

## **APPENDIX A**

### **FINAL JUDGMENTS**

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.  
AMERICAN COLUMN AND LUMBER COMPANY, *et al.*

In Equity No.: 751

Year Judgment Entered: 1920

In Equity No. 751.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

AMERICAN COLUMN AND LUMBER COMPANY, AND  
OTHERS, DEFENDANTS.

FINAL DECREE.

This cause having come on to be heard on March 8, 9 and 10, 1920, upon the application of the plaintiff for a preliminary injunction as prayed in the bill of complaint and the plaintiff having exhibited its sworn bill of complaint, affidavits and exhibits in support thereof, and the defendants having filed and read their sworn answer, affidavits and exhibits in opposition, and the court having ordered a preliminary injunction to issue as prayed; and the parties having now come again and stipulated that the proceedings heretofore had on the application for a preliminary injunction may be treated as having the effect in all respects of a final hearing, and that a final decree may be entered thereon; and the court having considered the evidence and the arguments of counsel and being fully advised, it is ordered, adjudged and decreed:

First: That an injunction issue out of and under the seal of this Court perpetually commanding the defendants

herein, namely: (Here follow the names.) both individually and in their respective capacities as officers, agents, or members of the so-called "Open Competition Plan" of the American Hardwood Manufacturers' Association or otherwise, and all persons combining, conspiring, agreeing or arranging with them, and all other persons whomsoever:

(a) Not to make any further oral agreements at the next regular monthly meetings of the members of the so-called "Open Competition Plan" of the American Hardwood Manufacturers' Association, at Cincinnati, Ohio, on the second Tuesday of the month; at New Orleans, La., on the second Thursday of the month; at Memphis, in this District, on the second Friday of the month; and at Little Rock, Ark., on the third Thursday of the month; or at any other time or place, to eliminate such competition as may still persist amongst the said defendants;

(b) Not to take any further steps whatsoever in compiling, printing or distributing through the said F. R. Gadd, "Manager of Statistics," or otherwise, at Memphis, in this District, or elsewhere, the next issues of the monthly "Stock Reports," monthly "Production Reports" and weekly "Sales Reports" of the said so-called "Open Competition Plan," or any other issues of any such or similar reports;

(c) Not to discuss prices which have been charged, or are to be charged by the defendants, or by any other persons, for hardwood lumber, at any of the coming association meetings of the defendants;

(d) Not to exchange, through the said F. R. Gadd, "Manager of Statistics," or otherwise, written predictions to the effect that high prices for hardwood lumber will continue to be maintained and enhanced;

(e) Not to distribute through the said F. R. Gadd, "Manager of Statistics," or otherwise, any further written or printed statements, explanations, or arguments, inciting the defendants to maintain and enhance their prices for hardwood lumber;

(f) To forthwith take appropriate action, as members

and officers of the above-described association and so-called "Open Competition Plan," to abandon, and to effectively announce the abandonment of all efforts whatsoever, by or through such association, having the purpose or tendency to maintain or enhance the price of hardwood lumber; and

(g) Not to do any further act or thing whatsoever having the purpose or tendency to continue in effect or to further the conspiracy described in the Bill of Complaint to maintain and to enhance the prices of hardwood lumber.

Second: That the Bill of Complaint be and the same is hereby dismissed as to defendants, West Virginia Timber Company, Bon Air Coal & Iron Company, Dierks Lumber & Coal Company, J. W. James, J. C. Eakle, and E. L. Kooster, without costs as to them and without prejudice to any of the parties.

Third: That the plaintiffs recover of the defendants its reasonable costs herein to be taxed by the Clerk and that execution issue therefor.

JNO. E. MCCALL,

*United States District Judge.*

Entered April 21, 1920.

UNITED STATES v.  
AMERICAN COLUMN AND LUMBER COMPANY, *et al.*

In Equity No.: 751

Year Modification Entered: 1934

IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF TENNESSEE, WESTERN  
DIVISION.

In Equity No. 751.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

AMERICAN COLUMN AND LUMBER COMPANY, AND  
OTHERS, DEFENDANTS.

CONSENT ORDER MODIFYING FINAL INJUNCTION.

This cause having come on for further hearing on the  
application of the defendants whose names are appended  
hereto for a modification of the decree hereinbefore en-

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## DECREEES AND JUDGMENTS

tered, in order to permit them to abide by and comply with, and to enjoy the benefits of the provisions of the National Industrial Recovery Act, being an Act of Congress (Public No. 67, 73d Congress, approved June 16th, 1933), as embodied in the Code of Fair Competition for the Lumber and Timber Products Industries, approved by the President on August 19, 1933, or otherwise, and the plaintiff having appeared through Garland Draper, Esq., Assistant United States Attorney for the Western District of Tennessee, and the defendants having appeared through their solicitor, Seneca B. Anderson, and the United States of America, plaintiff herein, having indicated its consent to such modification in open Court, and the Court being fully advised in the premises, it is hereby ordered that the injunction heretofore granted be modified as follows:

That nothing contained in the aforesaid injunction shall be deemed or construed to prevent the defendants, whose names are appended hereto, or any of them, from doing the acts required of and/or permitted to defendants as members of the Lumber and Timber Products Industries by the provisions of the Code of Fair Competition of the Lumber and Timber Products Industries now in effect.

GORE, *District Judge.*

February 21, 1934.

## LIST OF DEFENDANTS.

- F. R. Gadd, Memphis, Tennessee.  
 38 Anderson Tully Company, Memphis, Tennessee.  
 83 Ashby Veneer & Lumber Co., Jackson, Tenn., Mr. Ashby.  
 240 Bellgrade Lumber Company, Memphis, Tenn., Jno. W. McClure.  
 314 Bradley Lumber Co. of Ark., Warren, Ark., R. W. Fullerton.  
 134 W. P. Brown & Sons Lbr. Co., Louisville, Ky.  
 283 J. M. Card Lumber Company, Chattanooga, Tenn., Fred Arn.  
 3 Cherry River Boom & Lbr. Co., Philadelphia, Pa., F. Noel Pierce.  
 271 Crossett Lumber Company, Crossett, Ark., J. S. Garretson.  
 126 Davis Brothers Lumber Co., Ansley, Louisiana, F. M. Sparks.  
 112 Weis-Dillman Lbr. Co., Caruthersville, Mo., Frank Dillman.  
 118 Eastman Gardiner Hardwood Co., Laurel, Miss., J. W. Bailey.  
 67 Faust Bros. Lumber Co., Jackson, Miss., C. L. Faust.

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- 147 Fordyce Lumber Co., Fordyce, Ark., S. A. Williams.  
 45 Hillyer-Deutsch-Edwards, Inc., Oakdale, Louisiana.  
 177 King Creek Lbr. Co., New Willard, Texas, Fortune Bright.  
 13 Little River Lbr. Co., Townsend, Tenn., R. A. Rufstetter.  
 253 J. C. Love Lumber Company, Pine Bluff, Ark.  
 296 McGraw-Curran Lbr. Co., Yazoo City, Miss., James A. McGraw.  
 61 Mansfield Hardwood Lbr. Co., Shreveport, La., H. B. Johnson.  
 203 Miller Lumber Co., Marianna, Ark., Max Miller.  
 312 Mobile River Sawmill Co., Mt. Vernon, Ala., Lee Robinson.  
 142 Nickey Brothers, Memphis, Tenn., S. M. Nickey.  
 161 Pioneer Lumber Co., St. Louis, Mo., T. W. Fry.  
 17 C. L. Ritter Lumber Co., Huntington, W. Va., B. B. Burns.  
 18 W. M. Ritter Lbr. Co., Columbus, Ohio, J. W. Mayhew.  
 327 Dixon & Shannon, Memphis, Tennessee.  
 80 Southern Pine Lbr. Co., Texarkana, Texas, A. Temple.  
 266 Tschudy Lumber Co., Kansas City, Mo., Jay Tschudy.  
 288 Darnell-Love Lumber Co., Leland, Miss., F. T. Turner.  
 34 Vestal Lumber & Mfg. Co., Knoxville, Tenn., Ed. Vestal.  
 2 Wilderness Lumber Co., Nallen, West Va., J. J. Nallen.  
 298 Williams and Voris Lbr. Co., Chattanooga, Tenn., Lyle Motlow.  
 31 A. Wilson & Co., Wilson, Arkansas, I. J. Wilson.  
 197 Wood Mosaic Co., New Albany, Ind., C. F. Anderson.  
 207 Bedna Young Lumber Co., Jackson, Tenn., H. J. Schafer.  
 122 Hoffman Bros., Ft. Wayne, Ind., H. B. Sale.  
 26 Geo. C. Brown & Co., Memphis, Tenn., H. B. Weis.

UNITED STATES v.  
AMERICAN COLUMN AND LUMBER COMPANY, *et al.*

In Equity No.: 751

Year Modification Entered: 1934



IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF TENNESSEE, WESTERN  
DIVISION.

In Equity No. 751.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

AMERICAN COLUMN AND LUMBER COMPANY, AND  
OTHERS, DEFENDANTS.

AMENDMENT TO CONSENT ORDER MODIFYING  
FINAL INJUNCTION.

By consent of both parties, the consent order modifying final injunction which was heretofore granted and which provided "that nothing contained in the aforesaid injunction shall be deemed or construed to prevent the defendants whose names are appended hereto, or any of them, from doing the acts required of and/or permitted

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DECREES AND JUDGMENTS

to defendants as members of the Lumber and Timber Products Industries by the provisions of the Code of Fair Competition of the Lumber and Timber Products Industries now in effect," is amended to include in the list of defendants the following:

- 5 Gennett Lumber Company, Franklin, N. C., Andrew Gennett,
- 12 Long-Bell Lumber Co., Kansas City, Mo., W. W. Beebe,
- 53 Farris Hardwood Lbr. Co., Nashville, Tenn., W. M. Farris,
- 167 Northern Ohio Cooperage and  
Lumber Company, Parkin, Arkansas, H. C. Coldren,
- 191 Chapman & Dewey  
Lumber Company, Marked Tree, Arkansas, W. B. Chapman.

(Signed) GORE, *Judge*.

March 13, 1934.

UNITED STATES v.  
MEMPHIS RETAIL PACKAGE STORES  
ASSOCIATION, INC., *et al.*

Civil Action No.: 2672

Year Judgment Entered: 1956

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Retail Package Stores Association, Inc., et al., U.S. District Court, W.D. Tennessee, 1956 Trade Cases ¶68,383, (Jun. 15, 1956)**

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United States v. Memphis Retail Package Stores Association, Inc., et al.

1956 Trade Cases ¶68,383. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No. 2672. Filed June 15, 1956.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Coercion and Intimidation—Refusal To Deal.**—A retail liquor dealers' association and wholesale and retail liquor dealers were prohibited by a consent decree from entering into any understanding among themselves or with any other person to (1) control or fix prices, mark-ups, margins of profit, or conditions at which alcoholic beverages are sold, (2) control or fix discounts, (3) induce, compel, or coerce any person to adhere to prices or conditions at which alcoholic beverages will be sold, (4) communicate with any manufacturer or wholesaler for the purpose of inducing or coercing such manufacturer or wholesaler to establish, issue, or enforce minimum or suggested resale prices, mark-ups, margins of profit, or discounts, (5) communicate with any manufacturer or wholesaler for the purpose of inducing or coercing such manufacturer or wholesaler to refrain from selling, or to otherwise discriminate in the sale of, alcoholic beverages, (6) boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with, any person engaged in the purchase, sale, or distribution of alcoholic beverages, or (7) induce or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages. Each of the defendants was prohibited, for a period of two years, from suggesting, persuading, or coercing any manufacturer or wholesaler to establish, issue, or enforce minimum or suggested resale prices for alcoholic beverages.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Rebates and Preferences.**—A retail liquor dealers' association and wholesale and retail liquor dealers were prohibited by a consent decree from entering into any understanding among themselves or with any other person to “push” or give preference to alcoholic beverages on the condition or understanding that the manufacturer or wholesaler thereof establish, issue, or enforce minimum or suggested resale prices, mark-ups, margins of profit, or discounts.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—information Exchange and Price Lists.**—A retail liquor dealers' association and wholesale and retail liquor dealers were each prohibited, for a period of one year, from disseminating to any person price lists or other price information containing minimum or suggested resale prices at which alcoholic beverages are to be sold.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Membership.**—A retail liquor dealers' association and wholesale and retail liquor dealers were each prohibited by a consent decree from belonging to or participating in any organization, or concerted plan or program, for policing prices at which alcoholic beverages are sold. The decree prohibited each of the defendants from organizing, becoming a member of, or participating in the activities of, any trade association or other organization, the purposes or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of the decree.

**Resale Price Fixing—Fair Trade—Consent Decree—Specific Relief—Cancellation of Fair Trade Contracts.**—A retail liquor dealers' association and wholesale and retail liquor dealers were each ordered by a consent decree to cancel all fair trade contracts which fix or control the resale price of any alcoholic beverages in the Memphis trading area, and, to the extent that each defendant elects to sell alcoholic beverages in the Memphis trading area during the period of two years from the effective date of the decree, to do so at prices individually determined, without reference to established fair trade prices.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Dissolution of Association.**—A retail liquor dealers' association was ordered by a consent decree to cause the dissolution

of the association, and, within sixty days after the date of entry of the decree, its officers and directors were required to file an affidavit with the court setting forth the steps taken to comply with the terms of such order.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—**

**Proposing Legislation.**—A consent decree entered against a retail liquor dealers' association and wholesale and retail liquor dealers provided that nothing contained in a specified provision of the decree should be deemed to prohibit them from proposing or supporting legislation or the adoption of local, state, or federal regulations relating to the purchase, sale, or distribution of alcoholic beverages, or from individually taking action required by local, state, or federal legislation or regulation.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Millsaps Fitzhugh, United States Attorney; Worth Rowley, W. D. Kilgore, Jr., Raymond K. Carson, Walter W. Dosh, John H. Earle, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Harry C. Pierotti, Memphis, Tenn., for Memphis Retail Package Stores Association, Inc., Memphis Wholesale Liquor Company, Inc., Bertram M. Bates, Elfo J. Grisanti, Charles A. Wilder, Mose Karnowsky, Joseph E. Kiersky, Victor L. Robilio, and Frank J. Cianciola.

**Final judgment**

MARION S. BOYD, District Judge [ *In full text* ] : The plaintiff, United States of America, having filed its complaint herein on June 30, 1955, and the consenting defendants having appeared and filed their several answers to said complaint denying the substantive allegations thereof and any violation of law; and the plaintiff and said consenting defendants, by their attorney, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by plaintiff or any consenting defendant in respect to any such issue; and the Court having considered the matter and being duly advised:

Now, therefore, without the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of plaintiff and the consenting defendants, it is hereby

Ordered, adjudged and decreed, as follows:

I

[ *Sherman Act* ]

This Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendants. The complaint states a claim upon which relief may be granted against the consenting defendants 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

[ *Definitions* ]

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or any other business or legal entity;

(B) "Alcoholic Beverage" shall mean any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spirituous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per cent or more of alcohol by volume, which is fit for beverage purposes, except beer;

(C) "Manufacturer" shall mean any person who distills, rectifies, blends, ferments or bottles any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or who, as a distributor of alcoholic beverages, sells to a wholesaler for resale to a retailer;

(D) "Memphis Trading Area" shall mean Shelby County, Tennessee, and other Counties in the State of Tennessee supplied with alcoholic beverages by Memphis wholesalers.

(E) "Consenting defendants" shall mean each and all of the following defendants:

Memphis Retail Package Stores Association, Inc.

Memphis Wholesale Liquor Company, Inc.

Bertram M. Bates

Elfo J. Grisanti

Charles A. Wilder

Mose Karnowsky

Joseph E. Kiersky

Victor L. Robilio

Frank J. Cianciola

### III

#### [ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any of the consenting defendants shall apply to such defendants, their officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment, a consenting defendant and the respective officers, agents, servants, employees and attorneys thereof shall be deemed to be one person when acting in such capacity.

### IV

#### [ *Concerted Practices Prohibited—Permissive Provision*]

The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, concerted plan or program among themselves or with any other person, to:

(A) Control, fix, raise, adopt, stabilize or maintain prices, mark-ups, margins of profit, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons;

(B) Control, fix, raise, adopt, stabilize, maintain or eliminate discounts at which alcoholic beverages are sold or offered for sale to third persons;

(C) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, or to police or enforce adherence to, prices, terms or conditions at which alcoholic beverages will be sold to any person, or to any group or class of persons;

(D) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which alcoholic beverages are sold or offered for sale to third persons;

(E) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to refrain from selling, or to otherwise discriminate in the sale of, alcoholic beverages to any person or to any group or class of persons;

(F) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages;

(G) Induce, compel or coerce, or attempt to induce, compel or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages;

(H) "Push" or give preference to alcoholic beverages on the condition or understanding that the manufacturer or wholesaler thereof establish, adopt, issue or enforce, or agree to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts thereof.

Nothing in this Section IV shall be deemed to prohibit consenting defendants from proposing or supporting legislation or the adoption of local, state, or federal regulations, relating to the purchase, sale or distribution of alcoholic beverages or from individually taking action required by local, state or federal legislation or regulation.

## V

### *[ Dissemination of Price Information]*

(A) Each of the consenting defendants is enjoined and restrained, for a period of one year from the effective date of this final judgment, from disseminating, or preparing for dissemination, to any person price lists or other price information containing minimum or suggested resale prices at which alcoholic beverages are to be sold or offered for sale to third persons;

(B) Each of the consenting defendants is enjoined and restrained from belonging to or participating in any organization, or concerted plan or program, for policing prices at which alcoholic beverages are sold or offered for sale by any person.

## VI

### *[ Cancellation of Fair Trade Contracts]*

(A) Each consenting defendant is ordered and directed to cancel all fair trade contracts to which he is a party and which fix or control the resale price of any alcoholic beverages in the Memphis trading area, and, to the extent that such defendant elects to sell alcoholic beverages in the Memphis trading area during the period of two years from the effective date of this Final Judgment, to do so at prices individually determined by himself, without reference to fair trade prices established thereon.

(B) Each of the consenting defendants is enjoined and restrained for the two year period provided for in subsection (A) of this Section VI from urging, suggesting, persuading or coercing any manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices for alcoholic beverages.

## VII

### *[ Dissolution of Association]*

(A) Defendant Memphis Retail Package Stores Association, Inc. is ordered and directed to cause, within thirty (30) days after the date of entry of this Final Judgment, the dissolution of the Association and, within sixty (60) days after the date of entry of this Final Judgment its officers and directors shall file an affidavit with this Court, and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with the terms of subsection (A) of this Section VII;

(B) The consenting defendants are jointly and severally enjoined and restrained from organizing, becoming a member of, or participating in the activities of, directly or indirectly, any trade association or other organization, the purposes or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment.

## 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 consenting defendant, made to its principal office, be permitted:

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

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

Upon request said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Judgment. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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 is retained 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 modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violation thereof.



UNITED STATES v.  
MEMPHIS RETAIL PACKAGE STORES  
ASSOCIATION, INC., *et al.*

Civil Action No.: 2672

Year Judgment Entered: 1956  
(Adding Additional Defendants)

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MEMPHIS RETAIL PACKAGE STORES  
ASSOCIATION, INC., ET AL,

Defendants.

Civil Action No. 2672

Filed: July 12, 1956

DEFAULT JUDGMENT

The plaintiff, United States of America, filed its complaint herein on June 30, 1955 against two trade associations, two corporations and twelve individuals. All defendants other than the defendant Memphis Wholesale Liquor Dealers Association have filed their several answers to said complaint denying the substantive allegations thereof and any violation of law. The defendant Memphis Wholesale Liquor Dealers Association failed to file any responsive pleading to the complaint herein within the time required by law or within the further extended time approved by this Court, and on the 20th day of June, 1956 the plaintiff, United States of America, moved this Court for a judgment by default against the defendant Memphis Wholesale Liquor Dealers Association on the ground that said defendant had failed to plead or otherwise defend as required by the Federal Rules of Civil Procedure.

The motion for judgment by default came on for hearing before this Court on July 5, 1956 and it appearing that the summons and complaint in this action were duly served on the defendant Memphis Wholesale Liquor Dealers Association on July 21, 1955, that the

time of the said defendant to plead or otherwise defend expired on October 10, 1955 and that the defendant has failed to plead or otherwise defend as provided for by the Federal Rules of Civil Procedure, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

### I

This Court has jurisdiction of the subject matter hereof and of the plaintiff and of the defendant Memphis Wholesale Liquor Dealers Association. The complaint states a claim upon which relief may be granted against the defendant Memphis Wholesale Liquor Dealers Association 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

The provisions of this Default Judgment applicable to defendant Memphis Wholesale Liquor Dealers Association shall apply to such defendant, its officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise.

### III

Defendant Memphis Wholesale Liquor Dealers Association is ordered and directed to cause, within thirty (30) days after the date of entry of this Default Judgment, the dissolution of the Association and, within sixty (60) days after the date of entry of this Default Judgment its secretary or members shall file an affidavit with this Court, and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with the terms of this section.

## IV

Until such time as the defendant Memphis Wholesale Liquor Dealers Association has fully complied with the provisions of Section III of this Default Judgment, and for the purpose of securing compliance with this Default 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 the defendant Memphis Wholesale Liquor Dealers Association, made to the principal offices of its secretary or members, be permitted:

(A) Access during reasonable hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant or its members relating to any matters contained in this Default Judgment, and

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

Upon request said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Default Judgment as may from time to time be necessary to the enforcement of said Judgment. No information obtained by the means provided in this Section IV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Default Judgment or as otherwise required by law.

V

Until such time as the defendant Memphis Wholesale Liquor Dealers Association has fully complied with the provisions of Section III of this Default Judgment, jurisdiction is retained for the purpose of enabling any of the parties to this Default Judgment to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Default Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: July 12, 1956

/s/ MARION S. BOYD  
United States District Judge

UNITED STATES v.  
MEMPHIS RETAIL PACKAGE STORES  
ASSOCIATION, INC., *et al.*

Civil Action No.: 2672

Year Judgment Entered: 1956  
(Adding Additional Defendants)

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 2672 - Civil Action

UNITED LIQUORS CORPORATION,  
SIDNEY PERLBERG, KING KLEIN,  
HUBERT R. LEWIS, ALEX  
BARZIZZA and GEORGE B. HART,

Defendants.

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U. S. ATTORNEY  
MEMPHIS, TENN.

FINAL JUDGMENT

PREAMBLE

This case was tried upon the complaint, answers of the defendants United Liquors Corporation, Sidney Perlberg, King Klein, Hubert R. Lewis, Alex P. Barzizza and George B. Hart, and evidence taken in court between July 5, 1956 and July 12, 1956. The Court having duly filed its findings of fact and conclusions of law.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I.

(A) This Court has jurisdiction of the subject matter of this cause of action and of each of the defendants named in the preamble of this judgment;

(B) The complaint states a cause of action against the said defendants, and each of them, under Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209; 15 U.S.C. Sec. 1, as amended, commonly known as the Sherman Act;

(C) The said defendants have combined and conspired to restrain interstate trade and commerce in the sale of alcoholic beverages within the State of Tennessee in violation of Section 1 of the

## II

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or any other business or legal entity;

(B) "Alcoholic Beverage" shall mean any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spiritous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per cent or more of alcohol by volume, which is fit for beverage purposes, except beer;

(C) "Manufacturer" shall mean any person who distills, rectifies, blends, ferments or bottles any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or who, as a distributor of alcoholic beverages, sells to a wholesaler for resale to a retailer;

(D) "Memphis Trading Area" shall mean Shelby County, Tennessee, and other Counties in the State of Tennessee supplied with alcoholic beverages by Memphis wholesalers.

## III

The provisions of this Final Judgment applicable to any of the said defendants shall apply to such defendants, their officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment, a defendant and the respective officers, agents, servants, employees and attorneys thereof shall be deemed to be one person when acting in such capacity.

## IV

The said defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, concerted plan or program among themselves or with any other person,



(A) Control, fix, raise, adopt, stabilize or maintain prices, mark-ups, margins of profit, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons;

(B) Control, fix, raise, adopt, stabilize, maintain or eliminate discounts at which alcoholic beverages are sold or offered for sale to third persons;

(C) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, or to police or enforce adherence to, prices, terms or conditions at which alcoholic beverages will be sold to any person, or to any group or class of persons;

(D) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which alcoholic beverages are sold or offered for sale to third persons;

(E) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to refrain from selling, or to otherwise discriminate in the sale of, alcoholic beverages to any person or to any group or class of persons;

(F) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages;

(G) Induce, compel or coerce, or attempt to induce, compel or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages;

(H) "Push" or give preference to alcoholic beverages on the condition or understanding that the manufacturer or wholesaler thereof establish, adopt, issue or enforce, or agree to establish,

margins of profit or discounts thereon.

Nothing in this Section IV shall be deemed to prohibit the said defendants from proposing or supporting legislation or the adoption of local, state, or federal regulations, relating to the purchase, sale or distribution of alcoholic beverages or from individually taking action required by local, state or federal legislation or regulation.

#### V

(A) Each of the said defendants is enjoined and restrained, for a period of three years from the effective date of this final judgment, from disseminating, or preparing for dissemination, to any person price lists or other price information containing minimum or suggested resale prices, mark-ups, or margins of profit for alcoholic beverages to be sold or offered for sale to third persons;

(B) Each of the said defendants is enjoined and restrained from belonging to or participating in any organization, or concerted plan or program, for policing prices at which alcoholic beverages are sold or offered for sale by any person.

#### VI

(A) Each of the said defendants is enjoined for a period of five years from the effective date of this final judgment, from entering into, adhering to, or pricing pursuant to any fair trade contract which purports to fix or control the resale price of any alcoholic beverage in the Memphis trading area, and, to the extent that any such defendant elects to sell alcoholic beverages in the Memphis trading area during said period of five years to do so at prices individually determined by himself, without reference to fair trade prices established thereon.

(B) Each of the said defendants is enjoined and restrained for a period of five years from the effective date of this final judgment from urging, suggesting or otherwise inducing any manufacturer

or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices for alcoholic beverages.

#### VII

The said defendants are jointly and severally enjoined and restrained from organizing, becoming a member of, or participating directly or indirectly in the activities of any trade association or other organization, the purposes or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment.

#### VIII

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 said defendant, made to its principal office, be permitted:

(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 matters contained in this final Judgment, and

(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 request each of said defendants shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said judgment. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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

Jurisdiction is retained 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 modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

X

Judgment is entered against the said defendants for all costs to be taxed in this proceeding.

Dated: August 1st, 1936.

Marion S. Boyd  
United States District Judge

UNITED STATES v.  
DOVER CORPORATION, *et al.*

Civil Action No.: 2908

Year Judgment Entered: 1957

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA,        | ) |                       |
|                                  | ) |                       |
| Plaintiff,                       | ) |                       |
|                                  | ) |                       |
| v.                               | ) | Civil Action No. 2908 |
|                                  | ) |                       |
| DOVER CORPORATION, OLIVER IRON & | ) | Filed: FEB 12 1957    |
| STEEL CORPORATION and            | ) |                       |
| OLIVER TYRONE CORPORATION,       | ) |                       |
|                                  | ) |                       |
| Defendants.                      | ) |                       |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on the 11th day of June, 1956, and the defendants, by their attorneys, having appeared and filed their answers to such complaint and this Court having entered its Order herein dated 2/12/57 joining Oliver Tyrone Corporation as a party defendant herein and amending the caption of this cause, and plaintiff and said defendants having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment's constituting any evidence of any wrongful act by the defendants or any of them or any admission in respect to any issue of fact or law;

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

ORDERED, ADJUDGED AND DECREED as follows:



I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief can be granted 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, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Dover" shall mean defendant Dover Corporation, a Delaware Corporation;

(B) "Oliver" shall mean defendant Oliver Iron & Steel Corporation, a Pennsylvania Corporation, and defendant Oliver Tyrone Corporation, a Pennsylvania Corporation, and each of them;

(C) "Hydraulic elevators" shall mean any hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more fixed levels, and in which the energy is applied by means of a liquid under pressure. In addition, for the purposes of this Judgment, the term hydraulic elevator shall also include service station and garage type lifts for automobiles or buses;

(D) "Pumps" shall mean hydraulic pumps, including component parts and accessories thereof, used or capable of use with hydraulic elevators;

(E) "Patents" shall mean any, some or all claims in the following United States Letters Patent which relate to pumps:

(1) Letters patent owned or controlled by defendant Oliver on the date of entry of this Final Judgment;

(2) Letters patent which may be granted on applications for Letters Patent which applications are on file in the United States Patent Office and owned or controlled by defendant Oliver on the date of entry of this Final Judgment;

(3) Divisions, continuations, reissues or extensions of the Letters Patent described above in clauses (1) and (2);

(F) "Person" shall mean any individual, partnership, firm, corporation or any other business or legal entity.

### III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV

The defendants and each of them are ordered and directed to terminate and cancel, within thirty (30) days from the date of entry of this Final Judgment, the Agreement, dated October 14, 1954, between Dover and Oliver, including all agreements amendatory or supplemental thereto, and the defendants and each of them are enjoined and restrained from entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program contrary to or inconsistent with the terms of this Final Judgment.

### V

The defendants and each of them are enjoined and restrained from, directly or indirectly, entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with each other:



- (A) Not to sell pumps to any third person;
- (B) Not to buy pumps from any third person.

VI

(A) So long as it engages in the business of manufacturing pumps defendant Oliver is ordered and directed unconditionally to offer to sell ~~add to~~ sell such pumps, upon reasonable and non-discriminatory terms and conditions to any person, other than Dover, making written request therefor. Failure by Oliver to deliver such pumps to such person within ninety (90) days of its receipt of such request, or such later date as may be specified in the request, shall constitute prima facie evidence of violation of this Final Judgment.

(B) Defendant Oliver is enjoined and restrained from:

(1) Selling, transferring or assigning to Dover any of its business, assets (including patents or patent rights) or goodwill, relating to pumps, except upon such terms and conditions, other than dollar price, as may be approved by the plaintiff herein;

(2) Selling or offering to sell pumps upon the condition or understanding that the purchaser thereof buy all or any portion of his pumps from Oliver;

(3) Selling or offering to sell pumps upon the condition or understanding that the purchaser thereof not buy pumps from any other source;

(4) Selling or offering to sell pumps to Dover embodying improvements, changes, alterations, modifications or additions unless such pumps are offered for sale to its other customers upon an equal and non-discriminatory basis.

VII

Defendant Dover is enjoined and restrained from:

(A) Hindering, limiting or restricting any person from purchasing pumps from defendant Oliver; and

(B) Hindering, limiting or restricting Oliver from selling pumps to any person, provided, however, that in the event Oliver should hereafter cease selling pumps to Dover, nothing herein contained shall prevent Dover from lawfully enforcing any patent and/or other property rights it may then have in and to pumps.

VIII

Defendant Oliver is ordered and directed, within sixty (60) days from the date of entry of this Final Judgment to send a letter setting forth the substantive terms of this Final Judgment to each of its pump customers and to each person who has made written inquiry of Oliver concerning the purchase of pumps.

IX

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 any defendant made to its principal office, be permitted (1) 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 subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of

each defendant who may have counsel present, regarding any such matters. Upon such written request, each of the defendants shall submit such reports in writing to the Department of Justice with respect to 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 representative 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

Jurisdiction is retained 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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Marion S. Bard  
United States District Judge

Dated: February 12, 1957.

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

For the Plaintiff:

/s/ Victor R. Hansen  
Assistant Attorney General

/s/ Harry N. Burgess  
Harry N. Burgess

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

/s/ Charles L. Beckler  
Charles L. Beckler

/s/ Baddia J. Rashid  
Baddia J. Rashid

/s/ William P. Cassedy  
William P. Cassedy

/s/ Charles F. B. McAleer  
Charles F. B. McAleer

/s/ Charles H. McEnerney, Jr.  
Charles H. McEnerney, Jr.

For the Defendant Dover Corporation:

Clifton & Mack, Attorneys

/s/ Clarence Clifton  
By: Clarence Clifton

Curtis, Mallet-Prevost, Colt & Mosle

/s/ Kenneth N. LaVine  
By: Kenneth N. LaVine  
A member of the firm  
63 Wall Street  
New York, New York

For the Defendants, Oliver Iron &  
Steel Corporation and Oliver Tyrone  
Corporation:

/s/ Lucius E. Burch, Jr.  
By: Lucius E. Burch, Jr.  
128 N. Court Street  
Memphis, Tennessee

UNITED STATES v.  
MEMPHIS RETAIL APPLIANCE  
DEALERS ASSOCIATION, INC., *et al.*

Civil No.: 3016

Year Judgment Entered: 1957

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Retail Appliance Dealers Association, Inc.; C. D. Akers & Sons Hardware & Furniture Co., Inc. (also known as C. D. Akers & Sons, Inc.); Home Equipment Company; Wallace Johnston Appliances, Inc.; Sam Fortas House Furnishing Company, Inc.; Ace Appliance Company; Hollis Appliance Company; and Ben Gruber, doing business as Gruber Appliance Company., U.S. District Court, W.D. Tennessee, 1957 Trade Cases ¶68,704, (Apr. 25, 1957)**

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United States v. Memphis Retail Appliance Dealers Association, Inc.; C. D. Akers & Sons Hardware & Furniture Co., Inc. (also known as C. D. Akers & Sons, Inc.); Home Equipment Company; Wallace Johnston Appliances, Inc.; Sam Fortas House Furnishing Company, Inc.; Ace Appliance Company; Hollis Appliance Company; and Ben Gruber, doing business as Gruber Appliance Company.

1957 Trade Cases ¶68,704. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No. 3016. Filed April 25, 1957. Case No. 1308 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Fixing Resale Prices and Limitations on Trade-In Allowances—Boycotting—Retail Appliance Dealers and Trade Association.**—An association of retail appliance dealers was prohibited by a consent decree from entering into any understanding or plan to (1) fix or maintain manufacturers' suggested retail list prices on appliances, (2) fix or maintain maximum limitations on trade-in allowances for used appliances, (3) boycott or otherwise refuse to do business with any person, or (4) refuse to advertise appliances at prices lower than the manufacturer's list prices, or refuse to advertise fixed trade-in allowances for used appliances. Retail appliance dealers were prohibited from combining with each other or with any other retail appliance dealer to take any action, through the association or any other association, to do any of the acts prohibited above.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Amendment of Association's By-Laws—Self Enforcement Provision.**—A retail appliance dealers' association was ordered by a consent decree to (1) cancel and revoke any provision of its by-laws, rules, and regulations which is inconsistent with any provision of the decree, (2) serve upon each of its present members a copy of the decree, (3) institute such proceedings as may be necessary to amend its by-laws so as to incorporate therein a provision of the decree and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that it and other defendants are bound, (4) furnish to all its present and future members a copy of its by-laws, as amended, and (5) expel from membership any member who violates the provisions of its by-laws containing the provision of the decree when it has knowledge of such violation.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and W. D. Kilgore, Jr., Baddia J. Rashid, Philip L. Roache, Jr., Harry N. Burgess, Charles F. B. McAleer, and Stanley R. Mills, Jr., Attorneys, Department of Justice.

For the defendants: Hal Gerber, Memphis, Tenn., and Abe Fortas, of Arnold, Fortas & Porter, Washington, D. C.

**Final Judgment**

MARION S. BOYD, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on November 1, 1956, and each of the defendants having appeared herein, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial

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or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by the defendants in respect of 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 hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[ *Sherman Act*]

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim against the defendants and each of them 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.

[ *Definitions*]

As used in this Final Judgment:

- (A) "Defendant Association" means the defendant Memphis Retail Appliance Dealers Association (MRADA);
- (B) "Defendant retail dealers" means all of the defendants and each of them, except the Defendant Association;
- (C) "Defendants" means the Defendant Association and the defendant retail dealers;
- (D) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (E) "Appliances" means gas and electrical equipment used primarily in the home such as refrigerators, home freezers, ranges, television sets, room air conditioners, fans, water heaters, radios, washers, ironers, vacuum cleaners, clothes dryers, dishwashers, disposals and similar items.

III.

[ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant and to his or its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[ *Practices Enjoined*]

The Defendant Association is hereby enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program to:

- (a) Fix, establish, or maintain manufacturers' suggested retail list prices on appliances;
- (b) Fix, establish, or maintain maximum limitations on trade-in allowances for used appliances;
- (c) Boycott or otherwise refuse to do business with any person;
- (d) Refuse to advertise appliances at prices lower than the manufacturer's list prices, or refuse to advertise fixed trade-in allowances for used appliances.

V.

[ *Action Through Association*]

The defendant retail dealers are hereby enjoined and restrained from combining, conspiring, or agreeing with each other or with any other retail appliance dealer to take any action through the defendant association, any successor thereto or any other association with the intent, purpose, or effect of doing any of the acts or things prohibited by Section IV of the judgment, *Provided* that nothing in this final judgment shall prevent any retailer defendant from exercising any rights it may have pursuant to the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act, and the laws of the State of Tennessee relating to resale price maintenance in effect pursuant thereto and consistent therewith; *Provided further* that nothing in this final judgment shall be construed to prevent any defendant retail dealer from unilaterally exercising his right to select the distributors, dealers, consumers, or other persons with whom he will deal.

## VI.

### [ Notice of Judgment]

Each Defendant is hereby ordered and directed to give notice of the terms of this Final Judgment to its officers, directors, and employees and to take such steps as are necessary to cause such persons to comply with said terms.

## VII.

### [ Amendment of By-Laws]

Defendant Association is ordered and directed:

- (a) To cancel and revoke any provision of its by-laws, rules, and regulations which is inconsistent with any of the provisions of this Final Judgment;
- (b) Within thirty (30) days after the entry hereof to serve by mail upon each of its present members a conformed copy of this Final Judgment and to file with this Court and with the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, proof by affidavit of service upon each such member;
- (c) To institute forthwith and to complete within thirty (30) days from entry of this Judgment such proceedings as may be appropriate and necessary to amend its bylaws so as to incorporate therein Section IV of this Judgment and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that the defendants herein are now bound;
- (d) To furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (a) of this Section VII;
- (e) To expel promptly from membership any present or future member of the defendant association who shall violate the provisions of its by-laws which shall incorporate Section IV of this Judgment when the said defendant association shall have knowledge of such violation.

## VIII.

### [ Inspection and Compliance]

For the purpose of securing compliance with the 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, be permitted, subject to any legally-recognized privilege, (a) reasonable 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, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in Charge of the Antitrust Division, shall submit such written reports



with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section VIII 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.

**IX.**

*[ Jurisdiction Retained]*

Jurisdiction of this cause 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 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 of compliance therewith and punishment of violations thereof.

UNITED STATES v.  
FISCHER LIME & CEMENT CO., *et al.*

Civil Action No.: 4067C

Year Judgment Entered: 1961

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Fischer Lime & Cement Co., John A. Denie's Sons Co., and V. E. Schevenell Construction Co., Inc., U.S. District Court, W.D. Tennessee, 1960 Trade Cases ¶69,892, (Jan. 5, 1961)**

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United States v. Fischer Lime & Cement Co., John A. Denie's Sons Co., and V. E. Schevenell Construction Co., Inc.

1960 Trade Cases ¶69,892. U.S. District Court, W.D. Tennessee, Western Division. Civil No. 4067C. Filed January 5, 1961. Case No. 1561 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Noncompetitive Bids—Trade Association—Specific Relief—Consent Decree.**—Ready-mixed concrete dealers were enjoined by a consent decree from entering into any agreement with any other supplier of ready-mixed concrete or with any ready-mixed concrete trade association to fix prices, eliminate or suppress competition, submit noncompetitive bids, cause or permit an association to circulate a price list, and exchange price information on bids or sales. Also prohibited was any influence upon another person to submit noncompetitive bids and to exchange bid information. Membership in a trade association, the activities of which are inconsistent with the consent decree, was prohibited. Independent price lists based upon individual costs were ordered. For five years, a sworn statement to the effect that the prices quoted were arrived at independently, must be submitted with each governmental agency bid.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, Baddia J. Rashid, William D. Kilgore, Jr., Wilford L. Whitley, Jr., John F. Hughes, and Sidney Harris, Attorneys, Department of Justice.

For the defendants: John S. Montedonico for Fischer Lime & Cement Co.; Edward P. A. Smith for John A. Denie's Sons, Inc.; and John T. Shea for V. E. Schevenell Construction Co., Inc.

**Final Judgment**

BOYD, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 19, 1960, the defendants having appeared and the plaintiff and defendants by their respective attorneys having consented to the entry of this Final Judgment before any testimony has been taken herein,

Now, therefore, upon said consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

**I.**

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states, claims upon which relief may be granted against the defendants and each of them 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.**

[ *Definitions* ]

As used in this Final Judgment:

(A) "Ready-mixed concrete" includes all types and grades of concrete composed of cement, sand, gravel, broken stone or other aggregate which is mixed together with water;

(B) "Person" shall mean any individual, corporation, partnership, association or other legal entity.

III.

[ *Applicability*]

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

IV.

[ *Practices Prohibited*]

Defendants are each enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any supplier or manufacturer of ready-mixed concrete or any association or central agency of or for such suppliers or manufacturers, to:

- (A) Fix, determine, establish or maintain prices or other terms or conditions for the sale of ready-mixed concrete to any third person;
- (B) Eliminate or suppress competition in the sale of ready-mixed concrete.
- (C) Submit noncompetitive, collusive, or rigged bids for supplying ready-mixed concrete to any third person;
- (D) Cause or permit any association or central agency of or for such suppliers or manufacturers or any similar organization to publish, print or circulate any price sheets or price lists for the sale of ready-mixed concrete;
- (E) Exchange information concerning bids, prices or other terms or conditions for the sale to any third person of ready-mixed concrete prior to such information becoming public knowledge.

V.

Defendants are each enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to any other person that he quote or charge noncompetitive or specified prices or other terms or conditions of sale for ready-mixed concrete to any third person;
- (B) Disclosing to or exchanging with any other supplier or manufacturer of ready-mixed concrete, prior to the opening of bids submitted for the supplying of ready-mixed concrete.
  - (1) the intention to submit or not to submit a bid,
  - (2) the fact that a bid has or has not been submitted, or
  - (3) the content of any bid.

VI.

Defendants are each enjoined and restrained from belonging to or participating in any of the activities of any trade association or other organization, the activities or objectives of which are inconsistent with any of the terms of this Final Judgment.

VII.

[ *Independent Prices*]

Each of the defendants are ordered and directed within sixty days following the date of entry of this Final Judgment to cease utilizing any cost or pricing formulae, or part thereof, which has not been independently arrived at by such defendant on the basis of its individual cost figures and individual judgment as to profits, as a means of determining in whole or in part the price or prices at which it will sell ready-mixed concrete.

**VIII.**

Each defendant shall within sixty days following the entry of Final Judgment:

- (A) Withdraw its presently effective price lists for ready-mixed concrete (or, where no price list has been issued, withdraw its presently prevailing prices);
- (B) Individually review its prices for ready-mixed concrete on the basis of its individual cost figures and individual judgment as to profits; and
- (C) Issue a new price list for ready-mixed concrete (or, where no price list has been issued, issue new prices) on the basis of such independent review.

**IX.**

*[ Sworn Statement For Bids]*

Each defendant is ordered and directed for a period of five years from the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for ready-mixed concrete submitted to any governmental body or agency thereof. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

**X.**

*[ Enforcement 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 said defendant, made to its principal office, be permitted:

- (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 matters contained in this Final Judgment; and
- (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 request, each of said defendants shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

**XI.**

*[ Retention of Jurisdiction]*

Jurisdiction is retained 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 modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of the violations thereof.

**APPENDIX A**

*[ Affidavit]*

The undersigned hereby certify that:

1. The attached bid to ....(name of recipient of bid) dated .... has been arrived at by ..... (name of defendant) unilaterally and without collusion with any other vendor of ready-mixed concrete;
2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor, to their best knowledge and belief, by any employee or agent of .... name of defendant), to any person not an employee or agent of .... (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

Dated: .....

.....  
Signature of principal officer.

.....  
Signature of person who prepared bid.

.....  
Signature of person who signed bid.

.....  
Notarization

UNITED STATES v.  
DURABLE BUILDING MATERIALS COUNCIL, INC., *et al.*

Civil Action No.: 4068C

Year Judgment Entered: 1961

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Durable Building Materials Council, Inc.; Fischer Lime & Cement Co.; Fay Realty Co.; Crump Lime and Cement Co., Inc.; Standard Builders Supplies, Inc.; John A. Denie's Sons Co.; Fant & Anderson Co.; Memphis Lime and Cement Co., U.S. District Court, W.D. Tennessee, 1960 Trade Cases ¶69,891, (Jan. 5, 1961)**

[Click to open document in a browser](#)

United States v. Durable Building Materials Council, Inc.; Fischer Lime & Cement Co.; Fay Realty Co.; Crump Lime and Cement Co., Inc.; Standard Builders Supplies, Inc.; John A. Denie's Sons Co.; Fant & Anderson Co.; Memphis Lime and Cement Co.

1960 Trade Cases ¶69,891. U.S. District Court, W.D. Tennessee, Western Division. Civil No. 4068C. Filed January 5, 1961. Case No. 1563 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Price Fixing—Noncompetitive Bids—Trade Association—Specific Relief—Consent Decree.**—Cement dealers and a trade association were enjoined by a consent decree from entering into any agreement with any other cement supplier or trade association to fix prices, eliminate or suppress competition, submit noncompetitive bids, cause or permit an association to circulate a price list, and exchange price information on bids or sales. Also prohibited was any influence upon another person to submit noncompetitive bids and to exchange bid information. Membership in a trade association, the activities of which are inconsistent with the consent decree, are prohibited, and defendant trade association is to be dissolved. For five years, a sworn statement to the effect that the prices quoted have been arrived at independently must be submitted with each bid on government business.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, Baddia J. Rashid, William D. Kilgore, Jr., Wilford L. Whitley, Jr., John F. Hughes, and Sidney Harris, Attorneys, Department of Justice.

For the defendants: Thomas L. Robinson for Durable Building Materials Council, Inc.; John S. Montedonico for Fischer Lime and Cement Co.; Charles B. Dudley for Fay Realty Co.; George P. Douglass for Crump Lime and Cement Co., Inc.; George E. Morrow for Standard Builders Supplies, Inc.; Edward P. A. Smith for John A. Denie's Sons, Inc.; Caruthers Ewing for Fant & Anderson Co.; and Don G. Owens for Memphis Lime and Cement Co.

**Final Judgment**

BOYD, District Judge *[In full text]* : Plaintiff, United States of America, having filed its complaint herein on September 19, 1960, the defendants having appeared and the plaintiff and defendants by their respective attorneys having consented to the entry of this Final Judgment before any testimony has been taken herein,

Now, therefore, upon said consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

*[ Jurisdiction]*

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims upon which relief may be granted against the defendants and each of them 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.

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II

[ *Definitions*]

As used in this Final Judgment:

- (A) "Cement" includes all types and grades of portland cement and masonry cement;
- (B) "Person" shall mean any individual, corporation, partnership, association or other legal entity;
- (C) "Durable" shall mean the defendant Durable Building Materials Council, Inc.

III

[ *Applicability*]

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

IV

[ *Practices Enjoined*]

Defendants are each enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any supplier of cement or any association or central agency of or for such suppliers, to:

- (A) Fix, determine, establish or maintain prices or other terms or conditions for the sale of cement to any third person;
- (B) Eliminate or suppress competition in the sale of cement;
- (C) Submit noncompetitive, collusive, or rigged bids for supplying cement to any customer or prospective customer;
- (D) Cause or permit defendant Durable or any similar organization to publish, print or circulate any price sheets or price lists for the sale of cement;
- (E) Exchange information concerning bids, prices or other terms or conditions for the sale of cement prior to such information becoming public knowledge.

V

Defendants are each enjoined and restrained from directly or indirectly:

- (A) Urging, influencing or suggesting to any other person that he quote or charge noncompetitive or specified prices or other terms or conditions of sale for cement to any third person;
- (B) Disclosing to or exchanging with any other supplier of cement, prior to the opening of bids submitted for the supplying of cement,
  - (1) the intention to submit or not to submit a bid,
  - (2) the fact that a bid has or has not been submitted, or
  - (3) the content of any bid.

VI

[ *Dissolution of Trade Association*]

Defendants are each ordered and directed to forthwith dissolve and disband the defendant Durable, and the remaining defendants are each enjoined and restrained from belonging to or participating in any of the activities

of any trade association or other organization, the activities or objectives of which are inconsistent with any of the terms of this Final Judgment.

## VII

### [ *Independent Prices* ]

Each of the defendants, other than defendant Durable, are ordered and directed within sixty days following the date of entry of this Final Judgment to cease utilizing any cost or pricing formulae, or part thereof, which has not been independently arrived at by such defendant on the basis of its individual cost figures and individual judgment as to profits, as a means of determining in whole or in part the price or prices at which it will sell cement.

## VIII

Each defendant, except defendant Durable, shall within sixty days following the entry of Final Judgment:

- (A) Withdraw its presently effective price lists for cement (or, where no price list has been issued withdraw its presently prevailing prices);
- (B) Individually review its prices for cement on the basis of its individual cost figures and individual judgment as to profits; and
- (C) Issue a new price list for cement (or, where no price list has been issued, issue new prices) on the basis of such independent review.

## IX

Each defendant, other than the defendant Durable, is ordered and directed for a period of five years from the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for cement submitted to any governmental body or agency thereof. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

## X

### [ *Enforcement 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 said defendant, made to its principal office, be permitted:

- (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 matters contained in this Final Judgment; and
- (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 request, each of said defendants shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[ *Retention of Jurisdiction*]

Jurisdiction is retained 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 modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of the violations hereof.

**APPENDIX A**

*Affidavit*

The undersigned hereby certify that:

1. The attached bid to .... (name of recipient of bid) dated .... has been arrived at by .....(name of defendant) unilaterally and without collusion with any other vendor of cement;
2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor, to their best knowledge and belief, by any employee or agent of .... (name of defendant)., to any person not an employee or agent of .... (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

Dated: .....

Signature of principal officer.

.....

Signature of person who prepared bid

.....

Signature of person who signed bid.

Notarization

UNITED STATES v.  
MEMPHIS BOARD OF REALTORS

Civil Action No.: 72-218

Year Judgment Entered: 1972

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Board of Realtors., U.S. District Court, W.D. Tennessee, 1972 Trade Cases ¶74,056, (Jul. 27, 1972)**

[Click to open document in a browser](#)

United States v. Memphis Board of Realtors.

1972 Trade Cases ¶74,056. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No 72-218. Entered July 27, 1972. Case No. 2256, Antitrust Division, Department of Justice.

### **Sherman Act**

**Price Fixing—Prices for Services—Real Estate Brokerage Commissions.**—An association of real estate brokers was prohibited under the terms of a consent decree from fixing any rate or amount of commissions charged by any of its members in connection with real estate transactions. Distributing or forcing adherence to rate schedules and enforcing or suggesting fee splitting are prohibited. A declaration that all commission rates shall be negotiable between the broker and his client must be included in all association contracts and forms.

**Trade Association Membership—Real Estate Board—Nondiscriminatory Requirements—Part Time Brokers.**—An association of real estate brokers was required to admit to membership any person duly licensed by the appropriate governmental authority including those persons who engage in the real estate business on a part time basis. Membership fees that are not related to the cost of providing and maintaining the services of the organization are prohibited.

**For plaintiff:** Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, William E. Swope and Roy L. Ferree, Dept. of Justice. **For defendant:** Armstrong Allen Braden Goodman McBride and Prewitt, by Everett B. Gibson, Memphis, Tenn.

### **Final Judgment**

MCRAE, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 27, 1972 and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

#### **I**

##### **[ Jurisdiction]**

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. Section 1), commonly known as the Sherman Act.

#### **II**

##### **[ Definitions]**

As used in this Final Judgment:

(A) "Board" shall mean the defendant Memphis Board of Realtors;

(B) "Multiple Listing Service" (hereinafter "MLS") shall mean any plan or program the members of which submit for common circulation listings of real properties;

(C) "Person" shall mean any individual, partnership, firm, association, corporation, member of the Board or other business or legal entity.

### III

#### [ *Applicability* ]

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

### IV

#### [ *Commission Rates* ]

The Board, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

- (A) Fixing, establishing, or maintaining any rate or amount of commissions or other fees to be charged by any of the members of the Board in connection with the sale, lease or management of real estate;
- (B) Urging, recommending, or suggesting that any of the members of the Board adhere to any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged in connection with the sale, lease or management of real estate;
- (C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged by any of the members of the Board in connection with the sale, lease or management of real estate;
- (D) Taking any punitive action against any person where such action is based upon the person's failure or refusal to adhere to any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged in connection with the sale, lease or management of real estate;
- (E) Fixing, maintaining, suggesting, or enforcing any percentage division of commissions or other fees between the selling and listing broker;
- (F) Adopting, adhering to, maintaining or enforcing any by-law, rule, regulation, plan or program which would prohibit any member from doing business with any person;
- (G) Establishing, maintaining, or enforcing any fees for membership in the Board or its MLS which are not related to the cost of providing and maintaining the services of the organization and providing necessary and reasonable operational reserves; or
- (H) Adopting, adhering to, maintaining or enforcing any by-law, rule, regulation, plan or program relating to advertising by its members which is contrary to or inconsistent with any provision of this Final Judgment.

### V

#### [ *By-Laws* ]

The defendant is ordered to insert in all by-laws, rules, regulations, contracts and other forms which previously contained a set or recommended commission rate, a provision that commission rates for the sale, lease or management of property shall be negotiable between the broker and his client.

### VI

#### [ *Membership* ]

(A) The defendant is ordered and directed to admit to membership any person duly licensed by the appropriate governmental authority including such persons who engage in the real estate business on a part time basis,

provided, however, that the defendant may adopt and maintain reasonable and nondiscriminatory written requirements for membership not otherwise inconsistent with the provisions of this Final Judgment.

(B) The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its by-laws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment.

(C) Upon amendment of its by-laws, rules and regulations, as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-law, rule or regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

(D) The defendant is ordered to file with the plaintiff, annually for a period of ten (10) years on the anniversary of the entry of this Final Judgment, a report setting forth the steps taken by the Board to advise its officers, directors, employees and all appropriate committees of the obligations and prohibitions placed upon the Board by this Final Judgment,

## VII

### [ Notice]

The defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy thereof to each of its members and within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with this Section VII and Section V and Section VI (B) above.

## VIII

### [ Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment, 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 defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired, (A) access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of the defendant relating to any matters contained in this Final Judgment, and (B) subject to the reasonable convenience of defendant, and without restraint or interference from it to interview officers or employees of the defendant regarding any such matters; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section VIII 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 plaintiff, 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.

## IX

### [ Jurisdiction Retained]

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 modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES v.  
BROWNELL & COMPANY, *et al.*

Civil Action No.: 72-427

Year Judgment Entered: 1974



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Brownell & Co., Inc., Indian Head, Inc., Newton Line Co., Nylon Net Co., and Wellington Puritan Mills, Inc., U.S. District Court, W.D. Tennessee, 1974-1 Trade Cases ¶74,945, (Apr. 9, 1974)**

[Click to open document in a browser](#)

United States v. Brownell & Co., Inc., Indian Head, Inc., Newton Line Co., Nylon Net Co., and Wellington Puritan Mills, Inc.

1974-1 Trade Cases ¶74,945. U.S. District Court, W.D. Tennessee, Western Division. Civil No. 72-427. Entered April 9, 1974. Case No. 2290, Antitrust Division. Department of Justice.

**Sherman Act**

**Price Fixing—Nylon Twine Manufacturers—Price—Exchange of Information—Sale Transaction**

**Exception—Consent Decree.**—Five manufacturers of nylon twine were prohibited by a consent decree from agreeing to fix prices or other terms or conditions for the sale of twine and from exchanging price information with manufacturers except in connection with, bona fide purchase or sale transactions with manufacturers.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Donald A. Kinkaid, Roy L. Ferree, Leslie M. Jeffress, Neal F. Lehman, Attys., Antitrust Div., Dept. of Justice, Atlanta, Ga., Thomas F. Turley, U. S. Atty.

**For defendants:** Samuel N. Allen, for Brownell & Co., Inc.; James H. McGowan, III, for Newton Line Co.; David R. Aufdenspring, for Wellington Puritan Mills, Inc.; Ralph L. McAfee, for Indian Head, Inc.; William F. Kirsch, for Nylon Net Co.

**Final Judgment**

McRAE, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 11, 1972, and the Plaintiff and the Defendants, by their respective attorneys, having consented to entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without admission by any party with respect to any such issue, and without this Final Judgment constituting evidence or admission by any party with respect to any such issue:

Now, Therefore, before the taking of any testimony and without 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**

**[ Jurisdiction]**

This Court has jurisdiction over the subject matter herein and over the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Act of Congress of July 2, 1890, 15 U. S. C. Section 1, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

**II**

**[ Definitions]**

(A) "Nylon twine" shall mean a twine manufactured by twisting together strands of extruded nylon yarn for purposes of sale to the commercial fishing industry and the wholesale hardware trade.

(B) "Person" shall mean any individual, association, cooperative, partnership, corporation or other legal or business entity.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment shall apply to the Defendants, their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV

#### [ *Price Agreements; Exchanges* ]

Defendants are jointly and severally enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, or furthering any combination, contract, agreement, understanding, plan or program with any other manufacturer of nylon twine, to raise, fix, stabilize or maintain the prices, discounts, markups, or other terms or conditions for the sale of nylon twine to any other person; and

(B) Communicating to, exchanging or discussing with any other manufacturer of nylon twine any price, discount, markup, or other term or condition for the sale of nylon twine to any other person prior to the release of such price, discount, markup, or other term or condition of sale to the trade generally, provided, however, that nothing in this Final Judgment shall be construed as prohibiting any Defendant from communicating such information to any other manufacturer of nylon twine in the course of negotiating for, entering into, maintaining or carrying out any bona fide purchase or sale transaction with such manufacturer.

### V

#### [ *Independent Pricing* ]

Each of the Defendants is ordered and directed, not later than ninety (90) days following the date of entry of this Final Judgment, independently and individually to review and redetermine, based upon its own costs, business judgments and other lawful considerations, the prices, discounts, markups or any other terms or conditions at which it sells nylon twine. Each of the Defendants is further ordered and directed, not later than ninety (90) days following the entry of this Final Judgment, to file with the Plaintiff a statement on the manner in which such review and redetermination was conducted and the factors considered.

### VI

#### [ *Notification* ]

Each of the Defendants is ordered and directed to furnish, within ninety (90) days after date of entry of this Final Judgment, a copy thereof to each of its officers, directors, and to each of its agents and employees having sales and/or pricing responsibilities, and to each of its subsidiaries, successors and assigns and to file with this Court and serve upon the Plaintiff an affidavit as to the fact and manner of its compliance with this Section VI.

### VII

#### [ *Reports* ]

For a period of 10 years from the date of entry of this Final Judgment each of the Defendants is ordered to file with the Plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise the appropriate officers, directors, agents, employees, subsidiaries, successors and assigns of its and their obligations under this Final Judgment.

### VIII

[ *Inspection and Compliance*]

For the purpose of determining or 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, 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 the Defendants relating to any matters contained in this Final Judgment:

(B) Subject to the reasonable convenience of the Defendants, and without restraint or interference from them, to interview officers, directors, employees or agents of the Defendants, 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, Defendants 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 VIII 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 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.

IX

[ *Retention of Jurisdiction*]

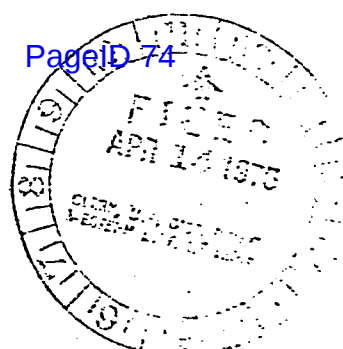
Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the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

UNITED STATES v.  
BROWNELL & COMPANY, *et al.*

Civil No.: 72-427

Year Judgment Modified: 1976

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

vs.

C-72-427

BROWNELL & CO., INC.; INDIAN  
HEAD, INC.; NEWTON LINE CO.;  
NYLON NET CO.; and WELLINGTON  
PURITAN MILLS, INC.,

Defendants.

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ORDER MODIFYING FINAL JUDGMENT

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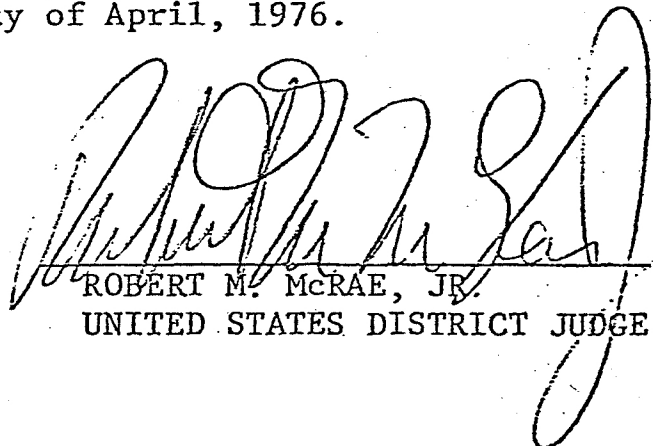
On April 9, 1974, this Court entered a Final Judgment in this cause, to which all parties consented, retaining jurisdiction over this cause for several reasons, one being to enable parties to apply for modification of the Judgment. On March 26, 1976, defendant Indian Head, Inc. accomplished divestiture of all its business operations encompassed by the subject matter of this litigation. In light of this development, certain terms of the Final Judgment concerning reporting requirements were no longer applicable to defendant and consequently defendant moved this Court to enter an Order modifying the Final Judgment to reflect these developments. On April 5, 1976, the United States of America responded to said Motion and interposed no objection to the entry of a Modification to the Final Order setting forth the terms proposed by Indian Head, Inc.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that the Final Judgment entered in this cause on April 9, 1974, be, and the same hereby is, modified by abrogating and terminating the obligations and requirements of Paragraph VII of said Final Judgment solely insofar as the same apply to defendant Indian Head, Inc., and said defendant shall have no further obligation to comply with the provisions

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of said Paragraph VII; provided, however, that if defendant Indian Head, Inc., shall at any time hereafter re-acquire any interest in the business or industry which is the subject of said Final Judgment, the provisions of such Paragraph VII shall again be of full force and effect as to defendant Indian Head, Inc. All other provisions of such Final Judgment shall remain applicable to defendant Indian Head, Inc., and all provisions of the same shall continue with respect to each remaining defendant herein.

Entered this 4<sup>th</sup> day of April, 1976.



ROBERT M. McRAE, JR.  
UNITED STATES DISTRICT JUDGE