UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMENTS IN THE EASTERN DISTRICT OF VIRGINIA	No. 2:18cv____
Consolidating:	
UNITED STATES OF AMERICA, Plaintiff, v. THE NOLAND COMPANY, INC., *et al.*, Defendants;	In Equity No. 148
UNITED STATES OF AMERICA, Plaintiff, v. SOUTHERN HARDWARE JOBBERS' ASSOCIATION, *et al.*, Defendants;	In Equity No. 152
UNITED STATES OF AMERICA, Plaintiff, v. RICHMOND DISTRIBUTING CORPORATION, *et al.*, Defendants;	In Equity No. 162
UNITED STATES OF AMERICA, Plaintiff v. NATIONAL AUDIO-VISUAL ASSOCIATION, INC., *et al.*, Defendants;	Civil Action No. 1589

UNITED STATES OF AMERICA, Plaintiff, v. THE BANK OF VIRGINIA, Defendant.	Civil Action No. 4959

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF
THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States respectfully submits this memorandum in support of its motion to terminate five legacy antitrust judgments. This Court entered these judgments in cases brought by the United States between 1926 and 1966; thus, they are between fifty-two and ninety-two years old. After examining each judgment—and after soliciting public comments on each proposed termination—the United States has concluded that termination of these judgments is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a

[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgments the United States seeks to terminate with the accompanying motion concern violations of these two laws.

defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or firm defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, none of these judgments likely continue to do so because of changed circumstances.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

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[2] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[3] https://www.justice.gov/atr/JudgmentTermination.

In brief, the process by which the United States has identified judgments it believes should be terminated is as follows:[4]

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.
- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.
- The public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.
- Having received no comments regarding the above-captioned judgments, the United States moved this Court to terminate them.

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old should be terminated absent compelling circumstances. This section also describes the additional reasons that the United States believes each of the judgments should be terminated. Section IV concludes. Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of each judgment and the United States' reasons for seeking termination. Finally, Appendix C is a Proposed Order Terminating Final Judgments.

[4] The process is identical to that followed by the United States when it recently and successfully moved the District Court for the District of Columbia to terminate nineteen legacy antitrust judgments. See Order Granting Mot. to Terminate Legacy Antitrust Js., *United States v. Am. Amusement Ticket Mfrs. Ass'n, et al.*, Case No. 1:18-mc-00091-BAH (D.D.C. Aug. 15, 2018).

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Each judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. The Federal Rules of Civil Procedure grant the Court authority to terminate each judgment. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)-(6); *see also Thompson v. U.S. Dept. of Housing & Urban Dev.*, 404 F.3d 821, 826 (4th Cir. 2005) ("The court's inherent authority to modify a consent decree or other injunction is now encompassed in Rule 60(b)(5) of the Federal Rules of Civil Procedure."); *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC, et al.*, 859 F.3d 295, 299 (4th Cir. 2017) ("Rule 60(b) also contains a catchall section, which gives a court authority to relieve a party from a judgment for 'any other reason' not articulated in sections (1) through (5), Fed. R. Civ. P. 60(b)(6), but only when the movant demonstrates 'extraordinary circumstances.'" (citation omitted)).

Given its jurisdiction and its authority, the Court may terminate each judgment for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition.[5] Termination of these judgments is warranted.

[5] In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means that it is likely that the judgments no longer serve their original purpose of protecting competition.

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each of the above-captioned cases because they no longer continue to serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests they no longer protect competition. Other reasons, however, also weigh in favor of terminating these judgments, including that defendants likely no longer exist, terms of the judgment merely prohibit that which the antitrust laws already prohibit, or changed market conditions likely have rendered the judgment ineffectual. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Judgments Presumptively Should Be Terminated Because of Their Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. These considerations, among others, led the

Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

The judgments in the above-captioned matters—all of which are decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. There are no affirmative reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating them.

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) most defendants likely no longer exist, (2) the judgment largely prohibits that which the antitrust laws already prohibit, and (3) market conditions likely have changed. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons, and we identify those judgments that are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and the reasons to terminate it.

1. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in the following three cases brought by the United States likely no longer exist:

- *The Noland Company Inc., et al.*, In Equity No. 148 (judgment entered 1926),
- *Southern Hardware Jobbers' Association, et al.*, In Equity No. 152 (judgment entered 1926), and
- *Richmond Distributing Corporation, et al.*, In Equity No. 162 (judgment entered 1927).

[6] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

These three judgments relate to very old cases brought against groups of individuals or firms. Each of these cases is more than ninety years old. With the passage of time, the individual defendants in these cases likely have passed away and some firm defendants likely have gone out of existence. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate these judgments.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments in the following cases merely prohibit acts that are illegal under the antitrust laws, such as price fixing, customer or territorial allocations, or group boycotts:

- *The Noland Company Inc., et al.*, In Equity No. 148 (prohibiting price fixing),
- *Southern Hardware Jobbers' Association, et al.*, In Equity No. 152 (price fixing, group boycott),
- *Richmond Distributing Corporation, et al.*, In Equity No. 162 (group boycott), and
- *National Audio-Visual Association, Inc., et al.*, Civil Action No. 1589 (price fixing, territorial allocation, group boycott).

These terms amount to little more than an admonition that defendants shall not violate the law. Absent such terms, defendants who engage in the type of behavior prohibited by these judgments still face the possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation, thereby making such violations of the antitrust laws unlikely to occur. To the extent these judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is reason to terminate them.

3. Market Conditions Likely Have Changed

The Department has determined that the following judgments concern products or markets that likely no longer exist, no longer are substantial in size, or now face different competitive forces such that the behavior at issue likely no longer is of competitive concern:

- *National Audio-Visual Association, Inc., et al.*, Civil Action No. 1589 (concerning audio-visual equipment), and
- *The Bank of Virginia*, Civil Action No. 4959 (concerning charge service plans).

These judgments are more than fifty years old, and substantial changes in technology during the decades since their entry likely have rendered them obsolete. The *National Audio-Visual* judgment was entered in 1957, well before the advent of digital audio-visual technologies, whose use have become widespread. The judgment in *Bank of Virginia*, which was entered in 1966, concerned credit charge plans that largely have been replaced by the use of credit cards. Market dynamics in these industries appear to have changed so substantially that the factual conditions that underlay the decisions to enter the judgments no longer exist.

C. Public Notice and Comment

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments, and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Virginia.[7] On the same day, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[8] The notice identified each case, linked to the judgment, and invited public comment.[9] In the above-captioned cases, however, the Division received no comments

[7] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments, (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[8] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in Virginia, Eastern District of."

[9] The United States identified on its public website the judgment entered by this Court in *United States v. Metro MLS, Inc.*, Civil Action No. 201-73-N (E.D. Va. Aug. 5, 1974).

concerning the judgments. Had comments been received, the Division would have reviewed them and considered whether they provided a reason for retaining any of the judgments.

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgments in each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an order terminating them. *See* Appendix C, which is a proposed order terminating the judgments in the above-captioned cases.

Respectfully submitted,

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

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DATE: November 15, 2018

ATTORNEYS FOR THE UNITED STATES

APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

U.S. v. The Noland Company, Inc., et al.

Civil No.: 148

Year Judgment Entered: 1926

In Equity No. 148

In the District Court of the United States
for the Eastern District of Virginia

UNITED STATES OF AMERICA, PETITIONER

v.

THE NOLAND COMPANY, INC., ET AL., DEFENDANTS

FINAL DECREE

Entered April 19, 1926

In the District Court of the United States for the Eastern District of Virginia

APRIL TERM, 1926

IN EQUITY No. 148.

UNITED STATES OF AMERICA, PETITIONER

v.

THE NOLAND COMPANY, INC., HAINES, JONES AND CADBURY COMPANY, THE MOTT-SOUTHERN COMPANY, THE McGRAW-YARBROUGH COMPANY, THE CRANE COMPANY, GEORGE G. LEE COMPANY, INC., THE JAMES ROBERTSON MANUFACTURING COMPANY OF BALTIMORE CITY, PIERCE, BUTLER AND PIERCE MANUFACTURING CORPORATION, THE STANDARD SUPPLY COMPANY, INC., THE SEABOARD SUPPLY COMPANY, INC., THE SOUTHERN STATES SUPPLY COMPANY, THE TIDEWATER PLUMBING SUPPLY COMPANY, THE WHITMAN-DOUGLAS COMPANY, AND THE TOMLINSON COMPANY, INC., DEFENDANTS.

FINAL DECREE

This cause came on to be heard at this term upon petition and answers before any testimony had been taken herein, the defendant The James Rob-

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ertson Manufacturing Company of Baltimore City (in the petition erroneously named as The James Robertson Manufacturing Company), having duly appeared and answered under its correct corporate name, waiving all benefits which might have accrued to it by reason of the aforesaid misnomer, and all defendants, except The Crane Company, having duly appeared and answered by Felix H. Levy, Esq., their solicitor of record, and was argued by counsel.

And the petitioner, by Paul W. Kear, its Attorney for the Eastern District of Virginia, and by William J. Donovan, Assistant to the Attorney General, Abram F. Myers, George P. Alt, and Porter R. Chandler, Special Assistants to the Attorney General, of counsel, having moved the court for relief in accordance with the prayer of the petition.

On consideration whereof, it appearing to the satisfaction of the Court that it has jurisdiction of the subject-matter alleged in the petition, and that the allegations of the petition state a cause of action against the defendants under the Act of July 2, 1890, chapter 647, and that the petitioner is entitled to the relief hereinafter granted; and all of the defendants, except The Crane Company, through their said solicitor of record, now consenting to the rendition and entry of the following decree.

Now therefore it is ordered, adjudged and decreed as follows:

(1) That the defendants, The Noland Company, Inc., Haines, Jones and Cadbury Company, The Mott-Southern Company, The McGraw-Yarbrough Company, George G. Lee Company, Inc., The James Robertson Manufacturing Company of Baltimore City, Pierce, Butler, and Pierce Manufacturing Corporation, The Standard Supply Company, Inc., The Seaboard Supply Company, Inc., The Southern States Supply Company, The Tidewater Plumbing Supply Company, The Whitman-Douglas Company, and The Tomlinson Company, Inc., have been and are engaged in a combination and agreement in restraint of trade and commerce among the several States with respect to plumbing supplies, in the manner and by the means set forth in the petition herein, in violation of the Act of July 2, 1890, chapter 647.

(2) That the term " plumbing supplies " as used in this decree embraces any and all fixtures for use in connection with plumbing work and intended to be connected to water systems and/or sewer systems. It includes, among others, such articles as iron, lead, and brass pipes and fittings, iron soil pipe, bath tubs, lavatories, valves, faucets and other accessories, and any one or more of any such articles. It likewise includes the separate parts of any one or more of such articles.

(3) That the said defendants and each of them, their officers, directors, branch house managers, salesmen, agents, servants, and employees, and all persons acting under, through, by or in behalf of them, or any of them or claiming so to act, be and they hereby are perpetually restrained and enjoined from directly or indirectly committing or doing any of the following acts or things relating to or affecting the transportation or sale of plumbing supplies in interstate trade or commerce:

(*a*) Agreeing to, fixing or establishing in any manner whatsoever, by agreement express or implied, understanding, or otherwise, among themselves the prices to be charged for plumbing supplies.

(*b*) Adopting, maintaining, or using, or continuing to maintain or use by collective action, agreement, or understanding, uniform prices, uniform minimum prices, or uniform discounts with respect to plumbing supplies.

(*c*) Agreeing among themselves to establish or adopt the terms, conditions, or policies which should obtain with respect to the sale of plumbing supplies, when the purpose or effect of such agreement may be to create uniform prices or to restrict production or to cause discrimination in favor of or against any group or class of purchasers.

(*d*) Agreeing among themselves in any manner whatsoever to charge uniform prices for plumbing supplies, or doing any act of any kind whatsoever

which will or may be calculated to result in uniform prices among any two or more of the defendants.

(*e*) Increasing, by collective action, agreement, or understanding, the prices to be charged for plumbing supplies.

(*f*) Exchanging information with one another with respect to, or otherwise fixing or determining by collective action, discussion, or agreement, the amount or terms of any bids, offers, or "lump estimates" upon any quantity of plumbing supplies to be furnished, which any of said defendants shall make or submit, in advance of the making and submitting of such bids, offers, or "lump estimates".

(*g*) Agreeing by concerted action to refuse to sell to any person or corporation because of any unpaid account or accounts.

(*h*) Agreeing to create, or creating, directly or by inference, any list or class of so-called legitimate or preferred dealers or purchasers, or of so-called illegitimate or undesirable dealers or purchasers.

(*i*) Agreeing to pool orders or to enter joint bids.

(*j*) Resuming, further engaging in, continuing or carrying into further effect any agreement hereby adjudged illegal, or engaging in or entering into any like agreement or attempt to restrain trade in plumbing supplies, the effect of which will be to restrain commerce in plumbing supplies among the several States or territories of the United States, by making any express or implied agreement or ar-

rangement together, like those hereby adjudged illegal, relative to the control or management of the business of said defendants or any of them, the effect of which will be to prevent each or any of them from carrying on interstate trade and commerce in plumbing supplies in competition with the others.

(*k*) Aiding, abetting, or assisting, individually or collectively, others to do any of the things herein adjudged illegal.

(4) That the defendants are hereby expressly permitted to maintain and use and to assist in maintaining and using a credit bureau for the sole purpose of furnishing information as to the financial standing and credit rating of persons and corporations purchasing or attempting to purchase plumbing supplies, but not for the purpose of—

(*a*) creating directly or by inference any list or class of so-called legitimate or preferred dealers, or

(*b*) furnishing information as to whether any customer or prospective customer is or is not a legitimate or preferred dealer, or

(*c*) furnishing information as to whether any customer or prospective customer is or is not permitted to purchase plumbing supplies.

(5) That jurisdiction of this cause is hereby retained for the following purposes:

(*a*) Enforcing this decree.

(*b*) Enabling the United States to apply to the Court for a modification or enlargement of its provisions on the ground that they are inadequate.

(*c*) Enabling the defendants or any of them to apply for its modification on the ground that its provisions have become inappropriate or unnecessary.

D. LAWRENCE GRONER,
United States District Judge.

APRIL 19, 1926.

[Endorsed on cover]

We ask for the within decree.

PAUL W. KEAR,
U. S. Atty.

PORTER R. CHANDLER,
Spl. Ass't to the Atty. Gen'l.

In behalf of all the defendants herein, except The Crane Company, I hereby consent to the entry of the within decree.

RICHMOND, VA., *April 19, 1926.*

FELIX H. LEVY,
Attorney for all defendants
(except The Crane Company).

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In Equity, No. 148

In the District Court of the United States
for the Eastern District of Virginia

UNITED STATES OF AMERICA, PETITIONER,

v.

THE NOLAND COMPANY, INC., ET AL., DEFENDANTS

SUBSTITUTED FINAL DECREE

Entered June 2, 1934

In the District Court of the United States for the Eastern District of Virginia

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IN EQUITY NO. 148

UNITED STATES OF AMERICA, PETITIONER,

v.

THE NOLAND COMPANY, INC., ET AL., DEFENDANTS

To each of the defendants in the above-entitled action:

PLEASE TAKE NOTICE that a decree, of which the within is a copy, was duly filed and entered in the office of the Clerk of the District Court of the United States for the Eastern District of Virginia, at Richmond, Virginia, on the 2nd day of June, 1926.

Dated June 2nd, 1926.

PAUL W. KEAR,
United States Attorney for the Eastern District of Virginia,

PORTER R. CHANDLER,
Special Assistant to the Attorney General,
Solicitors for the Petitioner.

In the District Court of the United States for the Eastern District of Virginia

IN EQUITY NO. 148

UNITED STATES OF AMERICA, PETITIONER,

v.

THE NOLAND COMPANY, INC., HAINES, JONES AND CADBURY COMPANY, THE MOTT-SOUTHERN COMPANY, THE MCGRAW-YARBROUGH COMPANY, THE CRANE COMPANY, GEORGE G. LEE COMPANY, INC., THE JAMES ROBERTSON MANUFACTURING COMPANY OF BALTIMORE CITY, PIERCE, BUTLER AND PIERCE MANUFACTURING CORPORATION, THE STANDARD SUPPLY COMPANY, INC., THE SEABOARD SUPPLY COMPANY, INC., THE SOUTHERN STATES SUPPLY COMPANY, THE TIDEWATER PLUMBING SUPPLY COMPANY, THE WHITMAN-DOUGLAS COMPANY, AND THE TOMLINSON COMPANY, INC., DEFENDANTS.

SUBSTITUTED FINAL DECREE

This cause came on to be heard at this term upon petition and answers before any testimony had been taken herein, the defendant The James Robertson Manufacturing Company of Baltimore City (in the petition erroneously named as The James Rob-

ertson Manufacturing Company) having duly appeared and answered under its correct corporate name, waiving all benefits which might have accrued to it by reason of the aforesaid misnomer, and the defendant The Crane Company having duly appeared and answered by Ashcraft and Ashcraft and Munford, Hunton, Williams, and Anderson, its solicitors of record, and all of the defendants (other than The Crane Company) having duly appeared and answered by Felix H. Levy, Esq., their solicitor of record, and was argued by counsel.

And the petitioner, by Paul W. Kear, its Attorney for the Eastern District of Virginia, and by William J. Donovan, Assistant to the Attorney General, Abram F. Myers, George P. Alt, and Porter R. Chandler, Special Assistants to the Attorney General, of counsel, and the defendants (other than The Crane Company) by Felix H. Levy, Esq., their solicitor aforesaid, having consented to the vacating and setting aside of the decree heretofore entered in this cause, upon April 19th, 1926, against the defendants (other than The Crane Company), and having moved the Court to vacate and set aside the said decree.

And the United States, by its solicitors aforesaid, having moved the Court for the entry of this present decree:

On consideration whereof, it appearing to the satisfaction of the Court that it has jurisdiction of the subject matter alleged in the petition, and that the allegations of the petition state a cause of action against the defendants under the Act of July 2, 1890, chapter 647, and that the petitioner is entitled to the relief hereinafter granted; and all of the defendants, through their said solicitors of record, now consenting to the rendition and entry of this present decree.

Now therefore it is ordered, adjudged, and decreed as follows:

(1) That the decree heretofore entered in this cause upon April 19, 1926, against the defendants (other than The Crane Company) be, and it hereby is, vacated and set aside and that this present decree, binding upon all the defendants named in the petition (including The Crane Company) be entered as a complete substitute therefor.

(2) That the term "plumbing supplies" as used in this decree, embraces any and all fixtures for use in connection with plumbing work and intended to be connected to water systems and/or sewer systems. It includes, among others, such articles as iron, lead, and brass pipes and fittings, iron soil pipe, bath tubs, lavatories, valves, faucets, and other accessories, and any one or more of any such articles. It likewise includes the separate parts of any one or more of such articles.

(3) That the defendants and each of them, their officers, directors, branch house managers, salesmen, agents, servants, and employees, and all persons acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and they hereby are perpetually restrained and enjoined

from directly or indirectly committing or doing any of the following acts or things relating to or affecting the transportation or sale of plumbing supplies in interstate trade or commerce:

(*a*) Agreeing to, fixing, or establishing in any manner whatsoever, by agreement express or implied, understanding or otherwise, among themselves the prices to be charged for plumbing supplies.

(*b*) Adopting, maintaining, or using, or continuing to maintain or use by collective action, agreement, or understanding, uniform prices, uniform minimum prices, or uniform discounts with respect to plumbing supplies.

(*c*) Agreeing among themselves to establish or adopt the terms, conditions, or policies which should obtain with respect to the sale of plumbing supplies, when the purpose or effect of such agreement may be to create uniform prices or to restrict production or to cause discrimination in favor of or against any group or class of purchasers.

(*d*) Agreeing among themselves in any manner whatsoever to charge uniform prices for plumbing supplies, or doing any act of any kind whatsoever which will or may be calculated to result in uniform prices among any two or more of the defendants.

(*e*) Increasing, by collective action, agreement, or understanding, the prices to be charged for plumbing supplies.

(*f*) Exchanging information with one another with respect to, or otherwise fixing or determining by collective action, discussion, or agreement, the amount or terms of any bids, offers, or "lump estimates" upon any quantity of plumbing supplies to be furnished, which any of said defendants shall make or submit, in advance of the making and submitting of such bids, offers, or "lump estimates."

(*g*) Agreeing by concerted action to refuse to sell to any person or corporation because of any unpaid account or accounts.

(*h*) Agreeing to create, or creating, directly or by inference, any list or class of so-called legitimate or preferred dealers or purchasers, or of so-called illegitimate or undesirable dealers or purchasers.

(*i*) Agreeing to pool orders or to enter joint bids.

(*j*) Resuming, further engaging in, continuing or carrying into further effect any agreement hereby adjudged illegal, or engaging in or entering into any like agreement or attempt to restrain trade in plumbing supplies, the effect of which will be to restrain commerce in plumbing supplies among the several States or territories of the United States, by making any express or implied agreement together, like those hereby adjudged illegal, relative to the control or management of the business of said defendants or any of them, the effect of which will be to prevent each or any of them from carrying on interstate trade and commerce in plumbing supplies in competition with the others.

(*k*) Aiding, abetting, or assisting, individually or collectively, others to do any of the things herein adjudged illegal.

(4) That the defendants are hereby expressly permitted to maintain and use and to assist in maintaining and using a credit bureau for the sole purpose of furnishing information as to the financial standing and credit rating of persons and corporations purchasing or attempting to purchase plumbing supplies, but not for the purpose of—

(*a*) creating directly or by inference any list or class of so-called legitimate or preferred dealers, or

(*b*) furnishing information as to whether any customer or prospective customer is or is not a legitimate or preferred dealer, or

(*c*) furnishing information as to whether any customer or prospective customer is or is not permitted to purchase plumbing supplies.

(5) That jurisdiction of this cause is hereby retained for the following purposes:

(*a*) Enforcing this decree.

(*b*) Enabling the United States to apply to the Court for a modification or enlargement of its provisions on the ground that they are inadequate.

(*c*) Enabling the defendants or any of them to apply for its modification on the ground that its provisions have become inappropriate or unnecessary.

D. Lawrence Groner,
United States District Judge.

June 2, 1926.

In behalf of all the defendants herein, except The Crane Company, I hereby consent to the entry of this decree.

Felix H. Levy,
Solicitor for all defendants (except The Crane Company).

In behalf of the defendant The Crane Company, we hereby consent to the entry of this decree.

Ashcraft and Ashcraft,
Munford, Hunton,
Williams and Anderson,
Solicitors for The Crane Company.

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U.S. v. Southern Hardware Jobbers' Association, et al.

Civil No.: 152

Year Judgment Entered: 1926

UNITED STATES OF AMERICA v. SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA, PETITIONER,

VS.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

In Equity No. 152.

FINAL DECREE.

The United States of America having filed its petition in the above entitled cause on the 9th day of August, 1926, against the following defendants:

Southern Hardware Jobbers' Association, *a voluntary unincorporated association:*

Allen & Jemison Company,
Anniston Hardware Company,
G. W. Barnett Hardware Company,
Bloch Brothers,
Gadsden Hardware & Supply Company
Long-Lewis Hardware Company,
Loeb Hardware Company, Inc.,
McGowin-Lyons Hardware & Supply Co.,
Moore-Handley Hardware Company,
Talladega Hardware Company,
Teague Hardware Company,
Tissier Hardware Company,
Wimberly & Thomas Hardware Company,
Atkinson-Williams Hardware Company,
Benton County Hardware Company,
Buhrman-Pharr Hardware Company,
Fones Brothers Hardware Company,
Fox Brothers Hardware Company,
Speer Hardware Company,
Benton County Hardware Company,
Baird Hardware Company,
Florida Hardware Company,
Tampa Hardware Company,
The Athens Hardware Company,
Beck & Gregg Hardware Company,
Dinkins-Davidson Hardware Co.,
Dunlap Hardware Company,
Griffin-Cantrell Hardware Co.,
King Hardware Company,
Palmour Hardware Company,
Peeler Hardware Company,
Peeples Hardware Company,
Home Hardware Company,
Sharp-Lachey-Hersey Company,
Strickland Hardware Company,
Lambert-Grisham Hardware Co.,
Sterling Hardware Company,
A. Baldwin & Company, Ltd.,
Brown-Roberts Hardware & Supply Company, Ltd.,

Doherty Hardware Company, Ltd.,
Gibbens & Gorden, Inc.,
Lee Hardware Company, Ltd.,
Monroe Hardware Company, Inc.,
Knight & Wall Company,
Palm Beach Mercantile Company,
Railey-Milam Hardware Company,
Ray Hardware Company,
Woodward, Wright & Company, Ltd.,
Addkison & Bauer, Inc.,
Baker & McDowell Hardware Company,
The Crane Hardware Company,
Delta Hardware & Implement Co.,
Henderson & Baird Hardware Company,
Melton Hardware Company,
O'Neill-McNamara Hardware Company,
Wado Hardware Company,
Wright Brothers Hardware Co.,
American Hardware & Equipment Co.,
Brown-Rogers-Dixson Company,
Glasgow-Allison Company,
Harris Hardware Company,
N. Jacobi Hardware Company,
Monroe Hardware Company,
J. W. Murchison & Company,
Odell Hardware Company,
Smith-Wadsworth Hardware Company,
Oklahoma City Hardware Company,
Chester Hardware Company,
C. D. Francke & Company,
Lorick & Lawrence, Inc.,
Poe Hardware & Supply Company,
Sullivan Hardware Company,
Thompson-Miler Hardware Corporation,
E. C. Atkins & Company, Inc.,
Cash-Melton Hardware Company,
The Elder-Conroy Hardware Company,
House-Hasson Hardware Company,
Interstate Hardware & Supply Company,
Keith-Simmons Company, Inc.,
H. G. Lipscomb & Company,
C. H. McClung & Company, Inc.,
Orgill Brothers & Company,
Phillips & Buttorff Mfg. Company,
Stratton-Warren Hardware Company,
Summers Hardware Company,
Whittaker-Holtsinger Hardware Co.,
Murray-Brocks Hardware Company, Ltd.,

B. V. Redmond & Son, Inc.,
Stauffer, Eshelman & Company, Ltd.,
Thomas-Ogilvie Hardware Company, Inc.,
W. W. Woodruff Hardware Company,
Bering-Cortes Hardware Company,
Black Hardware Company,
Corpus Christi Hardware Company,
A. Deutz & Brother,
F. W. Heitmann Company,
Herrick Hardware Company,
Huey & Philip Hardware Company,
Ed S. Hughes Company,
McLendon Hardware Company,
Moroney Hardware Company,
Morrow-Thomas Hardware Company,
Nash Hardware Company,
National Hardware & Stove Company,
Peden Iron & Steel Company,
Penick-Hughes Company,
W. H. Richardson & Company,
Roberts, Sanford & Taylor Company,
The Sabine Supply Company,
W. M. Tatum Hardware Company,
Tyrrell Hardware Company,
Wadel-Connally Hardware Company,
The Walter Tips Company,
E. L. Wilson Hardware Company,
Barker-Jennings Hardware Corporation,
The W. S. Donnan Hardware Company,
Charles Leonard Hardware Company, Inc.,
Mitchell-Powers Hardware Company,
Nelson Hardware Company,
Norton Hardware Company,
Perrow-Evans Hardware Corporation,
Roanoke Hardware Company,
Virginia-Carolina Hardware Company,
Watters & Martin, Inc.,
Worth Hulfish & Sons., Inc.,
Worthington Hardware Company, Inc.,
Bluefield Hardware Company,
Bluefield Supply Company,
Foster-Thornburg Hardware Company,
Logan Hardware & Supply Company,
Sterling Hardware Company,

corporations:

The Kaminski Hardware Company, McRae Bros. Hardware Company, Montgomery & Crawford, Pruitt-Barrett

Hardware Company, *partnerships*: John E. Gannaway & Company, Ben J. Schuster, J. D. Weed & Company, *individually owned concerns*: Mark Lyons, John Donnan, W. C. Thomas, C. H. Ireland, J. A. Summers, W. C. Halleyman, W. W. French, R. J. Ogilvie, L. M. Stratton, C. A. Trumbull, E. W. Kaminski, Joseph Kaminski, H. Schenk, Joseph Schenk, H. Kaminski, H. E. McRae, C. L. McRae, T. S. Crawford, L. E. Crawford, B. W. Montgomery, B. G. Montgomery, W. S. Montgomery, Sr., W. S. Montgomery, Jr., L. M. Cart, K. M. Oates, J. C. Pruitt, E. R. Barrett, G. M. Barrett, John E. Gannaway, Ben J. Schuster, and Henry S. Weed, *individuals*:

And all of said defendants named in the petition in this cause having duly appeared by their counsel, A. G. Turner, of the firm of Knight, Thompson, and Turner of Tampa, Florida, and L. T. W. Marye, of Richmond, Virginia.

Comes now the United States of America, by Paul W. Kear, its attorney for the Eastern District of Virginia, William J. Donovan, Assistant to the Attorney General, and Miller Hughes, Special Assistant to the Attorney General, and come also all of said defendants named in the petition herein by their counsel as aforesaid, and it appearing to the court that the court has jurisdiction of the subject matter alleged in the petition, and that the petition states a cause of action, and the petitioner having moved the court for an injunction against the defendants as hereinafter decreed, and the court having duly considered the statements of counsel for the respective parties and all of said defendants named in the petition in this cause through their said counsel now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged and decreed as follows:

I.

That the combination and conspiracy in restraint of interstate trade and commerce, the acts, regulations, rules, and resolutions of the defendants, and the agreements and understandings among the defendants in restraint of interstate trade and commerce with respect to hardware as described in the petition herein, and the restraint of such trade and commerce obtained thereby are violative 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 Anti-Trust Act.

II.

That the term "hardware" as used in this decree embraces hardware supplies of every kind and description. It includes agricultural implements and supplies, firearms, firearm ammunition, various kinds of steel goods, axes, tools, chains, nails, wire, picks, mattocks, blacksmith supplies, shovels, spades, automobile hardware, hoes, sheets, bars, plows, screens, builders hardware and kindred articles.

That the term "jobbers" as used in this decree means any person, firm or corporation engaged in the business of buying hardware or other commodities from manufacturers and selling same to retail dealers.

That the term "retail dealer" as used in this decree means any person, firm or corporation engaged in the business of buying hardware or other commodities from manufacturers or jobbers and selling same to the consuming public.

III.

That the Southern Hardware Jobbers' Association, and its Secretary and all of its officers and the members of its committees, and each of them, be and they are hereby perpetually enjoined, restrained, and prohibited from committing or doing, directly or indirectly, any of the following acts or things:

(a) Endeavoring, expressly or impliedly, or in any manner or by any means whatsoever, to prevail upon the defendant jobbers to sell any article of hardware or any other commodity to the retail dealers or other customers

at uniform prices; or to in any way restrain competition among the defendant jobbers or other jobbers as to prices.

(b) Endeavoring, expressly or impliedly, to prevail upon any manufacturer to suggest or fix the price at which any article of hardware or any commodity shall be resold by the jobber.

(c) Endeavoring, expressly or impliedly, to prevail upon any manufacturer to refrain from selling any article of hardware or any commodity to any jobber or jobbers who resell such commodity at lower prices than the resale prices suggested or fixed by the respective manufacturer.

(d) Endeavoring, expressly or impliedly, to prevail upon any defendant jobber or other jobber to sell any article of hardware or any commodity at the price at which any manufacturer suggests or requests that it be sold.

(e) Endeavoring, expressly or impliedly, to prevail upon any of the defendant jobbers or other jobbers to refrain from purchasing any article of hardware or any commodity from a manufacturer who does not suggest or fix a price at which the respective article shall be resold by the jobbers.

(f) Endeavoring, expressly or impliedly, to prevail upon any of the defendant jobbers or other jobbers to refrain from purchasing any commodity from any particular person, firm or corporation, or from selling any commodity to any particular person, firm or corporation, for any reason whatsoever.

(g) Endeavoring, expressly or impliedly, to prevail upon any manufacturer or manufacturers not to ship hardware, or any commodity, anywhere except to the place of business of the jobber making the purchase.

(h) Endeavoring, expressly or impliedly, to prevail upon any manufacturer or manufacturers to sell to so-called legitimate jobbers or not to sell to any particular jobber or jobbers or any other dealer or dealers, for any

reason whatsoever; or to in any way dictate those to whom any manufacturer shall sell or not sell.

(i) Reporting to any of the defendant jobbers or other jobbers the names of manufacturers suggesting or fixing resale prices.

(j) Reporting to the defendant jobbers or to other jobbers the names of manufacturers refusing to fix resale prices.

(k) Reporting to any of the defendant jobbers or other jobbers the names of manufacturers refusing, or who have announced their policy to refuse, to sell jobbers who, in their sales to retail dealers, fail to maintain the resale prices suggested or fixed by the respective manufacturers.

(l) Reporting to the defendant jobbers or other jobbers the names of manufacturers who ship hardware only to the place of business of the jobber making the purchase; or the names of manufacturers who do not observe or maintain such policy.

(m) Submitting to any of the defendant jobbers, or to any jobber, expressly or impliedly, any list of preferred manufacturers or any list of undesirable manufacturers.

(n) Reporting to any manufacturer the names of jobbers who fail to observe or maintain, in their sales of any particular commodity to retail dealers or others, the resale prices suggested by the manufacturer from whom such commodity was purchased.

(o) Endeavoring, expressly or impliedly, directly or indirectly, to prevail upon any manufacturer to raise the price at which such manufacturer has suggested that any article of hardware or any commodity shall be sold by the jobbers to retail dealers or other customers.

IV.

That the defendants and each of them, their members, officers, agents, servants and employees, and all persons

acting under, through, by or in behalf of them, or any of them, or claiming so to act, be and they are hereby perpetually enjoined, restrained, and prohibited from agreeing, combining, conspiring, directly or indirectly, among themselves or with others, and from continuing any such agreement, combination or conspiracy as alleged in the petition herein, and from committing or doing, directly or indirectly, any of the following acts or things:

(a) Agreeing among themselves or with other jobbers, expressly or impliedly, or in any manner or by any means whatsoever, on the price at which they shall sell hardware or any other commodities to the retail dealers or any other customers.

(b) Adopting, maintaining, or using, or continuing to maintain or use by collective or concerted action, agreement or understanding, uniform prices, uniform minimum prices, or uniform discounts with respect to their sales of any article of hardware or any commodity.

(c) Endeavoring, either collectively, or individually as a result of any agreement or understanding, express or implied, among them or any of them, to prevail upon any manufacturer to suggest or fix the price at which any article of hardware or any commodity shall be resold by the jobbers.

(d) Endeavoring, either collectively, or individually as a result of any agreement or understanding, express or implied, among them or any of them, to prevail upon any manufacturer to refrain from selling any article of hardware or any commodity to any jobber or jobbers who resell such commodity at lower prices that the resale prices suggested or fixed by the respective manufacturer.

(e) Agreeing among themselves or with other jobbers, expressly or impliedly, or in any manner or by any means whatsoever, to sell any article of hardware or any commodity at the price at which any manufacturer suggests or requests that it be sold.

(f) Agreeing among themselves or with other jobbers, expressly or impliedly, or in any manner or by any means

whatsoever, to refrain from purchasing any particular article of hardware or any other commodity from a manufacturer who does not suggest or fix a price at which the respective article shall be resold by the jobbers.

(g) Agreeing among themselves or with other jobbers, expressly or impliedly, or in any manner or by any means whatsoever, to refrain from purchasing any commodity from any particular person, firm or corporation, or from selling any commodity to any particular person, firm or corporation, for any reason whatsoever.

(h) Endeavoring, either collectively, or individually as a result of any agreement or understanding, express or implied, among them or any of them, to prevail upon any manufacturer or manufacturers not to ship hardwrae, or any commodity, anywhere except to the place of business of the jobber making the purchase.

(i) Endeavoring, either collectively, or individually as a result of any agreement or understanding, express or implied, among them or any of them, to prevail upon any manufacturer or manufacturers to sell only to so-called legitimate jobbers, or not to sell to any particular jobber or jobbers, or any other dealer or dealers, for any reason whatsoever; or to in any way dictate those to whom any manufacturer shall sell or not sell.

(j) Reporting to each other, or to other jobbers, directly or indirectly, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers suggesting or fixing resale prices.

(k) Reporting to the Southern Hardware Jobbers' Association, to its Secretary, or to any of its officers or the members of any of its committees, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers suggesting or fixing resale prices.

(l) Reporting to each other, or to other jobbers, directly or indirectly, as a result of any agreement or understanding, express or implied, among them or any

of them, the names of manufacturers refusing to suggest or fix resale prices.

(m) Reporting to the Southern Hardware Jobbers' Association, to its Secretary, or to any of its officers or the members of any of its committees, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers refusing to suggest or fix resale prices.

(n) Reporting to each other, or to other jobbers, directly or indirectly, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers refusing, or who have announced their policy to refuse, to sell jobbers who, in their sales to retail dealers or others, fail to maintain the retail prices suggested or fixed by the respective manufacturers.

(o) Reporting to the Southern Hardware Jobbers' Association, to its Secretary, or to any of its officers or the members of any of its committees, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers refusing, or who have announced their policy to refuse, to sell jobbers who, in their sales to retail dealers or others, fail to maintain the resale prices suggested or fixed by the respective manufacturers.

(p) Reporting to each other, or to other jobbers, directly or indirectly, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers who ship hardware only to the place of business of the jobber making the purchase; or the names of manufacturers who do not observe or maintain such policy.

(q) Reporting to the Southern Hardware Jobbers' Association, to its Secretary, or to any of its officers or the members of any of its committees, as a result of any agreement or understanding, express or implied, among them or any of them, the names of manufacturers who ship hardware only to the place of business of the jobber

making the purchase; or the names of manufacturers who do not observe or maintain such policy.

(r) Agreeing among themselves or with others to create, or creating, directly or indirectly, any list or class of preferred manufacturers, or any list or class of undesirable manufacturers.

(s) Reporting to each other, or to other jobbers, or to any manufacturer, either directly or indirectly, as a result of any agreement or understanding, express or implied, among them or any of them, the names of jobbers who fail to observe or maintain, in their sales of any particular commodity to retail dealers or others, the resale prices suggested by the manufacturer from whom such commodity was purchased.

(t) Reporting to the Southern Hardware Jobbers' Association, to its Secretary, or to any of its officers or the members of any of its committees, the names of jobbers who fail to observe or maintain, in their sales of any particular commodity to retail dealers or others, the retail prices suggested by the manufacturer from whom such commodity was purchased.

(u) Increasing, by collective action, agreement, or understanding, or by any concerted effort whatsoever, the prices to be charged for hardware or any commodity.

(v) Aiding, abetting, or assisting, individually or collectively, others to do any of the things herein adjudged to be illegal or which the defendants are herein restrained from doing.

V.

That jurisdiction of this cause is hereby retained for the following purposes:

(a) Enforcing this decree.

(b) Enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate.

(c) Enabling the defendants or any of them to apply for its modification on the ground that its provisions have become inappropriate or unnecessary.

VI.

That the petitioner have and recover of the defendants the costs in this cause expended.

August 12, 1926.

D. LAWRENCE GRONER,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

In Equity No. 152.

UNITED STATES OF AMERICA, PETITIONER,

VS.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

ORDER MODIFYING FINAL DECREE.

The motion of the defendants for modification of the Final Decree made and entered herein on the 12th day of August, 1926, having come on to be heard this day, after due notice thereof to the Attorney General,

And Nelson B. Caskill, Esq., counsel for the defendants, appearing in behalf of said motion, and George P. Alt, Esq., Special Assistant to the Attorney General, appearing on behalf of the United States, and counsel having consented in open Court to the entry of this order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Nothing contained in the Final Decree herein shall be construed to enjoin, prohibit or prevent, during the time for which the Code of Fair Competition for the Iron and Steel Industry, approved by the President August 19, 1933, under the National Industrial Recovery Act of June 16, 1933, and Section 4, of Schedule E attached to and forming part of said Code, shall be in effect, any defendant, acting individually and not in combination or agreement with any other defendant, person or corporation, including two or more members

of said Code, from entering into an agreement in writing with any manufacturer who is a member of the industry, pursuant to Section 4, of Schedule E thereof, providing as follows:

> "Before any member of the Code shall allow any such deduction to any jobber or sell for resale to any purchaser who shall not be a jobber to such member, such member shall secure from such jobber or such other purchaser an agreement substantially in a form theretofore approved by the Board of Directors and filed with the Secretary whereby such jobber or other purchaser shall agree with such member (a) that such jobber or other purchaser will not, without the approval of the Board of Directors, sell such product to any third party at a price which at the time of the sale thereof shall be less than the price at which such member might at that time sell such product to such third party, and (b) that, if such jobber or such other purchaser shall violate any such agreement, he shall pay to the Treasurer as an individual and not as treasurer of the Institute, in trust, as and for liquidated damages the sum of $10. per ton of any product sold by such jobber or such other purchaser in violation thereof."

2. Except as provided in this order, the Final Decree herein shall remain in full force and effect.

November 24, 1933.

(Sgd.) LUTHER B. WAY,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

In Equity No. 152.

ORDER MODIFYING FINAL DECREE.

On the petition of defendant, Southern Hardware Jobbers' Association, dated April 30, 1933, and filed herein

May 3, 1934, and on the final decree in this cause entered August 12, 1926, and the Petitioner having consented to the entry of this order and no objection being made on behalf of any party hereto,

It is hereby ORDERED, ADJUDGED and DECREED as follows:

I

The final decree made and entered herein on August 12, 1926, is hereby modified so as to incorporate therein the following additional provisions:

Nothing contained in this decree shall be deemed or construed to prevent any defendant, its successors, members, officers, agents, servants, employees, or persons acting under, through, by or on behalf of it, from doing any act authorized, permitted or required by the code of Fair Competition for the Wholesaling or Distributing Trade, approved by the President on January 12, 1934, pursuant to the Act of Congress of June 16, 1933, known as the National Industrial Recovery Act, or by any Supplemental Code of Fair Competition for the Wholesale Hardware Trade (a division of the Wholesaling or Distributing Trade), which may hereafter be approved by the President, or on his behalf, under said Act, or by any code of fair competition so approved, or which may hereafter be so approved, for any trade or industry the products of which are purchased and sold by any defendant named in this decree and the provisions of which code authorize, permit or require any defendant to take any action with respect thereto in connection with the purchase of the products of any such trade or industry for resale, and also by any modification of, or addition or amendment to any code hereinbefore mentioned or referred to, which may hereafter be approved, during such time and to the extent to which the same shall remain in effect;

PROVIDED, however, that no such code of fair competition which may hereafter be so approved, nor any modification of or addition or amendment to an approved code of fair competition, which modification, addition or amendment may hereafter be so approved, shall be effective for the purpose of this decree until ten (10) days after there shall have been filed herein and served upon the United States Attorney for this District and upon the Attorney General of the United States an authenticated copy of any such code of fair competition which may hereafter be so approved, and of any modification of, or addition or amendment to an approved code which may hereafter be so approved, nor then if the United States shall have filed herein and given to the defendant, Southern Hardware Jobbers' Association, or to its solicitor or counsel, a notice of objection thereto; without prejudice to the right of any defendant to make such motions herein for modification of this decree or otherwise, as it may be advised.

II

The United States may at any time apply to the Court to revoke any modification of this decree made under the proceeding paragraph, on the ground that operations under, or purporting to be under any approved Code of Fair Competition hereinbefore mentioned or referred to, or under or purporting to be under any modification of, or addition or amendment thereto which may hereafter be approved, the approval of which code, modification, addition or amendment has resulted in the modification of this decree, are promoting monopolies, or are eliminating, oppressing or discriminating against small enterprises, or are permitting monopolies or monopolistic practices.

III

Except as provided in this order, said Final Decree of August 12, 1926, shall remain in full force and effect.

Dated May 3, 1934.

(Signed) LUTHER B. WAY,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA, PETITIONER,

VS.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

In Equity No. 152.

ORDER OF CORRECTION.

It being made to appear that the petition heretofore filed in this cause on May 3, 1934, was inadvertently and erroneously dated April 30, 1933, instead of April 30, 1934, and that the order modifying the final decree heretofore filed on May 3, 1934, inadventently and erroneously referred to the petition as filed April 30, 1933, the petitioner having consented to the entry of this order and no objection being made on behalf of any party hereto

It is hereby ordered, adjudged and decreed that the date of the petition be changed to read April 30, 1934, and that the reference in the order modifying the final decree be corrected to show that the petition was filed on April 30, 1934, and that such corrections shall be effective as of May 3, 1934, the date when said order was allowed and entered.

LUTHER B. WAY,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA, PETITIONER,

VS.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

In Equity No. 152.

On the Notice of Petitioner, the United States of America, filed on November 21, 1934, withdrawing its Notice of Objection filed by it with the Court in this cause on July 13, 1934, pursuant to the provisions of the order entered herein May 3, 1934, modifying the decree entered in this case August 12, 1926, objecting to "Amendment No. 1," approved by the President May 30, 1934, to the Code of Fair Competition for the Iron and Steel Industry, approved August 19, 1933, which Notice of Withdrawal states that Petitioner does not object to any defendant's entering into, with manufacturers who are members of the said Code of Fair Competition approved for the Iron and Steel Industry, contracts concerning the prices at which products of the industry may be sold by jobbers, in the form of the agreement annexed thereto and marked Exhibit "A", in the form of the special contracts prepared by counsel for said Board of Directors, submitted to the Department of Justice, and annexed thereto as Exhibits "B", "C" and "D", respectively, or in the form of the contracts annexed to said Notice of Withdrawal as Exhibits "E" and "F", and expressly reserves Petitioner's right at any time to apply to the Court to revoke any modification of the decree herein, on the ground that operations under, or purporting to be under, any contract entered into by a defendant and relating to the resale prices of any products of the iron and steel industry are promoting monopolies, or are eliminating, oppressing or discriminating against small enterprises, or are permitting monopolies or monopolistic practices; it is, on the motion of the United States Attorney

ORDERED, ADJUDGED and DECREED that said Notice of Objection filed by the Petitioner on July 13, 1934, be, and the same is hereby, withdrawn, and that any defendant may enter into, with manufacturers who are members of the Code of Fair Competition approved for the Iron and Steel Industry under the National Industrial Recovery Act, contracts concerning the prices at which products of the industry may be sold by jobbers, in the form of the agreements marked Exhibits "A", "B", "C", "D", "E", and "F" attached to said Notice of Withdrawal; but that the right of Petitioner at any

time to apply to the Court to revoke any modification of the decree herein on the ground that operations under, or purporting to be under, any such contract entered into by any defendant are promoting monopolies, or are eliminating, oppressing or discriminating against small enterprises, or are permitting monopolies or monopolistic practices is hereby reserved.

On motion of the United States Attorney, it is hereby further

ORDERED, ADJUDGED and DECREED that the final decree made and entered herein on August 12, 1926, is hereby modified so as to incorporate therein the following additional provisions:

Nothing contained in this decree shall be deemed or construed to prevent any defendant, its members, officers, agents, servants, employees, or persons acting under, through, by or on behalf of it, from doing any act authorized, permitted or required by the Code of Fair Competition for the Wholesaling or Distributing Trade, approved by the President on January 12, 1934, pursuant to the Act of Congress of June 16, 1933, known as the National Industrial Recovery Act, or by the Supplemental Code of Fair Competition for the Wholesale Hardware Trade (a division of the Wholesaling or Distributing Trade), approved July 30, 1934, under said Act, or by any code of fair competition approved, or which may hereafter be approved, for any trade or industry the products of which are purchased and sold by any defendant named in this decree and the provisions of which code authorize, permit or require any defendant to take any action with respect thereto in connection with the purchase of the products of any such trade or industry for resale, and also by any modification of, or addition or amendment to any code hereinbefore mentioned or referred to, which may hereafter be approved, during such time and to the extent to which the same shall remain in effect and shall be in accordance with the National Industrial Recovery Act.

The United States may at any time apply to the Court to revoke any modification of this decree made under the preceeding paragraph on the ground that operations under, or purporting to be under any approved Code of Fair Competition hereinbefore mentioned or referred to, or under or purporting to be under any modification of, or addition or amendment thereto which may hereafter be approved, the approval of which code, modification, addition or amendment has resulted in the modification of this decree, are promoting monopolies, or are eliminating, oppressing or discriminating against small enterprises, or are permitting monopolies or monopolistic practices,

It is hereby further

ORDERED, ADJUDGED AND DECREED that this order shall supersede the orders previously entered by this Court on November 24, 1933, and May 3, 1934, modifying the decree herein, and that, except as provided in this order, said final decree of August 12, 1926, shall remain in full force and effect.

Dated November 22nd, 1934.

LUTHER B. WAY,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION, ET AL., DEFENDANTS.

In Equity No. 152.

ORDER MODIFYING FINAL DECREE.

A-28

Upon consideration of the petition of the defendant Southern Hardware Jobbers' Association dated November 30, 1937, and this day filed, praying for a modification of the final decree entered herein August 12, 1926,

and the arguments of counsel for said defendant and for petitioner, it is

ADJUDGED, ORDERED AND DECREED as follows:

The final decree made and entered herein on August 12, 1926, is hereby modified so as to incorporate therein the following additional provisions, pursuant to the amendment to Section 1 of "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, contained in Title VIII of the Act of Congress entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes", approved August 17, 1937:

Nothing contained in this decree shall be deemed or construed to prevent any defendant, its successors, members, officers, agents, servants, employees, or persons acting under, through, by or on behalf of it, from entering into contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for resale.

PROVIDED, however, that the foregoing paragraph shall not be deemed to modify any provision of said final decree relating to any contract or agreement providing for the establishment or maintenance of minimum resale prices on hardware between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between jobbers, or between retail dealers, or between persons, firms or corporations in competition with each other.

The modification by this order of said final decree shall be and remain in effect only during such time and to the

extent to which the amendment to Section 1 of "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, contained in Title VIII of the Act entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes", shall remain in effect.

Except as provided in this order, said final decree of August 12, 1926, shall remain in full force and effect.

(Sgd.) ROBT. N. POLLARD,
United States District Judge.

December 29, 1937.

U.S. v. Richmond Distributing Corporation, et al.

Civil No.: 162

Year Judgment Entered: 1927

UNITED STATES OF AMERICA vs. RICHMOND DISTRIBUTING CORPORATION ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

In Equity No. 162.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RICHMOND DISTRIBUTING CORPORATION ET AL., defendants.

DECREE.

The United States of America having filed its petition herein on the 13th day of April, 1927, and the defendants, Richmond Distributing Corporation, Charles D. McEwen, Shelden H. Short, William T. Stuart, Elam C. Toone, Marion S. Rose, Earl C. Johnson, Joseph D. Berger, Irvin Scherr, A. Barbee Betts, Fred F. Braswell, and the following defendants, members of the Wholesale Confectioners Club of Richmond:

Charles E. Brauer Company (Inc.);
Edwards Candy Company;
Gunn-Ellis Company;
W. H. Harris Grocery Company;
Harris-Woodson Company;
H. P. Harrison Company (Inc.);
Piedmont Confectionery Company;
Stuart & Betts;
B. H. Tyler Confectionery Company;
Woodville A. Page and Holt Page, Copartners, doing business as W. A. Page & Company;
Robert B. Pruett and Thomas J. Pruett, Copartners, doing business as Pruett Bros.;
Frederick K. Woodson;

having duly appeared by Robert H. Talley, their solicitor;

Comes now the United States of America by Paul W. Kear, its attorney for the Eastern District of Virginia, and by John G. Sargent, Attorney General, William J. Donovan, Assistant to the Attorney General, and Mary G. Connor, Special Assistant to the Attorney General, and come also the defendants named herein by their solicitor as aforesaid;

And it appearing to the court by admission of the parties consenting to this decree, that the petition herein states a cause of action; that the court has jurisdiction of the subject matters alleged in the petition; and that the petitioner has moved the court for an injunction and for other relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said solicitors now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

1. That the combination and conspiracy in restraint of interstate trade and commerce, and the acts, agreements, and understandings among the defendants in restraint of interstate trade and commerce, as described in the petition herein, are in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and acts amendatory thereof and supplemental or additional thereto.

2. That the defendants, their officers, agents, servants, or employees are perpetually enjoined and prohibited—

(*a*) From combining, conspiring, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to withhold their patronage from any manufacturer or producer of the candy products dealt in by the defendants, for or on account of such manufacturer or producer having sold such products in the City of Richmond and in other places in the Eastern District of Virginia wherein members of the Wholesale Confectioners Club of Richmond are engaged in the candy jobbing business, to persons, firms, or corporations other than the members of said association;

(*b*) From combining, conspiring, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to prevent manufacturers or producers, or

their agents, engaged in shipping and selling such commodities among the several States, from shipping and selling such commodities freely in the open market.

(*c*) From issuing or sending to manufacturers or producers, or their agents, engaged in selling or shipping such commodities among the several States, lists of the members of said association, for the purpose and with the intention of influencing the said manufacturers or producers, or their agents, to refrain from making sales in the said commodities in the territory embraced by said association to others than those named in said lists, or otherwise suggesting to said manufacturers or producers, or their agents, that they refrain from making sales in the City of Richmond, Virginia, or elsewhere in the Eastern District of Virginia, to others than those named in said lists of members of the association.

(*d*) From sending to manufacturers or producers, or their agents, engaged in selling or shipping said commodities among the several States, communications, oral or written, suggesting directly or indirectly that such manufacturers or producers, or their agents, shall refrain from selling such commodities directly to the consuming or retail trade, or to jobbers not members of said association.

3. That jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree; and for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the execution of the provisions of this decree, and for the enforcement of strict compliance therewith and the punishment of evasions thereof.

4. That the United States shall recover its costs.

United States District Judge.

April 13, 1927.

U.S. v. National Audio-Visual Association, Inc., et al.

Civil No.: 1589

Year Judgment Entered: 1957

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs- NATIONAL AUDIO-VISUAL ASSOCIATION, INC., and DON WHITE, Defendants.	)	CIVIL ACTION NO. 1589

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its complaint herein on October 10, 1957; the defendants having filed their answer to such complaint denying the substantive allegations thereof; and the parties hereto by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without any admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I

This court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim for relief against the defendants under Section 1 of the Act of Congress of July 2, 1890, c.647,26 Stat. 209, entitled "An act to protect trade and commerce from unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "NAVA" means National Audio-Visual Association, Inc., a corporation organized and existing under the laws of Illinois with offices in Fairfax County, Virginia;

(B) "Audio-visual equipment" means new and used 16 millimeter motion picture projectors, filmstrip, slide, and other still projectors, projection screens, tape recorders, and record and transcription players;

(C) "Person" means any individual, partnership, firm, association, or corporation or other business or legal entity.

III

The provisions of this Final Judgment applicable to the defendants shall apply to such defendants and to their successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with a defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendants Don White and NAVA are jointly and severally enjoined and restrained from:

(A) Fixing, establishing or stabilizing, or attempting to fix, establish or stabilize, trade-in allowances, prices or rentals to be charged for the purpose, sale or rental of any audio-visual equipment; provided, that this subsection shall not be deemed to prohibit defendant Don White from entering into any fair trade agreement valid and enforceable in the State where it is effective;

(B) Inducing any manufacturer or dealer to

(1) limit the territory within which any dealer may sell or rent any audio-visual equipment;

(2) allocate or divide, on an exclusive basis or otherwise, territories for the sale or rental of any audio-visual equipment;

(C) Inducing any manufacturer to refrain from

(1) selling any audio-visual equipment to any particular person or group or class of persons;

(2) selling any audio-visual equipment to any person except on conditions and terms agreeable to NAVA;

(3) giving schools or any group or class of persons discounts or other favorable terms or conditions of sale or rental for audio-visual equipment;

(D) Inducing any publication

(1) not to accept advertising for audio-visual equipment from any person or group or class of persons;

(2) to reproduce or publicize any form or type of bid specification for the sale, rental or servicing of any audio-visual equipment;

(E) Preparing, disseminating or approving any form or type of bid specification, to be used by any consumer, for the sale, rental or servicing of any audio-visual equipment;

(F) Inducing or persuading any person, group or organization to use any form or type of bid specification for the sale, rental or servicing of any audio-visual equipment;

(G) Preparing, disseminating or assisting in the preparation or dissemination of any book, list or literature, containing monetary trade-in values, or average trade-in values for any audio-visual equipment;

(H) Permitting any manufacturer of audio-visual equipment to participate in the management, direction or control of NAVA by advisory committees or individual manufacturer or other committees of manufacturers;

(I) Refusing to list, in any directory of manufacturers, the name of any manufacturer of audio-visual equipment if such manufacturer sells such equipment to dealers with a trade discount.

V

Defendant NAVA is ordered and directed to publicize, within 90 days from the date of entry hereof, the terms of this Final Judgment in the

following manner:

(A) Public announcements thereof mailed to each magazine and periodical heretofore disseminating NAVA bid specifications;

(B) Announcements thereof in a letter sent by first class mail to each person known to have received NAVA bid specification forms from:

(1) NAVA;

(2) an affiliate or member of NAVA; or

(3) any person, group or organization supplied with such forms by NAVA;

(C) Announcements of the injunctions placed upon each of the defendants by the Final Judgment in two different issues of NAVA NEWS distributed to its members and affiliates.

VI

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendants and without restraint or interference from defendants, to interview officers or employees of defendants, who may have counsel present, regarding any such matters.

Upon such written request, defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

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

VIII

That the plaintiff recover the costs of this suit.

Dated: October 10, 1957.

/s/ Albert V. Bryan
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ Earl A. Jinkinson
EARL A. JINKINSON

/s/ W. D. Kilgore, Jr.
W. D. Kilgore, Jr.

/s/ Harry H. Faris
HARRY H. FARIS

/s/ Barbara J. Svedberg
Barbara J. Svedberg

/s/ Robert J. Oliver
ROBERT J. OLIVER

/s/ George D. Reycraft
George D. Reycraft

Attorneys, Department of Justice
Room 404, United States Courthouse
Chicago 4, Illinois
Harrison 7-4700

/s/ A. Andrew Giangreco
A. Andrew Giangreco
Assistant U. S. Attorney

For the Defendants:

By/s/Herman S. Waller
HERMAN S. WALLER

WALLER AND WALLER
32 West Randolph Street
Chicago 1, Illinois

E. C. Van Dyke
102 S. Payne St.
Fairfax, Virginia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED
DEC 20 1976
CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

CIVIL ACTION
NO. 1589

UNITED STATES OF AMERICA,	*	
Plaintiff	*	
-vs-	*	ORDER MODIFYING SECTION IV(H) OF FINAL JUDGMENT
NATIONAL AUDIO-VISUAL ASSOCIATION INC., and DON WHITE,	*	
	*	
Defendants	*	

Upon reading and filing the attached stipulation of the parties, it is hereby ordered that without any finding or adjudication as to past or future compliance by the defendants with the Final Judgment entered herein on October 10, 1957 or with the Antitrust Laws, Section IV(H) of such Final Judgment is modified to read:

> (H) Prior to June 1, 1976, permitting any manufacturer of audio-visual equipment to participate in the management, direction or control of NAVA by advisory committees or individual manufacturer or other committees of manufacturers;

G. Y. B. J.
UNITED STATES DISTRICT JUDGE

Dated: 12/17, 1976

A True Copy, Teste:
W. Farley Poreno, Jr., Clerk
By Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED
DEC 20 1976
CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

CIVIL ACTION
NO. 1589

UNITED STATES OF AMERICA,	*	
Plaintiff	*	
-vs-	*	STIPULATION FOR ORDER TO MODIFY FINAL JUDGMENT
NATIONAL AUDIO-VISUAL ASSOCIATION, INC. and DON WHITE,	*	
	*	
Defendants	*	

WHEREAS Section IV(H) of the Final Judgment entered herein by consent of the parties on October 10, 1957, prohibits any manufacturer of audio-visual equipment to participate in the management, direction or control of the defendant, National Audio-Visual Association, Inc., and

WHEREAS, such participation, as such, is not a per se violation of Section 1 of the Sherman Act, as amended, and

WHEREAS, the defendant, National Audio-Visual Association, Inc., by attorneys, represents that the specific publications which furthered the activities upon which Section IV(H) was based have been discontinued, that there are current activities of the defendant Association appropriate for participation by such manufacturers, and that such prohibition may have an adverse impact on securing and maintaining membership in the Association;

IT IS HEREBY STIPULATED, that the parties consent that an Order in the form hereto attached and filed herewith be entered by the Court.

For the Plaintiff:

CHARLES F. B. McALEER

ELLIOTT H. MOYER

Attorneys, Department of Justice
Washington, D. C. 20530
Phone: (202) 739-3716

For the Defendants:

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Suite 506, 320 King Street
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Phone: (703) 549-0780

Attorney for Defendants
National Audio-Visual Association, Inc. and Don White

THOMAS M. GOULD, ESQ.
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2613 Carew Tower
Cincinnati, Ohio 45202
Phone: (513) 621-4607

Attorneys for Defendant,
National Audio-Visual Association, Inc.

ANTHONY J. THOMPSON, ESQ.
Hamel, Park, McCabe & Saunders
1776 F Street, NW
Washington, DC 20006
Phone: (202) 785-1234

Attorney for Defendant, Don White

U.S. v. The Bank of Virginia

Civil No.: 4959

Year Judgment Entered: 1966

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 4959
	)	
v.	)	
	)	
THE BANK OF VIRGINIA,	)	Entered: December 27, 1966
	)	
Defendant.	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 30, 1966, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment's constituting evidence or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED AS FOLLOWS:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, 15 U.S.C. 1, 2, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II

(A) "Defendant" means the defendant, The Bank of Virginia;

(B) "Member merchant" means a person who has contracted with a credit grantor for participation in a charge service plan;

(C) "Customer" means any person who uses charge account facilities made available at retail stores affiliated with a credit grantor offering a charge service plan;

(D) "Charge service plan" means a service offered by a credit grantor to member merchants and customers pursuant to which a member merchant agrees to sell and the credit grantor agrees to purchase accounts receivable arising from the purchase of merchandise or services from the member merchant by customers whose credit has been approved by the credit grantor; after purchasing such accounts receivable from the member merchants the credit grantor assumes the risk and responsibility for billing and collecting such accounts directly from the customers;

(E) "Accounts receivable" means those assets of a member merchant consisting of the obligations (usually evidenced by a sales slip signed by the customer) of a customer to pay for merchandise or services purchased on credit;

(F) "Person" means any individual, corporation, partnership, association, firm or other legal entity.

III

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, directors, officers, employees and agents, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) The defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or furthering or claiming any rights under any provision of any agreement relating to a charge service plan which is inconsistent with any of the provisions of this Final Judgment;

(B) The defendant is ordered and directed to delete from all of its charge service plan agreements, and is prohibited from inserting in any such agreement hereafter entered into, any provision or requirement that its charge service plan will be exclusive in character or that the terms and conditions of this agreement will be affected in the event the member merchant contracts with or has contracted with or proposes to contract with another charge service plan.

V

The defendant is enjoined and restrained from, directly or indirectly:

(A) Adopting, following, maintaining, furthering or enforcing any policy, plan or course of conduct of accepting or retaining as member merchants only merchants who do not do business with or have not done business or do not intend to do business with any other charge service plan;

(B) Conditioning the making or continuing of, or the terms or conditions of, any charge service plan agreement upon a member merchant's refraining from entering into, or limiting or agreeing to limit the extent of doing business under, any charge service plan agreement with any other person;

(C) Conditioning the making or continuing of any charge service plan agreement upon a member merchant's selling to the defendant any specified dollar amount or any specified fractional share or percentage of such member merchant's accounts receivable arising from the sale of goods or service on credit;

(D) Conditioning the availability of any banking service upon any person's agreement to use defendant's charge service plan;

(E) Canceling or terminating the affiliation or membership of any member merchant with the defendant's charge service plan or refusing to do business with any person because of the fact that or the extent to which he does business with any other person;

(F) Entering into, adhering to, or claiming any rights under any agreement for the purpose or with the effect of hindering, limiting or interfering with the entrance into, participation in, or advertising affiliation with any charge service plan by any person, either as a member merchant or otherwise.

VI

Subject to the foregoing provisions of this Final Judgment, defendant may decline to enter into or to continue any charge plan service agreement for the reason that the servicing of such account will result, or has resulted, in an annual net loss to defendant.

VII

The defendant is ordered and directed within thirty (30) days from the date of entry of this Final Judgment, to mail a copy of this Final Judgment, or the substance thereof approved as to form and content by plaintiff herein, to each member merchant with whom it has entered into a charge service plan agreement.

VIII

The defendant is ordered and directed, within sixty (60) days from the date of entry of this Final Judgment, to file with the Clerk of this Court, with a copy to the plaintiff herein, an affidavit setting forth the fact and manner of compliance with subsection (B) of Section IV hereof and with Section VII hereof.

IX

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during office hours of such defendant, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final 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.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment tc apply to this Court at

any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: December 27, 1966

/s/ JOHN D. BUTZNER
United States District Judge

APPENDIX B:

SUMMARY OF REASONS FOR TERMINATING EACH JUDGMENT

(Ordered by Year Judgment Entered)

Case No.: 148

Case Name: United States v. The Noland Company Inc., et al.

Year Judgment Entered: 1926

Section of Judgment Retaining Jurisdiction: 5

Description of Judgment: Defendants perpetually enjoined and restrained from, among other things, fixing prices for plumbing supplies; agreeing to uniform prices, uniform minimum prices, or uniform discounts; agreeing to terms, conditions, or policies that create uniform prices, restrict production, or discriminate against or in favor of any group of purchasers; agreeing to charge uniform prices; agreeing to increase prices; exchanging information about with respect to the amounts or terms of any bids for sale; agreeing to refuse to sell to any person because of unpaid accounts; creating a list of preferred dealers or purchasers; agreeing to pool orders or to enter joint bids for sales; and engaging in or aiding others in any activities judged illegal under the judgment.

Reasons Judgment Should be Terminated:
- Judgment more than ten years old.
- Most defendants likely no longer exist.
- Judgment terms largely prohibits acts the antitrust laws already prohibit (price fixing).

Public Comments: None.

Case No.: 152

Case Name: United States v. Southern Hardware Jobbers' Association, et al.

Year Judgment Entered: 1926

Section of Judgment Retaining Jurisdiction: V

Description of Judgment: Defendant Southern Hardware Jobbers' Association perpetually enjoined and prohibited from, among other things, seeking to have jobbers sell hardware at uniform prices; seeking to have manufacturers fix prices; seeking to have manufacturers refrain from selling to jobbers who resell at lower than prices fixed by the manufacturer; seeking to have jobbers sell at a price suggested by a manufacturer; seeking to have jobbers refrain from purchasing from a manufacturer who does not fix a resale price; seeking to have jobbers refrain from purchasing from or selling to any person; and seeking to have a manufacturer sell or not sell to any particular jobber; seeking to have a manufacturer raise its suggested price. All defendants perpetually enjoined and prohibited from, among other things, agreeing on prices for hardware; adopting uniform prices; seeking to have manufacturers fix resale prices; seeking to

have manufacturers refrain from selling to those who resell at lower than suggested retail prices; agreeing to sell at a manufacturer suggested price; agreeing to refrain from purchasing from a manufacturer who does not suggest resale prices; agreeing to refrain from purchasing from any person; agreeing to create any list of preferred manufacturers; and agreeing to increase the price to be charged for hardware.

Reasons Judgment Should be Terminated:
- Judgment more than ten years old.
- Most defendants likely no longer exist.
- Judgment terms largely prohibits acts the antitrust laws already prohibit (price fixing and group boycott)

Public Comments: None.

Case No.: 162

Case Name: United States v. Richmond Distributing Corporation, et al.

Year Judgment Entered: 1927

Section of Judgment Retaining Jurisdiction: 3

Description of Judgment: Defendants perpetually enjoined and prohibited from, among other things, agreeing to withhold their patronage from any manufacturer of candy dealt in by the defendants because such manufacturer sold candy in the Eastern District of Virginia; agreeing to prevent manufacturers from selling in the open market; issuing lists of members of the Wholesale Confectioners Club of Richmond ("Club") to encourage manufacturers to refrain from selling to others than those on the list; and suggesting to manufacturers that they should refrain from selling directly at retail or to jobbers not members of the Club.

Reasons Judgment Should be Terminated:
- Judgment more than ten years old.
- Most defendants likely no longer exist.
- Judgment terms largely prohibits behavior the antitrust laws already prohibit (group boycott).

Public Comments: None.

Case No.: 1589

Case Name: United States v. National Audio-Visual Association, Inc., et al.

Year Judgment Entered: 1957

Section of Judgment Retaining Jurisdiction: VII

Description of Judgment: Defendants enjoined and restrained from, among other things, fixing prices for the sale or rental of audio-visual equipment; inducing any manufacturer or dealer to limit or allocate territories in which dealers may sell; inducing any manufacturer to refrain from selling to any particular person, or to sell on conditions acceptable to defendant National Audio-Visual Association ("NAVA"), or giving discounts to any group or class of persons for audio-visual equipment; inducing any publication not to accept advertising from any person, to reproduce any form of bid specification for the sale of audio-visual equipment; preparing any form of bid specification to be used by any consumer; inducing any person to use any form of bid specification; preparing any list containing monetary trade-in values; permitting any manufacturer to participate in the management of NAVA; and refusing to list the name of any manufacturer in any directory if the manufacturer sells to dealers with a trade discount.

Reasons Judgment Should be Terminated:
- Judgment more than ten years old.
- Judgment terms largely prohibits acts the antitrust laws already prohibit (price fixing, territorial allocation, and group boycott)
- Market conditions likely have changed. In particular, changes in technology, including the development of digital audio and visual equipment, likely have rendered the judgment ineffectual.

Public Comments: None.

Case No.: 4959

Case Name: United States v. The Bank of Virginia

Year Judgment Entered: 1966

Section of Judgment Retaining Jurisdiction: X

Description of Judgment: Defendant is enjoined and restrained from, among other things, adopting any policy of accepting as member merchants only members who do not do business with other charge service plans; conditioning any charge service plan agreement upon a member merchant's restraining from entering into any agreement with any other person; conditioning any agreement upon a member merchant's selling to the Defendant any specified dollar amount; conditioning the availability of any banking service upon any person's agreement to use Defendant's charge plan; canceling any member merchant because he does business with any other person; entering into any agreement to interfere with the entrance into any plan by any person.

Reasons Judgment Should be Terminated:
- Judgment more than ten years old.
- Market conditions likely have changed. In particular, credit services technology and markets have evolved so substantially since entry of the judgment that the market of concern (central

credit service plans) likely is small in volume and faces new competition, thus rendering the judgment ineffectual.

Public Comments: None.

APPENDIX C:

PROPOSED ORDER TERMINATING FINAL JUDGMENTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMENTS IN THE EASTERN DISTRICT OF VIRGINIA	No. 2:18cv____
Consolidating:	
UNITED STATES OF AMERICA, Plaintiff, v. THE NOLAND COMPANY, INC., *et al.*, Defendants;	In Equity No. 148
UNITED STATES OF AMERICA, Plaintiff, v. SOUTHERN HARDWARE JOBBERS' ASSOCIATION, *et al.*, Defendants;	In Equity No. 152
UNITED STATES OF AMERICA, Plaintiff, v. RICHMOND DISTRIBUTING CORPORATION, *et al.*, Defendants;	In Equity No. 162
UNITED STATES OF AMERICA, Plaintiff v.	Civil Action No. 1589

NATIONAL AUDIO-VISUAL ASSOCIATION, INC., *et al.*, Defendants; UNITED STATES OF AMERICA, Plaintiff, v. THE BANK OF VIRGINIA, Defendant.	Civil Action No. 4959

[PROPOSED] ORDER TERMINATING FINAL JUDGMENTS

The Court having received the motion of plaintiff United States of America for termination of the final judgments entered in these cases, and the Court having considered all papers filed in connection with this motion, and the Court finding that it is in the public interest to terminate the final judgments, it is

ORDERED, ADJUDGED, AND DECREED:

That said final judgments are hereby terminated.

Dated: _____ _____

Chief United States District Court Judge
Eastern District of Virginia