

U. S. vs. LINE MATERIAL COMPANY, ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF WISCONSIN.

Civil Action No. 1696.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

LINE MATERIAL COMPANY, ET AL., DEFENDANTS.

AMENDED FINAL JUDGMENT¹

The above entitled suit came on for trial September 10, 1945 before the Honorable F. Ryan Duffy, United States District Judge, and the complaint was dismissed on its merits May 14, 1946. This judgment was reversed by the Supreme Court of the United States and the case was remanded to this Court for entry of an appropriate judgment in accordance with the opinion of the Supreme Court of the United States.

NOW, THEREFORE, upon motion of plaintiff, including its motion, filed October 9, 1948, to amend the judgment entered October 4, 1948, and after argument of counsel for all parties, the court hereby directs that the judgment entered October 4, 1948, be amended, and therefore it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

ARTICLE I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against defendants 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," commonly known as the Sherman Act, and acts amendatory thereof and supplemental thereto.

ARTICLE II

Pursuant to the mandate of the Supreme Court issued April 9, 1948 and filed in this Court on the 12th day of

¹This Decree modifies the previous Decree by minor additions to clarify "Minimum Price" definitions. Previous Decree not printed.

April, 1948, the judgment of this Court entered herein on May 14, 1946 whereby the complaint herein was dismissed on its merits, is hereby vacated.

ARTICLE III

As used in this judgment:

A. "Fuse cutouts" refers to protective devices used on transmission, distribution, and power lines to break the electric circuit in which they are installed embodying a pivotally mounted expulsion tube containing a fuse link which ruptures from excessive current caused by a short circuit or other overload;

B. "Dropout fuse cutouts" refers to fuse cutouts constructed so that the expulsion tube automatically drops and swings out of place upon rupture of the fuse link;

C. "Minimum price provisions" as used in parts B and C of Article IV of this judgment, include: (1) any agreement or understanding to fix prices, sales conditions, or terms of sale; (2) any agreement or understanding that a licensee will report to a licensor any of its selling prices, other than amounts of sales upon which royalties are to be calculated; and (3) any agreement or understanding that the books and records of a licensee may be inspected by an employee, agent, or representative of a licensor, unless the agreement or understanding also provides that the inspection may be made only by an independent auditor, or a person acceptable to the licensee, who shall report to the licensor only the amount of royalty due and payable.

ARTICLE IV

A. Defendants have engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce to fix, maintain, and control prices of dropout fuse cutouts and their parts in violation of Section 1 of the Sherman Act, by entering into, and observing the provisions of, the license agreements described in paragraph B of this Article, which contain minimum price restrictions on the sale by the licensees of dropout fuse cutouts and their parts, with knowledge of:

1. The execution of each said license agreement then in existence;
2. That each of said license agreements contained substantially identical minimum price restrictions; and
3. The substance of the agreement of May 23, 1938 between Line Material Company and Southern States Equipment Corporation.

B. The minimum price provisions of the following agreements pertaining to dropout fuse cutouts are hereby declared to be illegal:

DATE	PARTIES
May 23, 1938	Line Material Company Southern States Equipment Corporation
October 3, 1938	Southern States Equipment Corporation James R. Kearney Corporation
January 12, 1940	Southern States Equipment Corporation Line Material Company
March 15, 1940	Line Material Company General Electric Company
March 21, 1940	Southern States Equipment Corporation General Electric Company
June 4, 1940	Line Material Company W. N. Matthews
June 4, 1940	Southern States Equipment Corporation W. N. Matthews
June 12, 1940	Line Material Company James R. Kearney Corporation
June 14, 1940	Southern States Equipment Corporation James R. Kearney Corporation
June 18, 1940	Line Material Company Railway & Industrial Engineering Co.
June 18, 1940	Southern States Equipment Corporation Railway & Industrial Engineering Co.
November 15, 1940	Line Material Company Porcelain Products, Inc.
November 18, 1940	Southern States Equipment Corporation Porcelain Products, Inc.

November 15, 1940	Line Material Company Pacific Electric Mfg. Corporation
November 18, 1940	Southern States Equipment Corporation Pacific Electric Mfg. Corporation
January 20, 1941	Line Material Company Schweitzer & Conrad, Inc.
January 21, 1941	Southern States Equipment Corporation Schweitzer & Conrad, Inc.
January 29, 1941	Line Material Company Westinghouse Electric & Mfg. Co.
January 29, 1941 (January 27, 1941)	Southern States Equipment Corporation Westinghouse Electric & Mfg. Co.
June 15, 1943	Line Material Company T. F. Johnson
June 28, 1943	Southern States Equipment Corporation T. F. Johnson
March 24, 1944	Line Material Company Royal Electric Manufacturing Company
April 25, 1944	Southern States Equipment Corporation Royal Electric Manufacturing Company
July 3, 1947	Line Material Company Hubbard and Company
July 9, 1947	Southern States Equipment Corporation Hubbard and Company

C. Each defendant, its agents, employees, successors and assigns, and each person acting or claiming to act under, through, by, or for it or him, and, except as to the individual defendant T. F. Johnson, each and all of its officers, directors, and subsidiaries are hereby enjoined and restrained from:

1. The further performance or enforcement of any of the minimum price provisions of said agreements;
2. Entering into, or carrying out, any agreement in restraint of interstate trade or commerce in dropout fuse cutouts for the purpose or with the effect of continuing, reviving, or reinstating any of the mini-

imum price provisions of the agreements declared in this judgment to be illegal.

ARTICLE V

A. Defendants Line Material Company and Southern States Equipment Corporation are hereby ordered and directed to file with the Clerk of this Court, within sixty (60) days after the effective date of this judgment, a list of the principal patents under their respective ownership or control, under which either has the power to license or sublicense, and which were, on March 8, 1948, licensed by or pursuant to one or more of the agreements listed in Article IV B of this judgment. The said list is referred to hereinafter in this judgment as "Schedule A" and is hereby made a part of this judgment as though it were fully set forth herein.

B. Within thirty (30) days from the date of this judgment, any licensee designated under Article IV B may cancel its said license agreement by giving written notice thereof to the licensor, said cancellation to be effective ten (10) days after the receipt of such notice of cancellation by the licensor. However, any such licensee so cancelling the license agreement may have the right to apply for a license under the provisions for compulsory licenses hereinafter described.

C. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby ordered and directed with respect to the patents listed in said "Schedule A" and all patents on inventions made prior to March 24, 1944 pertaining to dropout fuse cutouts hereafter acquired by them, or either of them, during the life of Schultz et al. Patent Re. 22,412 and any reissue thereof, to grant to each applicant therefor a non-exclusive license to make, use, and vend dropout fuse cutouts and their parts under any, some, or all of said patents, or under any claim or claims thereof. Said defendants, their successors and assigns, are further ordered and directed with respect to all claims of Schultz et al. Patent Re. 22,412, and with respect to all claims of

Lemmon Patent No. 2,150,102, which read on a structure claimed by said Schultz et al., patent, to grant each applicant therefor a non-exclusive license to make, use, and vend under any claim or claims thereof. Each of said two defendants, its successors and assigns, are hereby enjoined and restrained from making any assignment, sale, or other disposition of any of said patents which would deprive it, or them, of the power or authority to grant such licenses, unless it is required, as a condition of such assignment, sale, or other disposition, that the purchaser, transferee, or assignee, shall observe the requirements of Articles V and VI of this judgment; and the purchaser, transferee, or assignee shall file with this Court, prior to consummation of said transaction a consent to be bound by the provisions of said Articles V and VI of this judgment.

D. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from including any restriction or condition whatsoever in any license granted to others pursuant to the provisions of this Article except that: (1) the license may be non-transferable; (2) a reasonable non-discriminatory royalty may be charged; (3) reasonable provision may be made for inspection of the books and records of the licensee by an independent auditor, or any person acceptable to the licensee, who shall report to the licensor only the amount of the royalty due and payable; (4) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of the books and records as hereinabove provided; (5) the license shall provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving ninety (90) days' notice in writing to the licensor; (6) the license shall provide that the licensee shall immediately have the benefit of any more favorable terms granted any other licensee; and (7) such other restrictions or conditions as may be approved by the court.

E. Upon receipt of written request for a license under the provisions of this Article, the defendant receiving such request shall advise the license-applicant in writing of the royalty which it deems reasonable and will require to be paid for a license under the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for license was received by the defendant, the license-applicant may apply forthwith to this Court for the determination of a reasonable royalty; and defendant shall, upon receipt of notice of the filing of such court application, promptly give notice thereof to the Attorney General. In any such court proceeding the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the license-applicant, and shall also apply to all other licensees, under the same claim or claims of the patent or patents, whose licenses provide for payment of a higher royalty rate than that determined by the Court. For said sixty (60) day period and pending the completion of any such court proceeding, the license-applicant shall have the right to make, use, and vend under the claim or claims of the patent or patents to which his application pertains without payment of royalty or other compensation, but subject to the final judgment and order of the Court in such proceeding, and further subject to the following provisions: The defendant may apply to the Court to fix an interim royalty rate, pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, the defendant shall then issue and the license-applicant shall accept a license, or as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such court-application by the license-applicant. If the license-applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such failure shall be ground for dismissal of his application and for the rescission of any and all of the license-applicant's rights

under this paragraph. Where an interim license or sublicense has been issued pursuant to this paragraph, or where the license-applicant has exercised a right to make, use, and vend hereunder, reasonable royalty rates, if any, as finally determined by the Court may be retroactive for the license-applicant, and for all other licensees, under the same claim or claims of the patents, whose licenses provide for payment of a higher royalty rate than that determined by the Court, to a date to be fixed by the Court.

F. Defendants Line Material Company and Southern States Equipment Corporation are hereby ordered and directed to take such steps as may be necessary, within ninety (90) days after the effective date of this judgment, to list the patents in said "Schedule A" with the United States Patent Office for inclusion in the "Register of Patents Available for Licensing or Sale."

G. Nothing herein shall prevent any applicant for a license from attacking at any time the validity or scope of any patent, nor shall this judgment be construed as importing any validity or value to any patent.

ARTICLE VI

A. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement, occurring prior to the effective date of this judgment, of any claim of Schultz et al. Patent Re. 22,412 or of any claim of Lemmon Patent No. 2,150,102 which reads on a structure claimed by said Schultz et al. patent.

B. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement of any United States Letters Patent occurring prior to the effective date of this judgment by reason of the making, using or selling of dropout fuse cutouts or their parts.

C. Defendants Line Material Company and Southern States Equipment Corporation, their successors and assigns, are hereby enjoined and restrained from instituting, maintaining, or continuing any suit for an infringement, occurring after the effective date of this judgment, of any United States Letters Patent which is not listed in said "Schedule A" and is on an invention made prior to March 24, 1944, by reason of the making, using, or selling of dropout fuse cutouts or their parts, when the accused structure of the alleged infringer, during the period of alleged infringement, was licensed under either Schultz et al. Patent Re. 22,412 or Lemmon Patent 2,150,102, or any reissue or extension thereof.

ARTICLE VII

Each defendant, its agents, employees, successors and assigns, and each person acting or claiming to act under, through, or for it or him, and, except as to the individual defendant T. F. Johnson, each and all of its officers, directors, and subsidiaries are hereby enjoined and restrained from taking concerted action or agreeing, combining, or conspiring, or from performing or adhering to any program, understanding, plan or arrangement with any other manufacturer of electrical current interrupting devices, or any person acting or claiming to act under, through, or for such other manufacturer:

(a) To fix or have fixed, maintain, or control the prices, sales conditions, or terms at which any dropout fuse cutout or part thereof, shall be sold, except that the defendant may agree with an individual customer upon prices to be charged by it on sales to such customer;

(b) To quote or sell, or to refuse to quote or sell, dropout fuse cutouts or their parts under any specified sales price, condition, or term.

ARTICLE VIII

A. Each defendant, its successors and assigns, are hereby ordered and directed, within thirteen (13) months

from the effective date of this judgment, to serve plaintiff with a statement, under oath, of:

(a) Its prices, terms, and conditions of sale that were in effect March 8, 1948 and that were applicable to dropout fuse cutouts;

(b) Each change made by it during the period between March 8, 1948 and one year after the effective date of this judgment with respect to any of said prices, terms, and conditions of sale;

(c) The effective date of each such change, the date it was announced to the trade, and the manner in which the announcement was made.

B. Within ninety (90) days after the service of the last of said statements upon plaintiff, plaintiff may move to amend this judgment in order more effectively to dissipate the effects of the said combination of defendants.

ARTICLE IX

Within sixty (60) days from the effective date of this judgment, each defendant, its successors and assigns, shall send to each of its agents, jobbers, salesmen, and distributors of dropout fuse cutouts in the United States a true and complete copy of this judgment and, within said sixty (60) day period, shall file with the Clerk of this Court its affidavit of mailing.

ARTICLE X

This judgment shall have no effect with respect to defendants' acts and operations without the continental United States or to their acts and operations within the continental United States relating exclusively to acts without the continental United States, or with respect to operations or activities, wherever performed, which are authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or by acts amendatory thereof or supplemental thereto; provided, however, that nothing in this article shall be construed to permit any action

which is or becomes unlawful under any existing or future law of the United States or of any political subdivision thereof.

ARTICLE XI

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice in writing at its principal office to any defendant, its successors or assigns, be permitted, subject to any legally recognized privilege: (a) access during the office hours of such defendants, its successors or assigns, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, its successors or assigns, relating to any of the matters contained in this judgment; (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; provided, however, that information obtained by the means permitted in this Article 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 of America is a party, for the purpose of securing compliance with this judgment, or as otherwise required by law.

ARTICLE XII

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

ARTICLE XIII

Judgment is entered against defendants for all costs to be taxed in this proceeding.

ARTICLE XIV

This judgment shall be effective sixty (60) days after the date hereof.

(signed) F. RYAN DUFFY,
United States District Judge.

Dated October 19th, 1948.