

U. S. vs. THE BORDEN COMPANY, ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION.

Civil Action No. 2088.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

THE BORDEN COMPANY; BOWMAN DAIRY COMPANY; SIDNEY WANZER & SONS, INC.; HUNTING DAIRY COMPANY; CAPITOL DAIRY COMPANY; WESTERN-UNITED DAIRY COMPANY; WESTERN DAIRY COMPANY, INC.; UNITED DAIRY COMPANY; INTERNATIONAL DAIRY COMPANY; ASSOCIATED MILK DEALERS, INC.; MILK DEALERS BOTTLE EXCHANGE; PURE MILK ASSOCIATION; MILK WAGON DRIVERS' UNION LOCAL 753; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA; D. B. PECK; FRANCIS H. KULLMAN, JR.; M. J. METZGER; H. T. ADAMSON; J. F. PHILIPPI; H. W. COMFORT; S. M. ROSS; CHARLES L. DRESSSEL; HARRY M. RESER; W. A. BARIL; O. O. SMAHA; R. W. NESSLER; GORDON B. WANZER; H. STANLEY WANZER; HYMAN I. FREED; LOUIS G. GLICK; MAURICE S. DICK; SAMUEL S. DICK; LOUIS JANATA; PAUL POTTER; DON N. GEYER; EDWARD F. COOKE; E. E. HOUGHTBY; F. J. KNOX; LOWELL D. ORANGER; JOHN P. CASE; ROBERT G. FITCHIE; JAMES KENNEDY; STEVE SUMNER; FRED C. DAHMS; F. RAY BRYANT; JOHN O'CONNOR; DEFENDANTS.

CONSENT DECREE

The United States of America, having filed its complaint herein on September 14, 1940; each of the defendants appeared and filed its answer to such complaint, and asserted the truth of its answer and its innocence of any violation of law; each of the defendants have agreed and consented to the making and entry of this decree without taking any testimony and without findings of fact, upon condition that neither such consent nor this decree shall be considered as evidence, admission or adjudication that the defendants or any of them have violated any law of the United States; and on further condition that this decree shall not be admitted in evidence or be regarded as of probative effect in any civil action or proceeding of a private nature brought under the antitrust laws of

the United States of America; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction.

Now, Therefore, it is Ordered, Adjudged, and Decreed as follows:

I

That the Court has jurisdiction of the subject matter hereof and of all persons and parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the Acts amendatory thereof and supplemental thereto.

II

That whenever the following words are used in this decree, they shall be deemed to have the respective meanings set forth below:

(a) *Producer*—A producer is any person, firm or corporation owning or possessing one or more cows and selling as milk or cream a part or all of the milk produced by such cows.

(b) *Member-Producer*—A member-producer is a producer belonging to the Pure Milk Association, a corporation organized and incorporated on January 11, 1926, under an Act of the General Assembly of the State of Illinois, entitled "An Act in relation to agricultural cooperative associations and societies" approved June 21, 1923, as amended, or a producer who has authorized Pure Milk Association to market milk produced under his control.

(c) *Independent Producer*—An independent producer is a producer not belonging to the Pure Milk Association and who has not authorized Pure Milk Association to market milk produced under his control.

(d) *Distributor*—A distributor is a person, firm or corporation engaged in the business of receiving, pasteurizing, bottling, distributing or selling milk or cream in the City of Chicago.

(e) *Dairy Products*—Dairy products means milk, cream, butter, eggs and cottage cheese.

(f) *Vendor*—A vendor is a person, firm or corporation engaged in the business of buying milk or other dairy products at pasteurizing or bottling plants in the City of Chicago for resale in whole or in part in the City of Chicago.

III

That the defendants and each of them and their and each of their successors, officers, agents, employees, representatives, and all persons acting under, through or for them, be and they hereby are enjoined and restrained:

(a) from combining or conspiring together or engaging with one another, to fix, maintain or control prices to be paid to producers by distributors for milk or cream shipped into the City of Chicago;

(b) from combining or conspiring together or engaging with one another to fix, maintain or control prices for the sale of milk or cream by distributors in the City of Chicago;

(c) from combining or conspiring together or engaging with one another or others to restrict, limit or control or to restrain or obstruct the supply of milk or cream moving into the City of Chicago.

IV

That the defendants, Associated Milk Dealers, Inc.; The Borden Company; Bowman Dairy Company; Sidney Wanzer & Sons, Inc.; Hunding Dairy Company; Capitol Dairy Company; Western-United Dairy Company; Western Dairy Company, Inc.; United Dairy

Company; International Dairy Company; D. B. Peck; Francis H. Kullman, Jr.; M. J. Metzger; H. T. Adamson; J. F. Philippi; H. W. Comfort; S. M. Ross; Charles L. Dressel; Harry M. Reser; W. A. Baril; O. O. Smaha; R. W. Nessler; Gordon B. Wanzer; H. Stanley Wanzer; Hyman I. Freed; Louis G. Glick; Maurice S. Dick; Samuel S. Dick; Louis Janata; Paul Potter; and their and each of their successors, officers, agents, employees, representatives, and all persons acting under, through or for them, be, and they hereby are, enjoined and restrained:

(a) from agreeing with any producer or group of producers as to what any distributor not a party to the agreement shall pay for milk or cream to be resold in the City of Chicago;

(b) from agreeing with any producer, distributor, or group of producers or distributors, upon prices to be charged by distributors for milk or cream sold in the City of Chicago;

(c) from inducing, compelling, or coercing, or taking any action to induce, compel, or coerce, any distributor or distributors in the City of Chicago to charge prices fixed by any other distributor for milk or cream;

(d) from interfering with, obstructing, regulating, or controlling the manner or method of sale or distribution of milk or cream used by any distributor in the City of Chicago;

(e) from combining or conspiring together, or with any other distributor to hinder or prevent prospective or existing distributors from engaging in the business of distributing milk or cream in the City of Chicago;

(f) from agreeing with one another or with any other distributor to refrain, and in accordance with such agreement, refraining from competing for customer accounts in connection with the sale of milk or cream in the City of Chicago;

(g) from controlling, regulating, or interfering with the membership, internal affairs or management of the defendant Pure Milk Association or any other farm group or cooperative association of producers selling milk or cream;

(h) from controlling, regulating, or interfering with the internal management or membership of the defendant Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.

And said defendants named in this paragraph IV of this decree, their officers, agents, employees, representatives, successors, and each of them, are further enjoined and restrained from carrying out or performing the provisions of any contract or agreement or from making, carrying out or performing any provisions in any contract or agreement which provisions are inconsistent with, contrary to, or prohibited by the terms of this decree, and from aiding, abetting or assisting others to do any of the things prohibited by this decree.

V

That the defendants, Milk Dealers' Bottle Exchange, R. W. Nessler, F. A. Webb, Francis H. Kullman, Jr., H. Stanley Wanzer, Maurice S. Dick, their and each of their successors, officers, agents, employees, representatives, and all persons acting under, through or for them, be, and they hereby are, enjoined and restrained:

(a) from delaying or refusing to return milk bottles or other containers in its possession to any distributor entitled to possession thereof whose accounts are not in arrears and who is complying with reasonable and non-discriminatory rules and regulations of the Milk Dealers' Bottle Exchange designed to assure return of bottles and other containers and to prevent the use thereof by other than the rightful owner;

(b) from refusing to transfer on the records of the Milk Dealers' Bottle Exchange any share

of its capital stock purchased or title to which is otherwise acquired by any distributor;

(c) from refusing to grant to any distributor, requesting and offering in good faith to pay therefor, the same service in the collection and return of bottles and other containers upon the same terms and conditions as are granted to any other distributor having a comparable volume of bottles and other containers, whether or not any such distributor is a stockholder of the Milk Dealers' Bottle Exchange; provided, however, that said Milk Dealers' Bottle Exchange may require any such distributor to enter into a written contract with it, before performing any such service;

(d) from establishing a rate of compensation for the services of the Milk Dealers' Bottle Exchange in excess of that necessary to provide a reasonable return upon the investment therein;

(e) from imposing any condition or conditions upon the collection or return of milk bottles or other containers other than those necessary to assure return of bottles and other containers to the rightful owner, to prevent the use of such bottles or other containers by other than the rightful owner thereof, and to provide for payment to the Exchange for services rendered;

(f) nothing herein contained shall prevent said Milk Dealers' Bottle Exchange from paying or delivering over, from time to time, a portion or all of its assets to its shareholders, by way of dividends (cash, liquidation, dissolution or otherwise); and nothing herein contained shall prevent the legal dissolution, consolidation or merger of said Milk Dealers' Bottle Exchange or the amendment or surrender of its corporate franchise or charter.

At any time after three years from the effective date of this decree, the defendants, or any of them, upon

reasonable notice to the Attorney General of the United States of America, may apply for the deletion or modification of this paragraph V on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce within the meaning of the antitrust acts, regardless of whether or not such economic or competitive conditions are new or unforeseen.

VI

That the defendants Pure Milk Association, Don N. Geyer, Edward F. Cooke, E. E. Houghtby, F. J. Knox, Lowell D. Oranger and John P. Case, and their and each of their successors, officers, agents, employees, representatives, and all persons acting under, through or for them, be and they hereby are enjoined and restrained;

(a) from preventing, hindering, restraining or delaying, by threats, coercion, intimidation or violence, the production or sale of milk or cream by independent producers for shipment into the City of Chicago, or the transportation or delivery of such milk or cream into the City of Chicago, or the sale, delivery or distribution of such milk or cream in the City of Chicago;

(b) from discriminating in prices charged for milk or cream between different distributors in the City of Chicago or giving or granting any preference, priority or rebate in any form whatsoever to, in favor of, or against any distributor or distributors in the City of Chicago, provided, however, that nothing contained herein shall prevent the granting of differentials or adjustments which make only due allowances for differences in quantity, grade, quality, the purpose for which the milk or cream is to be used or consumed, location of farm where produced, place of delivery, or differences in the cost of sale or transportation;

(c) from interfering with, obstructing, hampering, regulating, or controlling the sale or distribution of milk or cream by distributors in the City of Chicago or the manner or method of such sale or distribution, or the price charged by, or sales policies of, any such distributor;

(d) from requiring any distributor or distributors in the City of Chicago to purchase milk or cream from independent producers only upon terms and conditions specified by Pure Milk Association or agreed upon between Pure Milk Association and the said distributor or distributors;

(e) from fixing, determining, or agreeing upon the price to be paid by distributors in the City of Chicago to independent producers for milk or cream;

(f) from agreeing with any of the defendants herein or with any other distributor to fix or maintain prices for the sale of milk or cream by distributors in the City of Chicago;

(g) from coercing or compelling independent producers to become members of the Pure Milk Association or to enter into agreements with it, by threats, intimidation or acts of violence;

(h) from refusing to sell milk to any distributor because of his sales policies, the manner or method of distribution employed by him or the price at which he sells milk or cream;

(i) from adopting or enforcing a base and surplus plan, or any other plan designed to equalize or level out the quantity of milk produced by member-producers, without first submitting such plan to the Secretary of Agriculture of the United States at least 60 days prior to the effective date thereof. If the Secretary shall within such time determine that the plan submitted is not fair and equitable as between the members of

the Pure Milk Association, and notify the Association accordingly, it shall not become effective.

And said defendants named in this paragraph VI of this decree, their officers, agents, employees, representatives, successors, and each of them, are further enjoined and restrained from carrying out or performing the provisions of any contract or agreement or from making, carrying out or performing any provisions in any contract or agreement which provisions are inconsistent with, contrary to, or prohibited by the terms of this decree, and from aiding, abetting or assisting others to do any of the things prohibited by this decree.

VII

That nothing contained in this decree shall prevent or be construed to prevent the Pure Milk Association from selecting its members or from adopting reasonable rules and regulations for the conduct of its members; nor shall this decree prevent or be construed to prevent the defendants named in paragraph IV, or any of them, or any other distributor or distributors and the defendants named in paragraph VI from bargaining collectively with each other, or from making and entering into lawful contracts concerning prices, terms and conditions for the purpose and sale of milk, subject to the limitations of this decree; and without limiting the general provisions of this paragraph, such contracts may provide that the purchaser shall be entitled to as favorable terms as other purchasers from the same seller, and may provide for the arbitration of disputes arising in connection with the purchase and sale of milk, provided, however, that any such arbitration shall be conducted by arbitrators selected, one by the distributors, one by the Pure Milk Association and one by the Senior District Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, or in the event the parties thereto agree, such arbitration shall be conducted in the manner provided by Section 3 of the Agricultural Marketing Agreement Act of 1937, 50 Stat. 248, 7 U. S. C. 671.

Except as to acts or conduct specifically prohibited herein the provisions of this decree shall not be deemed or construed to restrict any rights conferred or duties imposed upon the defendants named in paragraph VI by the provisions of the Clayton Act (15 U. S. C. Sec. 17), the Capper Volstead Act (7 U. S. C. 291, 292) or any other act of Congress dealing with or relating to agricultural cooperative associations.

VIII

That the defendants, Milk Wagon Drivers' Union Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, and John O'Connor, and their and each of their successors, officers, agents, employees, representatives, members, and all persons acting under, through or for them, be and they hereby are enjoined and restrained:

(a) from inducing, coercing, compelling, or attempting to induce, coerce or compel, any distributor or distributors to pay or to charge any price or prices fixed or advocated by said defendants or by any other distributor for milk or cream purchased or sold for distribution or distributed in the City of Chicago;

(b) from obstructing, hampering or preventing any distributor from selling to or soliciting any customer or customers of any other distributor or distributors;

(c) from preventing, hampering, or obstructing or placing restrictions upon sales by any distributor to or through stores, milk depots, vending machines, vendors, or others; the size or type of containers or the size or type of vehicles used by any distributor or distributors; the kind or kinds of dairy products distributed or sold by any distributor or distributors; the advertising programs or policies of any distributor or dis-

tributors or the manner of solicitation of business by any distributor or distributors; the hiring of solicitors or the use or employment of more than one employee on any vehicle used in the sale and delivery of milk or other dairy products by any distributor or distributors; the purchase of the business, assets, or capital stock of any other person, firm or corporation engaged in the sale, processing, or distribution of fluid milk or other dairy products; provided, that nothing contained herein shall be construed to prevent the defendants named in paragraph VIII from seeking, securing, entering into, or using lawful means to enforce agreements as to the minimum number of employees to be used on any vehicle or as to wages, commissions, hours, and working conditions of or for any employee or solicitor; nor shall this decree be construed to prevent said defendants from (1) refusing to deliver products other than dairy products or (2) requiring compensation for the delivery of free goods; provided, further, that the restraining provisions of this sub-paragraph (c) shall not be construed to prevent the defendants named in this paragraph VIII from using lawful means to effect a lawful unionization of milk wagon drivers, vendors or others delivering milk in the City of Chicago, but it is not intended that this provision shall be construed to be an admission by any of the parties hereto or a finding by the court that the unionization of vendors is lawful or unlawful.

(d) from denying membership, by unreasonable or discriminatory initiation fees or dues or by any other means or practices, to duly qualified drivers employed by any distributor because such distributor fails or refuses to pay or charge any price or prices fixed or advocated by any defendant or by others for milk or cream purchased or

sold for distribution or distributed in the City of Chicago;

(e) from preventing, hindering, restraining or delaying the transportation or delivery of milk or cream into the City of Chicago, or the sale, delivery or distribution of milk or cream within the City of Chicago by means of force or violence or threats of force or violence;

(f) from denying or refusing membership in the Milk Wagon Drivers' Union, Local 753, to duly qualified drivers in the employ of any distributor or distributors, because such distributor or distributors induce or attempt to induce member producers to withdraw from the Pure Milk Association or who purchase milk from producers who are not members of the Pure Milk Association;

(g) from compelling or coercing, or attempting to compel or coerce, prospective independent distributors to acquire the business of existing distributors as a condition precedent to entering into the milk business in the City of Chicago;

(h) from compelling or coercing or attempting to compel or coerce any distributor not to serve any customer served by any other distributor or not to take customers away from any other distributor;

(i) from refusing to enter into a labor contract with any distributor except on condition that such distributor shall agree (1) not to serve any customer served by any other distributor, or (2) not to take any customer away from any other distributor.

And said defendants named in this paragraph VIII, their successors, officers, agents, employees, representatives, members, and each of them, are further enjoined and restrained from carrying out or performing the provisions of any contract or agreement or from mak-

ing, carrying out or performing any provisions in any contract or agreement which provisions are inconsistent with, contrary to, or prohibited by the terms of this decree, and from aiding, abetting, or assisting others to do any of the things prohibited by this decree.

IX

That nothing contained in this decree shall prevent or be construed to prevent the defendants named in paragraph VIII hereof from:

(a) seeking, securing, entering into, or using lawful means to enforce, agreements with distributors or other employers in the City of Chicago covering wages, hours, or working conditions;

(b) seeking to bargain collectively or bargaining collectively for and on behalf of the members of Milk Wagon Drivers' Union, Local 753;

(c) lawfully and peacefully picketing, striking or refusing to work.

That nothing contained in this decree shall prevent or be construed to prevent the Milk Wagon Drivers' Union, Local 753, from selecting its membership (except as provided in subparagraphs (d) and (f) of paragraph VIII), or from adopting and enforcing reasonable rules and regulations for the conduct of its members, nor shall this decree be construed to prevent the defendants named in paragraph VIII and the defendants named in paragraph IV hereof, or any of them, from bargaining collectively, or making or entering into lawful contracts respecting terms and conditions of employment, including the right to arbitrate disputes with respect to the terms thereof.

X

That nothing contained in this decree shall prevent or be construed to prevent the defendants, or any of them, from exercising any right, or performing any

act, granted or required by any order of, or marketing agreement entered into with, the Secretary of Agriculture issued or made pursuant to the Agricultural Marketing Agreement Act of 1937, or acts amendatory thereof or supplementary thereto.

XI

That if obligations are imposed upon, or rights granted to, the defendants, or any of them, by the laws or regulations of any state or of the Federal Government, which are inconsistent with the terms of this decree, the Court, upon application of the defendants or any of them and reasonable notice to the Attorney General, and to the other parties hereto, shall from time to time enter orders relieving such defendants, or any of them, from compliance with any requirements of this decree in conflict with such laws or regulations; and the right of the defendants to make such applications and to obtain such relief is expressly granted.

XII

That for the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice as to time and subject matter to the defendants made to the principal office of the defendants, be permitted (1) reasonable access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, relating to any of the matters contained in this decree (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, and subject to any legally recognized privilege, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters; and the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time

be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

XIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree 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 decree, for the modification thereof, for the enforcement of compliance therewith or for the punishment of violations thereof.

XIV

That this decree shall have no effect with respect to the defendants' acts and conduct without the Continental United States of America, nor to their acts and conduct within the Continental United States of America except as such acts and conduct relate to or affect the production, transportation, sale or delivery of milk or cream for consumption in the City of Chicago.

XV

That this decree shall become effective twenty (20) days after the date hereof.

XVI

That this decree be entered without costs to any of the parties.

Dated September 16, 1940.

CHARLES E. WOODWARD,
United States District Judge.