

UNITED STATES OF AMERICA v. J. LEIBNER & CO.

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK.

In Equity No. 37-319.

UNITED STATES OF AMERICA, PETITIONER,

VS.

JOSEPH LEIBNER, MARCUS HYMAN, HARRY GOODWIN, MAX
EPSTEIN, PHILIP GREEN, ISIDORE GREEN, JACOB CON-
NOR, and MAX WENIG, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this Term, and upon consideration thereof, and upon motion of the petitioner, by Emory R. Buckner, United States Attorney for the Southern District of New York, Alexander B. Royce, Israel B. Oseas, and William D. Whitney, Special Assistants to the United States Attorney, of counsel, for relief in accordance with the prayer of the petition, and no testimony or evidence having been taken, and the defendants, Joseph Leibner, Marcus Hyman, Harry Goodwin, Max Epstein, Philip Green, and Isidore Green, hereinafter sometimes referred to collectively as J. Leibner & Co., and Jacob Connor and Max Wenig having appeared by their attorneys, Messrs. Rothwell, Harper & Matthews, and all of said defendants having consented thereto in open court; NOW THEREFORE IT IS

ORDERED, ADJUDGED and DECREED, as follows:

I. That the combination and conspiracy in restraint of interstate trade and commerce and to monopolize the same, described in the petition herein, be and they hereby are declared illegal and in violation of the Act of Congress approved July 2, 1890, and acts amendatory thereof and supplemental or additional thereto.

II. That the defendants and each of them, and their agents, servants and employees, and all persons acting under, through, by, or in behalf of them or any of them or claiming so to act, be and they hereby are perpetually enjoined, restrained and prohibited, collectively and individually, from directly or indirectly further engaging in or carrying into effect the said combination and conspiracy, and from engaging in or entering into any like combination or conspiracy, the effect of which would be to restrain the interstate and foreign trade and commerce in live fresh water fish described in the petition herein, and from directly or indirectly carrying out or continuing in effect the agreements, acts and practices described in the petition herein, and from making any express or implied agreements between them or any two or

more of them similar to those described in the petition herein and hereby declared to be illegal, and from using any other means or methods, the effect of which would be to prevent the free and unrestrained flow of said interstate and foreign trade and commerce in live fresh water fish.

III. That defendant, Joseph Leibner, shall turn over to Robert McC. Marsh, Esquire, who is hereby appointed Special Master herein, all his right, title and interest in and to the following cars adapted to the carriage of live fresh water fish and all equipment thereof: New York Central No. 3175 and New York Central No. 2965; and shall forthwith surrender to the Special Master all documents of title or otherwise setting forth such right, title and interest; but the said cars shall remain under the control of said Leibner until the Special Master shall give orders in relation thereto pursuant to the next succeeding paragraph.

IV. That the Special Master shall sell at the time and in the manner hereinafter stated for delivery on December 1, 1926 all right, title and interest of the said Leibner in and to each of said cars and the equipment thereof including all contracts, leases or other agreements, with the American Railway Express Company or the New York Central Railroad in regard thereto insofar as such contract interest may be assigned or consent to such assignment may be obtained. At the request of the Special Master said defendant Leibner shall execute and deliver all appropriate instruments of assignment, and on December 1, 1926 said Leibner shall cause said cars and equipment to be delivered to the purchasers thereof on the written order of the Special Master; but if such sale has not been effected pursuant hereto by December 1, 1926 no such order shall be given except in pursuance of further order of this court, which shall in no event extend the period for completing sale and delivery beyond February 1, 1927 on which date any and all documents of title or otherwise setting forth Leibner's right, title and interest in said cars and held by the

Special Master shall be returned to the defendant, Leibner, and from and after which date all of Leibner's said right, title and interest not having been sold pursuant hereto shall be and remain in defendant, Leibner, anything in this or the next preceeding paragraph contained to the contrary notwithstanding. After pay *pro rata* all expenses of said sale and his own fee to be fixed by this court, the Special Master shall turn over the proceeds of each of said sales to the defendant, Leibner. The Special Master shall offer separately said right, title and interest in each of said two cars for sale at public auction at such place as he may fix in the Borough of Manhattan, City of New York, not earlier than October 1, and not later than October 15, 1926, upon notice by mail to each of the defendants at their respective addresses hereinafter given and to all attorneys who have appeared herein, and like notice shall be published at least once in the New York Times in such form and on such date as the Special Master shall determine.

Joseph Leibner, 50 Sheriff Street, New York City.

Marcus Hyman, 50 Sheriff Street, New York City.

Harry Goodwin, 50 Sheriff Street, New York City.

Max Epstein, 50 Sheriff Street, New York City.

Philip Green, 50 Sheriff Street, New York City.

Isidore Green, 50 Sheriff Street, New York City.

Jacob Connor, 235 Rivington Street, New York City.

Max Wenig, 36 Pitt Street, New York City.

At such sale the Special Master shall provisionally accept the bid of the highest bidder for each such interest and in the event that no objections to such bidder are filed with the Special Master within ten days he shall finally accept such bid and direct the delivery of said car as heretofore provided. In the event that objections are filed by the United States or any defendant with the Special Master within the said ten days, the Special Master shall re-examine said bid and subject to the control of this court may affirm said provisionally accepted bid or order a resale upon such condition as to time, place and notice as he may fix. No sale of an interest in a car

shall be made at less than Three Thousand Dollars (\$3000) in cash. On such sale the defendant, Connor, may be a bidder for the interest in one car and the defendants, Max Epstein, Philip Green and Isidore Green may jointly or severally bid for the interest in either or both of said cars after first satisfying the Special Master that if the bid is successful the car or cars will not be used in conjunction with any other defendant or in violation of this decree.

V. That the defendants, and each of them, and their agents, servants and employees, and all persons acting under, through, by, or in behalf of them, or any of them, or claiming so to act, be and they hereby are perpetually enjoined, restrained and prohibited, collectively and individually, from directly or indirectly

(a) Consolidating the three businesses of J. Leibner & Co., J. Connor and Max Wenig, described in the petition herein or any two of them except in connection with a sale of the property and assets (which may include cars, or interests therein, notwithstanding the provisions of the succeeding subparagraph [e]) of any of the three to either of the others in which the seller is retiring from said business.

(b) Employing, or agreeing with each other or with others to employ, a common agent, whether one of said defendants or any third party, to purchase fish.

(c) Agreeing with others upon prices or terms upon which fish are to be purchased.

(d) Agreeing with each other or with others upon prices or terms upon which fish are to be sold.

(e) Except as permitted by paragraph IV to the defendants therein specified and except as permitted by subparagraph (a) of paragraph V hereof, acquiring by purchase, lease, or in any other manner, or exercising control over any of the following cars adapted to the carriage of live fish or the equipment thereon, or the right and privilege to use or manage the same; Baltimore and Ohio, Numbers 434, 435 and 436; New

York Central, Numbers 2961, 2962, 2964, 2965, 3175, 3181, 3182, and 3192; *provided, however*, that the following defendants may so acquire, control or retain the following cars and equipment thereon, or the right to use or manage the same respectively. Joseph Leibner (or J. Leibner & Co.), Baltimore and Ohio, Numbers 434, 436, and New York Central, Number 3182, Max Wenig, New York Central, Numbers 2961, 2962, Jacob Connor, New York Central, Number 2964. (Each car number shall be deemed to apply to and substituted car.)

(f) Interfering with any person, partnership, association or corporation (hereinafter collectively referred to as competitors), in the purchase or sale of fish in interstate or foreign trade and commerce, or in the shipment or transportation of the same into or through the United States, by, or through any of the following means and methods, or by any other means and methods which may constitute an unfair means or method of competition:

(1) Causing unfounded or malicious suits or proceedings to be brought against competitors or against persons who sell fish to them or buy from them.

(2) Opening stations in the vicinity of competitors where fish are sold for the purpose of causing injury to the business of competitors, not arising in the course of fair competition.

(3) Offering sums of money to competitors, actual or potential, for the purpose of inducing them to cease to be, or not to become, competitors, unless such offer is in connection with a consolidation, merger or purchase of property and assets.

(4) Offering sums of money to officers, agents, members, stockholders, servants or employees of competitors, or any other persons, for the purpose of inducing them to injure the business of competitors in any way.

(5) Making false and misleading statements to banks, transportation companies or others for the

purpose of inducing them to cease or to decline to do business with competitors, actual or potential.

(6) Threatening or intimidating competitors, actual or potential, in any manner or for any purpose.

VI. That this decree become effective at once; but no provisions hereof shall be deemed to prevent prior to December 1, 1926 the distribution pursuant to earlier arrangements, understandings or agreements, (express or implied) of live fish now in ponds in the name of or under the control of the defendant Leibner and the use of any of the cars herein mentioned in connection with such distribution.

VII. That jurisdiction of this cause is retained by this court for the purpose of making such other or further orders and decrees as may become necessary.

Dated, New York, July 2, 1926.

AUGUSTUS N. HAND,
United States District Judge.