

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Morris Wolf, also known as Pete Wolf doing business as Wolf & Co.; John P. Godchaux; George H. McFadden & Bro.; Geo. H. McFadden & Bro., Inc.; Weil Brothers-Cotton Incorporated; A. Campdera & Co., Inc.; J. A. Baker & Co.; E. F. Creekmore Co., Inc.; Sternberg-Martin & Company, Inc.; R. L. Dixon & Bro., Inc.; Crespi & Company; and Pell Cotton Company., U.S. District Court, E.D. Louisiana, 1957 Trade Cases ¶68,895, (Dec. 26, 1957)**

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United States v. Morris Wolf, also known as Pete Wolf doing business as Wolf & Co.; John P. Godchaux; George H. McFadden & Bro.; Geo. H. McFadden & Bro., Inc.; Weil Brothers-Cotton Incorporated; A. Campdera & Co., Inc.; J. A. Baker & Co.; E. F. Creekmore Co., Inc.; Sternberg-Martin & Company, Inc.; R. L. Dixon & Bro., Inc.; Crespi & Company; and Pell Cotton Company.

1957 Trade Cases ¶68,895. U.S. District Court, E.D. Louisiana, New Orleans Division. Civil Action No. 5858. Filed December 26, 1957. Case No. 1281 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Bidding Practices—Preventing Competition—Cotton Merchants.**—Cotton merchants were prohibited by a consent decree from entering into any understanding to fix prices on bids or to allocate bids for the purchase of Commodity Credit Corporation cotton; to submit bids, fix bid prices, or allocate bids for the purchase of such cotton by or through a defendant cotton broker or any other person; or to prevent any person from engaging in the cotton catalogue business. Each of the merchants was prohibited from disclosing to any person the price bid (other than in open auction situations) or to bid for Commodity Credit Corporation cotton prior to the expiration of the time specified by the Commodity Credit Corporation for the filing of bids; suggesting to or determining for any other person the prices to be bid for such cotton; submitting bids on such cotton through or for any other person; actively preventing any person from engaging in the cotton catalogue business; or utilizing any persons to give advice as to the price to be bid on specific Commodity Credit Corporation cotton where such person is at the time engaged in giving similar advice to another merchant, broker, or other person eligible to bid.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Action Directed by United States (Commodity Credit Corporation)—Bona Fide Transactions.**—A consent decree entered against cotton merchants provided that the terms of the decree should not be construed to prevent any of the merchants from taking action, or refraining from taking action, affirmatively directed by the United States Government in connection with the purchase or sale of Commodity Credit Corporation cotton. Also, specified bona fide transactions by the cotton merchants were not prohibited by the decree.

**Department of Justice Enforcement and Procedure—Consent Decrees—Modification by Defendants.**—A consent decree entered against cotton merchants provided that, in the event that any regulation or ruling of the United States Government, in connection with the purchase or sale of Commodity Credit Corporation cotton, operates to cause any merchant undue hardship as a result of compliance with the decree, such merchant may apply to the court for a modification or termination of any terms of the decree to the extent necessary to eliminate such hardship.

**Department of Justice Enforcement and Procedure—Consent Decrees—Applicability of Provisions of Decree—Intra-Company Activities.**—A consent decree entered against cotton merchants provided that the provisions of the decree should not apply to transactions solely between any defendant and its officers, directors, agents, employees, subsidiaries, affiliates, successors, and assigns or any of them.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; M. Hepburn Many, United States Attorney; and W. D. Kilgore, Jr., Baddia J. Rashid, Max Freeman, Charles L. Beckler, Lewis J. Ottaviani, Charles H. McEnerney, Jr., and William P. Cassedy, Attorneys, Department of Justice.

For the defendants: Ashton Phelps and Taggart Whipple for Geo. H. McFadden & Bro. and Geo. H. McFadden & Bro., Inc.; Louis Oberdorfer and Lloyd N. Cutler for Weil Brothers-Cotton Inc.; Robert R. Ritchie for A. Campdera & Co., Inc.; Harry B. Kelleher for J. A. Baker & Co., E. F. Creekmore Co., Inc., R. L. Dixon & Bro., Inc., and Crespi & Co.; Morris I. Jaffe for Sternberg-Martin & Co., Inc.; and Saul Stone for Pell Cotton Co.

### Final Judgment

J. SKELLY WRIGHT, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on May 17, 1956, and each of the defendants signatory hereto having appeared and filed an answer herein denying the material averments of the complaint, and asserting its innocence therein, and the plaintiff and the said defendants, 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 admission by any party in respect to any such issue;

Now, Therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties signatory hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

#### I.

##### [ *Sherman Act*]

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

#### II.

##### [ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to each such defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between any such defendant and its said officers, directors, agents, employees, subsidiaries, affiliates, successors and assigns or any of them.

#### III.

##### [ *Definitions*]

As used herein:

- (A) "CCC cotton" shall mean cotton owned and which is offered for sale by the Commodity Credit Corporation;
- (B) "Cotton merchant" shall mean a person engaged in the business of buying, selling or otherwise trading in cotton;
- (C) "Cotton merchant defendants" shall mean all defendants, except defendants Morris Wolf and John P. Godchaux, and each of them;
- (D) "Cotton catalogue business" shall mean the collecting, compiling, publishing, disseminating or communicating of any list or catalogue setting forth or listing CCC cotton available for sale by the Commodity Credit Corporation, indicating quantities and location of each grade and staple;

(E) "Person" shall mean an individual, partnership, firm, association, corporation or any other business or legal entity, other than a common or contract carrier;

(F) "Subsidiary" shall mean in respect of any company, a corporation, 50 per cent or more of whose stock entitled to vote for the election of directors is owned or controlled directly or indirectly by that company;

(G) "Affiliate" shall mean a person which is, directly or indirectly, through one or more intermediaries, controlled by, or under common control with, another person, control for the purpose of this subsection being ownership in a corporation of 80 per cent or more of the stock entitled to vote for the election of directors, or an interest in a partnership of 80 per cent or more.

#### IV.

##### [ *Collusive Bidding Practices* ]

Each defendant signatory hereto is enjoined and restrained from entering into, participating in, adhering to or maintaining, directly or indirectly, any contract, combination, concert of action, agreement, understanding, plan or program between such defendant and any other defendant, any broker or any other person eligible to buy CCC cotton to:

(A) fix prices on bids to be submitted for the purchase of CCC cotton;

(B) allocate bids between or among any persons for the purchase of CCC cotton;

(C) submit bids, fix bid prices or allocate bids between or among any persons for the purchase of CCC cotton by or through Morris Wolf or any third person;

(D) prevent or deter, or attempt to prevent or deter, any person from entering into or engaging in the cotton catalogue business.

#### V.

##### [ *Disclosure of Bid* ]

Each defendant signatory hereto is enjoined and restrained from disclosing or transmitting to any person (other than Commodity Credit Corporation) the price bid (other than in open auction situations) or to be bid for CCC cotton prior to the expiration of the time specified by Commodity Credit Corporation for the filing of bids.

#### VI.

##### [ *Individual Bidding Practices* ]

Each defendant signatory hereto is enjoined and restrained from:

(A) suggesting to or determining for any other person the prices to be bid for CCC cotton;

(B) submitting bids on CCC cotton through or for any other person;

(C) actively preventing or deterring any person from entering into or engaging in the cotton catalogue business;

(D) utilizing any person to give advice as to the price to be bid on specific CCC cotton where such person is at the time engaged in giving similar advice to another cotton merchant, broker or other person eligible to bid.

#### VII.

##### [ *Transactions Not Prohibited* ]

The terms of this Final Judgment shall not be construed to prohibit bona fide transactions:

(A) With respect to "rights" to purchase CCC cotton. For the purposes of this section VII(A), a bona fide transaction in "rights" shall mean a transaction in which a cotton merchant submits, or directly causes to be submitted, a bid for specific CCC cotton at a price disclosed to, agreed to, or suggested or determined by, any person from or to whom such cotton merchant has bought or sold, contracted to buy or sell, or assigned

the “right” to bid upon and purchase from Commodity Credit Corporation, CCC cotton in a quantity equal to a quantity of substitute cotton exported in foreign commerce;

(B) In which a cotton merchant submits or causes to be submitted for a customer a bid for specific CCC cotton at a price disclosed to, agreed to, suggested or determined by, such customer:

(C) In which a defendant signatory hereto submits or causes to be submitted a bid, not contra to any Commodity Credit Corporation regulation or announced policy, for specific CCC cotton at a price disclosed to, agreed to, or suggested or determined by, the defendant and either (1) one other cotton merchant who shares in the profits and losses on the purchase and sale of such CCC cotton, neither of whom would otherwise have bid for such CCC cotton, or (2) one other person not a cotton merchant (excluding from the meaning of the term cotton merchant a person primarily engaged in the spinning or ginning of cotton who buys or sells cotton incidentally thereto) who shares in the profits and losses on the purchase and sale of such CCC cotton.

#### VIII.

##### [ *Government Action—Modification*]

(A) The terms of this Final Judgment shall not be construed to prevent any defendant signatory hereto from taking action, or refraining from taking action, affirmatively directed by the United States Government in connection with the purchase or sale of CCC cotton.

(B) In the event that subsequent to the entry of this Final Judgment, any of the regulations or rulings of the United States Government in connection with the purchase or sale of CCC cotton operate to cause any defendant signatory hereto undue hardship, with respect to the bidding for CCC cotton, as a result of its compliance with this Final Judgment, such defendant may apply to this Court, with ten days' notice thereof to the plaintiff, for a modification or termination of any of the terms of this Final Judgment to the extent necessary to eliminate such hardship; provided that the burden of establishing that this Final Judgment so operates shall be on the defendant making such application; and provided further that the plaintiff reserves the right to oppose such application.

#### IX.

##### [ *Inspection and Compliance*]

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 any defendant signatory hereto made to its principal office, 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 any defendant, and without restraint or interference from it, to interview officers and employees of such defendant who may have counsel present, regarding any such matters; and upon such written request, any such defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may be reasonably necessary for the purpose of enforcement of this Final Judgment. 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 Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

#### X.

##### [ *Jurisdiction Retained*]

Jurisdiction of this cause is retained 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement or compliance therewith and for the punishment of violations thereof.