

**UNITED STATES v. COLORADO AND WYOMING
LUMBER DEALERS' ASSOCIATION.**

**IN THE DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF COLORADO.**

In Equity No. 5749.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

**THE COLORADO AND WYOMING LUMBER DEALERS'
ASSOCIATION AND OTHERS, DEFENDANTS.**

FINAL DECREE.

This cause came on to be heard before Robert E. Lewis,

United States district judge, United States of America appearing by G. Carroll Todd, assistant to the Attorney General, Blackburn Esterline, special assistant to the Attorney General and Harry B. Tedrow, United States Attorney, and defendants appearing by L. D. Thomason, Lancaster, Simpson & Purdy, C. D. Joslyn, and L. C. Boyle, their solicitors, and the petitioner having moved the court for a decree in accordance with the prayer of the petition, and the defendants consenting thereto, it was, upon consideration thereof, ordered, adjudged, and decreed as follows, viz:

I. Defendant, The Colorado and Wyoming Lumber Dealers' Association, a corporation organized under the laws of the State of Colorado, with its principle office and place of business at Denver, and The Lumber Secretaries' Bureau of Information, a corporation organized under the laws of the State of Illinois, were, at the time of the filing of the petition, engaged in a combination and conspiracy to restrict and restrain trade and commerce in lumber and lumber products, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

II. Prior to and at the time of filing the petition the lumber trade was, and it now is, divided into the following classes:

1. Manufacturers, who operate at various points in the United States, and who receive logs from the forests and saw them into various sizes and lengths of timber and lumber required by the trade for building and manufacturing purposes and ship such products from the points of manufacture by railroad or steamship lines through and into the various States to the markets where such lumber products are required, including the State of Colorado. The various growths of the different varieties of timber are so distributed that no single State contains all of the varieties demanded and required by the trade. The products of pine timber, known as "yellow pine," are principally from manufacturers located in the States

where the timber is grown, i. e., North Carolina, Virginia, Mississippi, Alabama, Arkansas, Texas, and other States; of oak from North Carolina, South Carolina, Missouri, Arkansas, Tennessee, and other States; of maple from Ohio, Indiana, Michigan, Wisconsin, and other northern States; of spruce from Maine, West Virginia, and other States; of fir, red cedar, and redwood from Washington, Oregon, California, and other western States; of red oak from Indiana, Michigan, Minnesota, and other States; of northern pine from Minnesota, Wisconsin, and Michigan; of cypress from Louisiana, Mississippi, and Arkansas, and the products of other special varieties are from manufacturers in various localities and parts of the United States.

2. Wholesalers, who deal in lumber and lumber products and who are usually located at or near large markets or centers of trade, i. e., New York, Chicago, Pittsburgh, Baltimore, St. Louis, Kansas City, and Denver. In some instances the wholesaler maintains a yard for receiving and storing the lumber purchased by him from the manufacturer; in other instances he does not, but handles the manufactured product through orders from customers transmitted by wholesaler to manufacturer.

3. Retailers, who are located in cities and towns in Colorado, Wyoming, northern New Mexico, and other States of the United States, and who receive and store lumber and lumber products purchased either from manufacturer, wholesaler, or jobber and sell for building or manufacturing purposes in the city, town, or vicinity where the yard is located.

4. Mail-order houses, which are large stores located in Chicago, Davenport, St. Louis, and other large cities in nearly all of the States, which sell lumber and lumber products, as well as other merchandise, direct to the consumer, having purchased the same from the manufacturer, wholesaler, or jobber without the intervention of the retailer.

5. Cooperative associations, who are located in the farming communities of Iowa, Minnesota, Colorado, Utah,

Illinois, and other States, which purchase lumber in wholesale lots for the benefit of their own members only (regarded by some as retailers, by others as consumers, and by still others as separate and distinct classes).

6. Consumers, or ultimate users, who are classified by the trade as follows:

(a) The contracting or constructing builder who uses lumber for building houses, bridges, cofferdams, wharves, and repair and construction work of all kinds.

(b) The converter, or manufacturer, who converts the sawed lumber into furniture and "trim," such as molding, frames, sash, doors, blinds, boxes, and containers.

(c) The United States Government, and in some localities municipalities and railroads.

(d) The small consumer for small building, repair, and construction work.

(e) Cooperative unions of consumers located in country districts.

(f) Mail-order houses.

III. The Colorado and Wyoming Lumber Dealers' Association was, prior to April 17, 1903, a membership association composed of retail lumber dealers in Colorado, Wyoming, and northern New Mexico. It was incorporated on the date named, since which it has carried on business in Colorado and Wyoming. Its membership consists of dealers regularly engaged in the retail lumber trade, carrying an assorted stock reasonably commensurate with the demands of the community in which each is located. They buy lumber and lumber products in various States and receive and sell the same in Colorado, Wyoming, and northern New Mexico. The association elects officers and directors, has adopted a constitution and promulgated by-laws to manage and control the business, all with the knowledge and approval of the members. The purposes of the organization and its activities are to prevent sales of lumber from manufacturers and wholesalers in the various States to contractors, builders, and other con-

sumers, and to collect and furnish information of such sales to the members of the association and the lumber trade at large.

IV. The Lumber Secretaries' Bureau of Information embraced a membership of secretaries of the various retail lumber dealers' associations who represented the associations. Defendant association was admitted to membership in defendant bureau by the admission of its secretary, H. H. Hemenway, on or about April 16, 1903, and has since remained, and now is, a member. Defendant association did thereby adopt, assent, and subscribe to, and has ever since adopted, assented, and subscribed to the constitution, by-laws, and declaration of purposes and principles of defendant bureau, the activities of which consisted of:

1. Planning ways and means whereby all manufacturers and wholesale dealers in lumber and lumber products should be compelled to market lumber and lumber products only through regular and recognized retail lumber yards located in the various States.

2. The publication of a bulletin, or report, containing information theretofore gathered and assembled with reference to manufacturers and wholesale dealers who were supplying the so-called "poachers," who were selling direct to consumers, and shipping to customers at points where the said "poachers" had no yards, and who were considered as peddlers; and the manufacturers and wholesalers who ship direct to consumers. The method of compilation and use of the bulletin, or report, was as follows: A retail lumber dealer, learning of a sale by a wholesaler to a consumer, made complaint in writing to the secretary of the association to which the retailer belonged. The secretary thereupon investigated, ascertained the facts in regard to the complaint, and submitted his report to the board of directors of Lumber Secretaries' Bureau of Information. The latter determined whether the matter should be reported in the next issue of the bulletin, and instructed the secretary accordingly. The bulletin when

issued was distributed among all the members of the several associations.

3. Cooperating with other retail lumber dealers' associations corresponding to The Colorado and Wyoming Lumber Dealers' Association who were members of the bureau.

4. Approving and recommending to the several retail dealers' associations the plan and use of "customers' lists."

5. Entering into agreements between defendants and wholesale dealers and manufacturers by which they established the rule of conduct of trade that sales and shipments should be confined to manufacturers and wholesale dealers and retail dealers exclusively.

6. Agreeing to exchange and exchanging information by means of letters, lists, memoranda, and verbal statements between the members and officers of the defendant association and the members and officers of the other retail lumber dealers' associations represented in the bureau.

7. Issuing and distributing black lists giving the names of manufacturers and wholesale dealers who sold and shipped lumber or quoted prices for lumber to consumers, contractors and builders, mail-order houses, and farmers' cooperative unions.

8. Maintaining a trade newspaper conducted under the direction of certain retail lumber dealers and their representatives and used by them and defendants as a medium for notifying the lumber trade of the names and particular sales and shipments of dealers who had sold or shipped lumber to persons other than regularly recognized retail lumber dealers.

9. Adopting rules and regulations in regular conventions held by the members of the various associations.

10. Adopting an agreement known as the "code of ethics" in joint conventions attended by representatives of manufacturers, wholesale dealers, and retail dealers, by which code it was agreed that the manufacturers and wholesale dealers should confine their sales and shipments to the regularly recognized retail dealers and that the

widest trade publicity should be given to violations of the code.

11. Contributing money and other assistance to detective bureaus and agencies employed to gather and distribute information of sale, and shipments contrary to the rule established by the code, threatening and intimidating manufacturers and wholesale dealers and certain so-called unethical retail dealers by means of letters, lists, memoranda, verbal statements, and publications, by which threats and intimidation the trade of the manufacturers and wholesale dealers was intended to be confined, interfered with, and restrained.

12. Directing classifications of the lumber trade to and through the lumber credit books known as the Blue Book, published by National Lumber Credit Manufacturers' Corporation, St. Louis, Mo., and the Red Book, published by Lumbermen's Credit Association, Chicago, by which manufacturers and wholesalers are guided in their business, and which classification confined the allowance of credit to retail yard dealers who complied with the rules of defendant association.

13. Maintaining and perpetuating the aforesaid regulations and rules of conduct by the preparation of the "customers' lists," which are made up annually, and show manufacturers and wholesalers from whom the members of the defendant association purchased their supplies. Such "customers' lists" have been and are exchanged with other associations and the members thereof, with a view to furnishing the entire retail trade with a list of manufacturers and wholesalers who have consented to abide by and to conduct their business in accordance with the arbitrary classification of the lumber trade.

V. The objects of said combination and conspiracy, which objects are hereby adjudged to be illegal and in violation of the act of Congress aforesaid, were and are—

1. To eliminate or unreasonably restrict competition for the trade of—

(a) Contractors and builders;

- (b) Mail-order houses;
- (c) Cooperative yards;
- (d) The ultimate consumer, except certain consumers, i. e., United States Government, railroads, elevators, and bridges.

2. To force the ultimate consumer to buy at retail prices from regularly established and recognized retail lumber merchants operating in the vicinity where such lumber is to be used.

3. To prevent any wholesale dealer or manufacturer from quoting prices or selling and shipping to consumers.

VI. Defendants, and each of them, and their officers, agents, servants, employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited, directly or indirectly, from engaging in or carrying into effect the said combination and conspiracy hereby adjudged illegal, and from engaging in or entering into any like combination or conspiracy the effect of which would be to restrain trade or commerce in lumber or lumber products among the several States; and from making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, the effect of which would be to prevent the free and unrestricted flow of interstate commerce in lumber and lumber products from the manufacturer or wholesale dealer to the consumer.

VII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained and prohibited from combining, conspiring, or confederating with each other, or with others, expressly or impliedly, directly or indirectly—

1. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to any person, firm, corporation, or other organization not a retail

dealer in lumber and lumber products, or not classified or recognized as such retail dealer by the Colorado and Wyoming Lumber Dealers' Association, or the officers or members thereof, or not listed as such retail dealer in the so-called Blue Book and Red Book, published by the National Lumber Credit Manufacturers' Corporation and Lumbermen's Credit Association, respectively.

2. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to mail-order houses, cooperative associations, consumers, or any other person, firm, or corporation desiring to purchase.

3. To hinder or prevent any person, firm, corporation, or other organization from buying lumber or lumber products from manufacturers and wholesale dealers.

4. To hinder or prevent any person, firm, corporation, or other organization from buying or selling lumber and lumber products from or to whomsoever he, they, or it may desire.

5. To purchase lumber and lumber products from, or to favor with their custom and patronage, only those manufacturers and wholesale dealers who agree or who have agreed, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of retail dealers only and not also through mail-order houses, cooperative associations, consumers, or other persons, firms, or corporations.

VIII. Defendants, and each of them, their agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

1. To boycott, blacklist, or threaten with loss of custom or patronage any manufacturer or wholesale dealer engaged in interstate commerce of lumber and lumber products, for having sold, or being about to sell, lumber

or lumber products to mail-order houses, cooperative associations, consumers, or to any other person, firm, or corporation engaged in the business of retail dealing in lumber and lumber products, or to any other person, firm, or corporation.

2. To intimidate or coerce manufacturers or wholesale dealers in lumber or lumber products into selling only to such persons, firms, corporations, or other organizations as are classified or recognized by the Colorado and Wyoming Lumber Dealers' Association, or the Blue Book or the Red Book as legitimate retail dealers.

3. To do, or to refrain from doing, anything the purpose or effect of which is to hinder or prevent, by boycott, blacklist, threat, intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom any person, firm, corporation or other organization from buying or selling lumber or lumber products wherever, whenever, from whomsoever, and at whatsoever prices may be agreed upon by the seller and purchaser.

IX. Defendants, and each of them, and their directors, officers, agents, servants, and employees and all other persons acting under, through, by, or in behalf of them or either or any of them, or claiming so to act, be and they are hereby, perpetually enjoined, restrained, and prohibited, from publishing or distributing or causing to be published or distributed or aiding in the publication or distribution of—

1. The names of any manufacturers or wholesale dealers, or any list or lists of any manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to confine sales of lumber and lumber products to persons, firms, corporations, or other organizations engaged in the business of retail dealing in lumber and lumber products; or who are listed, or may be listed in said Blue Book and said Red Book, or any book, pamphlet, publication, or periodical, or list of like character, as manufacturers or wholesale dealers who agree or have agreed,

expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell lumber and lumber products to persons, firms, corporations, or other organizations, who are not engaged in the business of retail dealing in lumber and lumber products.

2. The names of any retail dealers, or any list or lists of retail dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to purchase lumber or lumber products from, or favor with their patronage and custom, only those manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to sell, distribute, or market their products through the medium of the retail dealers only, or who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell, distribute, or market their products directly to mail-order houses, cooperative associations, consumers, or any other persons whomsoever.

3. The names of any manufacturers of or wholesale dealers in lumber and lumber products who have been or are selling or shipping lumber or lumber products to any person, firm, corporation, or other organization not classified or recognized by the Colorado and Wyoming Lumber Dealers' Association, or its officers or members, as legitimate retail dealers, or who are not listed in the Blue Book or the Red Book as retail dealers, or the names of any manufacturers or wholesale dealers from whom any such person, firm, corporation, or other organization has been, is, or is supposed to be, purchasing or receiving lumber or lumber products.

X. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

To communicate, directly or indirectly, with any manufacturer, producer, or dealer for the purpose of inducing such manufacturer, producer, or dealer not to sell lumber or lumber products to any person, firm, corporation, association, or other organization not classified or recognized as a manufacturer or wholesale dealer by the Colorado and Wyoming Lumber Dealers' Association, National Credit Manufacturers' Corporation, or Lumbermen's Credit Association, or in the Blue Book or the Red Book, or by any other body or person, or in any other publication.

XI. The petitioner shall have and recover from the defendant its costs.

XII. The Colorado and Wyoming Lumber Dealers' Association, its officers and members, are not restrained from maintaining that organization for social or other purposes not inconsistent with this decree and not in violation of law.

DENVER, December 29, 1917.

ROBERT E. LEWIS,
United States District Judge.