

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Investors Diversified Services, Inc.; Jefferson Mortgage Corporation; Northwest Mortgage Company (Oregon); Northwest Mortgage Company (Washington); Southland Mortgage Company; and Syndicate Mortgage Company., U.S. District Court, D. Minnesota, 1954 Trade Cases ¶67,799, (Jun. 30, 1954)

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United States of America v. Investors Diversified Services, Inc.; Jefferson Mortgage Corporation; Northwest Mortgage Company (Oregon); Northwest Mortgage Company (Washington); Southland Mortgage Company; and Syndicate Mortgage Company.

1954 Trade Cases ¶67,799. U.S. District Court, D. Minnesota, Fourth Division. Civil No. 3713. Dated June 30, 1954. Case No. 1074 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Agreements Terminated—Hazard Insurance.—A mortgage loan company and five wholly-owned subsidiaries consented to the entry of a decree terminating, except as to certain specified rights, hazard insurance contracts insofar as any defendant as principal had the right under such contract to place or write hazard insurance on mortgaged property on behalf of the borrower.

Consent Decree—Types of Practices Enjoined—Placing of Hazard Insurance on Mortgaged Property.—A consent decree prohibited a mortgage loan company and five wholly-owned subsidiaries from (1) requiring mortgagors to buy or place hazard insurance required on the mortgaged property from or through any agent, broker, or company named by the defendants, (2) claiming, in behalf of a defendant, any right which prevented a borrower from placing insurance with anyone other than agents or insurers named by the defendants, (3) refusing to make a mortgage loan or discriminating in its terms, because the borrower would not accept or place insurance written by a defendant, and (4) entering into, adopting, or furthering any agreement for the purpose of, or which in effect, constitutes an act prohibited by clauses (1), (2), and (3). Additional terms of the decree required notice to be given to a borrower to inform him of his rights to select his own insurance company.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, W. D. Kilgore, Jr., Worth Rowley, Earl A. Jinkinson, Ralph M. McCareins, Max Freeman, Edwin C. Heininger.

For the defendants: G. Aaron Youngquist, Charles E. Phillips, and John R. Goetz.

For a prior opinion of the U. S. District Court, District of Minnesota, see [1952-1953 Trade Cases ¶ 67,220](#).

Final Judgment

GUNNAR H. NORDBYE, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on April 26, 1951; all the defendants having appeared and filed their answers to such complaint denying any violation of law and asserting affirmative defenses; and all parties having severally consented, by their attorneys, to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law and without admission by any defendant in respect of any such issue;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties signatory hereto, it is hereby ordered and adjudged as follows:

I

[*Retention of Jurisdiction*]

The Court has jurisdiction of the subject matter of this action and of all parties thereto. The complaint states a claim against the defendants upon which relief may be granted under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

- (a) "Defendant" shall mean any defendant and the term "defendants" refers to each and all of the defendants;
- (b) "Hazard insurance" shall mean a contract, usually termed a "policy", between an insurance company and one or more persons or "policy holders", whereby the insurance company, for a monetary consideration customarily called a "premium", agrees to indemnify a policy holder or policy holders, or others designated in said policy, for loss or damage to property by fire, storm, and other specified hazards;
- (c) "Place" or "placed" shall mean the selection or designation of an insurer by whom, or an agent through whom, a policy of insurance is to be written;
- (d) "Write" or "written", when used in connection with insurance, shall mean the issuance of a policy of insurance.
- (e) "Residential property" shall mean any building used primarily for dwelling purposes;
- (f) "Borrower" shall mean any applicant for a mortgage loan on residential property and any owner of mortgaged residential property whether or not such owner is the mortgagor;
- (g) "Contract regarding hazard insurance" shall mean any contract, or a provision in any contract, mortgage instrument, mortgage loan application form, or in any other instrument or form, whereby a borrower gives to any defendant the right or authority, not terminable by the borrower at will, to place or write hazard insurance required to be maintained by the mortgagor on mortgaged residential property;
- (h) "Serviced" shall mean the collection of the payments falling due on such loan and enforcement of the rights and performance of the obligations of the mortgagee under the terms of a mortgage on residential property, on behalf of an owner of the mortgage.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents, servants, employees and attorneys, and all other persons acting under, through, or for such defendant. No defendant shall cause or knowingly permit any subsidiary controlled by such defendant to perform any acts or engage in any course of conduct which such defendant is enjoined from performing or engaging in by this Final Judgment.

IV

[*Insurance Contracts Cancelled*]

All existing contracts regarding hazard insurance with respect to mortgage loans owned or serviced by defendants are, except as to rights described in paragraph VII (b) of this Final Judgment, hereby cancelled and annulled insofar as any defendant as principal has the right or authority under the terms of such contract to place or write hazard insurance on the mortgaged property in behalf of a borrower.

V

[*Insurance Practices Enjoined*]

The defendants are hereby jointly and severally enjoined and restrained from:

- (a) requiring a borrower to agree, as a condition to the making of a mortgage loan, to buy or place the hazard insurance, which is required to be maintained: by him on the mortgaged property, from or through any agent, broker or insurance company named or designated by defendants;
- (b) claiming, on behalf of any defendant, any right which prevents a borrower from placing hazard insurance with anyone other than agents or insurers selected by a defendant;
- (c) refusing to make a mortgage loan, or discriminating in the terms or conditions of any mortgage loan or in the application of any uniform procedure adopted by defendants, because the borrower will not purchase or accept hazard insurance placed or written by a defendant;
- (d) entering into, adopting, adhering to, or furthering any agreement or course of conduct for the purpose of, or which in effect constitutes, performance of an act enjoined and restrained by the provisions of subparagraphs (a), (b) and (c) of this paragraph V.

VI

[Note to Be Given]

(a) Defendants are ordered and directed to mail written notice to each borrower, as shown by defendants' records, at his address shown by such records, who has, or whose predecessor in interest has, entered into a contract regarding hazard insurance with any defendant, not more than sixty (60) days nor less than forty-five (45) days prior to the expiration date of hazard insurance upon the mortgaged property expiring more than four (4) months after the entry of this Final Judgment, in the form designated as Form A in the Appendix [*not reproduced*] to this Final Judgment if the mortgage is owned by any defendant, and in the form designated as Form B in the Appendix [*not reproduced*] to this Final Judgment if the mortgage is being serviced but is not owned by any defendant, on the date of the notice.

The Court by order, or the parties by an agreement in writing filed with the Clerk of this Court, may modify the text of such notice.

Such notice shall be given by the defendant which is servicing such mortgage or by defendant Investors Diversified Services, Inc., and shall not contain solicitation by or on behalf of a defendant for the placing or writing of hazard insurance.

[Statement to Borrower]

(b) It is ordered and directed that, beginning with the thirtieth day after the entry of this Final Judgment, each defendant making a residential mortgage loan shall take from the borrower an application or other appropriate form containing the following statement: "The hazard insurance to be maintained by the borrower as required by the security instrument may be obtained by the borrower through his own insurance agent or through the lender."

VII

[Permissive Provisions]

This Final Judgment shall not be construed to limit the right of any defendant:

(a) to require that any hazard insurance policy tendered by a borrower contain an acceptable loss payable clause and be issued by an insurer approved by such defendant, provided that a defendant's standards for approval shall not be unreasonable, arbitrary or discriminatory;

(b) to place or write hazard insurance on the mortgaged property whenever a borrower fails to tender a renewal policy, issued by an insurer approved by such defendant and containing an acceptable loss payable clause, within the time specified in the mortgage, but not more than thirty (30) days prior to the expiration date of the policy in force at the time, or by applicable state law or regulation, or in the absence of any such specification then at least thirty (30) days prior to such expiration date; and the right referred to in this paragraph shall not be limited or affected by any other provision of this Final Judgment;

(c) to solicit from any borrower, in free and open competition with others, the right or authority, terminable by the borrower at will, to place or write hazard insurance.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted, subject to any legally recognized privilege, (a) access during the office hours of such defendant 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 of the matters contained in this Final Judgment; and (b), subject to the reasonable convenience of such defendant and without restraint or interference by 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, on reasonable notice to defendants, defendants shall submit such written reports as may, from time to time, be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means specified in this paragraph VIII 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

[*Retention of Jurisdiction*]

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