

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Baton Rouge Insurance Exchange., U.S. District Court, E.D. Louisiana, 1958 Trade Cases ¶69,068, (Jun. 21, 1958)

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United States v. Baton Rouge Insurance Exchange.

1958 Trade Cases ¶69,068. U.S. District Court, E.D. Louisiana, Baton Rough Division. Civil Action No. 2088. Filed June 21, 1958. Case No. 1397 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Group Boycott.—

A local association of insurance agents and solicitors was prohibited by a consent decree from entering into any understanding, in concert, with any member or any other person having the purpose or effect of (1) boycotting or otherwise refusing to do business with any person, (2) boycotting or otherwise refusing to do business with any person who appoints as agent, or does business with, any non-member of the association, (3) boycotting or otherwise refusing to do business with any mutual or participating company or any person who does business with such mutual or participating company, or (4) boycotting or otherwise refusing to do business with any person who solicits insurance directly from policyholders.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Fixing

Commissions and Terms for Sale of Insurance.—A local association of insurance agents and solicitors was prohibited by a consent decree from entering into any understanding, in concert, with any member or any other person having the purpose or effect of (1) fixing commissions or other terms for the sale of insurance or (2) fixing the terms or conditions for the brokerage of insurance.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Allocation of

Customers and Commissions.—A local association of insurance agents and solicitors was prohibited by a consent decree from entering into any understanding, in concert, with any member or any other person having the purpose or effect of (1) soliciting business from or writing insurance for any person or (2) allocating or assigning customers, fields, or commissions for the sale of insurance. The association was also enjoined from receiving commissions for the sale of insurance and from preventing or restricting any of its members from engaging in any business.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Associations—Policing

Activities.—An association of insurance agents and solicitors was prohibited by a consent decree from (1) inspecting the records or otherwise policing the business activities of its members or any other person, (2) exacting fines or other punitive damages from any of its members or any other person, (3) receiving or claiming any commissions for the sale of insurance, or (4) preventing or restricting any of its members from engaging in any business.

Department of Justice Enforcement and Procedure—Consent Decree—Enforcement—Government

Report.—A consent decree entered against an association of insurance agents and solicitors provided that the Government should file in the record, 18 months from the date of the decree, a report of the progress on the compliance of the association and its membership with the decree. The report, to be based on the books and records of the association and its members, was to show “specifically whether or not the boycotts outlawed by this decree have been continued by the membership after the illegal by-laws have been repealed” by the association.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; M. Hepburn Many, United States Attorney; and William D. Kilgore, Jr., Baddia J. Rashid, Edward R. Kenney, William H. Rowan, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendant: Kantrow, Spaht, West & Kleinpeter by Carlos G. Spaht.

Final Judgment

J. SKELLY WRIGHT, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 27, 1958, the defendant Baton Rouge Insurance Exchange, having appeared and filed its answer to such complaint denying the substantive allegations thereof; and the plaintiff and said defendant by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudications of" any issue of fact or law herein, and without any admission by any of the parties 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 signatory hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of the parties herein. The complaint states claims against the defendant 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," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, corporation, partnership, association or any other business or legal entity;
- (B) "Exchange" shall mean the defendant Baton Rouge Insurance Exchange, a corporation organized and existing under the laws of the State of Louisiana;
- (C) "Insurance" shall mean fire, marine, aircraft, casualty, surety and allied insurance and each of them;
- (D) "Mutual company" shall mean any insurance company in which proprietorship rights are vested in the policyholders rather than stockholders;
- (E) "Participating company" shall mean any insurance company which allows its policyholders to participate in the profits of the company through the issuance of dividends or otherwise;
- (F) "Agent" shall mean any person engaged in the business of selling insurance as the representative of an insurance company.

III

[*Applicability of Decree*]

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

IV

[*Cancellation of By-Laws*]

(A) The defendant Exchange is ordered and directed, within thirty (30) days from the date this Judgment becomes final, to terminate and cancel in their entirety the following by-laws, rules and regulations:

Article III—Par. 13

Article VII—In its entirety

Article VIII—In its entirety

Article XI—Par. on Committee on Agency Appointments

Article XII—Par. on Committee on Agency Appointments

Article XIII—In its entirety

Article XIV—In its entirety

(B) The defendant Exchange and all those acting in concert with it are enjoined and restrained from maintaining, adopting, adhering to, enforcing or claiming any rights under any by-law, rule or regulation contrary to or inconsistent with any provision of this Final Judgment.

V

[*Agreements Prohibited*]

The defendant Exchange is enjoined and restrained from adopting, entering into, maintaining, adhering to, enforcing or claiming any rights under any by-law, rule or regulation, or any contract, agreement, or understanding, plan or program in concert with any member or any other person, having the purpose or effect of:

- (A) Any member or any person boycotting or otherwise refusing to do business with any person;
- (B) Fixing, establishing, maintaining or determining commissions or other terms or conditions for the sale of insurance;
- (C) Fixing, establishing, maintaining or determining the terms or conditions for the brokerage of insurance;
- (D) Any member or any person boycotting or otherwise refusing to do business with any person who appoints as agent, or does business with, any non-member of the Exchange;
- (E) Any member or any person boycotting or otherwise refusing to do business with (1) any mutual company or any participating company, or (2) any person who does business with such mutual company or participating company;
- (F) Any member or any person boycotting or otherwise refusing to do business with any person who solicits insurance directly from policyholders;
- (G) Soliciting business from or writing insurance for any person;
- (H) Allocating, dividing or assigning customers, fields or commissions for the sale of insurance.

VI

[*Practices Prohibited*]

Defendant Exchange is enjoined and restrained from;

- (A) Inspecting or claiming the right to inspect the books or records or otherwise policing the business activities, of any of its members or any other person;
- (B) Exacting or claiming the right to exact fines or other punitive damages from any of its members or any other person;
- (C) Receiving or claiming any commissions for the sale of insurance;
- (D) Preventing or claiming any member of the Exchange from engaging in any business.

VII

[*Notice of Judgment*]

Defendant Exchange is ordered and directed to:

- (A) Mail an exact copy of this Final Judgment to each of its members and to each insurance company represented by any member of the Exchange;
- (B) Furnish to each person applying for membership in said Exchange a copy of this Final Judgment upon acceptance of his application for membership;
- (C) Require as a condition of membership in defendant Exchange that each member agree to comply with the terms of the Final Judgment;
- (D) File, within forty-five (45) days from the date that this judgment becomes final, an affidavit with the Clerk of this Court certifying that the copies of the Final Judgment have been mailed in accordance with the provisions of Subsection (A) of this Section VII.

VIII

[*Permissive Provision*]

Nothing contained in this Final Judgment shall prevent defendant Exchange from expelling from membership any member adjudicated guilty of violating the State of Louisiana insurance laws.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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 the defendant Exchange made to its principal office, be permitted (1) access during the office hours of the Exchange to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Exchange which relate to any of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of the Exchange and without restraint or interference from it to interview officers or employees of said Exchange, who may have counsel present. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant 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 provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized employee of the Department except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

[*Report on Compliance*]

Eighteen months from the date this judgment becomes effective, the Government shall file in the record a report of the progress on the compliance of the Exchange and its membership with this decree. This report shall be based on an analysis of the books and records of the Exchange and the books and records of the individual members thereof. The report shall show specifically whether or not the boycotts outlawed by this decree have been continued by the membership after the illegal by-laws have been repealed by the Exchange.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either party 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 modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.