Co., Chapin Lumber Co., E. W. Robinson Lumber Company, The Sterling Lumber and Investment Company, The North Denver Lumber Company, The Aurora Lumber Company, The Moore Lumber Company, Newt Olson Lumber Company, The R. E. Spencer Lumber Co., J. W. Accola doing business as The Beach Lumber Company, L. W. Deffenbaugh doing business as L. W. Deffenbaugh Lumber Yard, Duvall-Davison Lumber Co., The Wise and Ferguson Lumber Company, The Englewood Lumber Company, The American Lumber Company, The Conover Lumber Company, Burt Coldren, I. F. Downer, Fred G. Coldren, F. Charles Metz, Charles O. Ringsted, E. W. Robinson, W. B. Barr, Jay T. Chapin, C. W. Richardson, C. B. Nelson, Newton A. Olson, R. F. Frantz, W. G. Duvall, R. E. Spencer.

James H. Pershing, Robert G. Bosworth, Lewis A. Dick, and C. C. Dawson, Jr., all of Denver, Colo., for The Oregon Lumber Company and Carl F. Hansen, Jr.

Foster Cline, Denver, Colo., for The Pacific Lumber Company.

Dayton Denious and Hudson Moore, both of Denver, Colo., for Stark Lumber Company and John H. Stark.

Harold J. Spitzer, Denver, Colo., for The Ames Lumber Company.

Emory L. O'Connell, Denver, Colo., for The Arvada Lumber Company and The Littleton Lumber Company.

Ernest L. Rhoads, Denver, Colo., for The Carney Lumber Company.

Frank McDonough, Jr., and Gilbert L. McDonough, both of Denver, Colo.; for L. H. Wallis and W. E. Kellogg, doing business as Wallis-Kellogg Company.

Forrest C Northcutt, Denver, Colo., for W. S. Woodside, doing business as W. S. Woodside Lumber Co.

Theodore Epstein, Denver, Colo., for Mandel and Son Lumber Co.

Before Symes, District Judge.

## Consent Decree

The complainant, United States of America, having filed its complaint herein on October 24, 1941; all the defendants having appeared in answer to such complaint and deny 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 Unlawful 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 consumers and other consumers.

### [ *Activities Enjoined* ]

III. Defendants, their directors, officers, agents, employees, their successor, 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, re-specting sales, orders, shipments, deliveries, inventories, costs, prices, or through the auditing of the books of retail lumber dealers, or otherwise:

### [ *Price Fixing* ]

(a) to raise, lower, fix, maintain or prevent changes in the retail prices to be charged for lumber and allied products;

### [ *Maintaining Uniform Mark-Ups* ]

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

### [ *Maintaining Uniform Discounts, Rebates, Etc.* ]

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

[ *Distributing Price Lists and Discount Sheets*]

(e) to prepare or distribute any price list or standard discount sheet;

[ *Allocation of Sales Quotas*]

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

[ *Classification of Dealers*]

(g) to classify or designate retail lumber dealers as “ethical” or “recognized” or otherwise classify or designate dealers as 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 for or against or to coerce, compel, advise or persuade any manufacturer or wholesaler to sell to or to refrain from selling to, 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;

[ *Fostering Governmental Regulation*]

(h) to advise or recommend or seek 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 to advise or recommend or seek 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.

[ *Dissemination of Sales, Etc., Information*]

(i) to gather, compile, or disseminate 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;

[ *Dissemination of Costs, Etc., Statistics*]

(j) to gather, compile, or disseminate 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.

[ *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 enjoined and restrained from engaging in the following specific acts:

[ *Coercion in 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;

[ *Compilation of Statistical Information*]

(c) collecting, compiling, or utilizing information or statistics respecting the sales, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers for the purpose or with the effect of violating any of the provisions of paragraph III hereof;

[ *Conducting Meetings*]

(d) calling, sponsoring, directing, attending or participating in any meetings or conferences for the purpose or with the effect of engaging in any of the activities prohibited by paragraph III hereof;

(e) presenting or discussing at meetings or conferences, or through correspondence, or otherwise, information or data relating to sales, orders, shipments, deliveries, or prices of retail lumber dealers for the purpose or with the effect of carrying out any of the activities prohibited by paragraph III hereof;

[ *Sponsoring Price Committees*]

(f) establishing, setting up, or sponsoring any price committees or other committees or agencies to carry out any of the activities prohibited by paragraph III hereof;

[ *Securing Association's Permission to Sell*]

(g) establishing, setting up, or sponsoring any plan, system, policy or procedure, including the requesting of permission from any association, group or agency to make sales of lumber and allied products at relaxed prices, or the reporting of any variances from established prices or price lists, for the purpose or with the effect of enforcing or carrying out any of the activities prohibited by paragraph III hereof;

[ *Furnishing Customer Lists*]

(h) furnishing or submitting revised and current lists of their respective regular customers to any association, group or agency;

[ *Reporting Variances from Established Prices*]

(i) reporting to any association or group or agency any variances from established prices or price lists or coercing, compelling, urging or persuading any manufacturer or wholesaler to sell to or refrain from selling to, or discriminate in favor of or against, or to grant preferential treatment to any purchaser or dealer in lumber and allied products.

[ *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.

*[ Dissolution of Association]*

VI. Defendant Retail Lumbermen's Association is hereby ordered to take whatever steps as may be necessary to consummate its dissolution and it is hereby ordered to dissolve, and to cease functioning in any manner other than for the purpose of consummating its dissolution and defendant companies are ordered to take such steps as are necessary to consummate the dissolution of said Association and are hereby ordered to refrain from supporting, contributing to or otherwise permitting the continuance of said Association.

*[ Activities Permitted to Secure Compliant*

VII. 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 the decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendant shall be permitted to interview officers & 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 or an Assistant Attorney General, shall submit sub-reports with respect to any of the matter 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 persons other than a duly authorized representative of the Department of Justice except in the court of legal proceedings in which the United States is a party or as otherwise required by law.

*[ Retention of Jurisdiction]*

VIII. 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 carrying out of this decree, for the modification thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.