Appendix A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

United States v. Colorado and Wyoming Lumber Dealers' Association, et al.

Equity No. 5749

Year Judgment Entered: 1917

UNITED STATES v. COLORADO AND WYOMING LUMBER DEALERS' ASSOCIATION.

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF COLORADO.

In Equity No. 5749.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

THE COLORADO AND WYOMING LUMBER DEALERS' ASSOCIATION AND OTHERS, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard before Robert E. Lewis,

United States district judge, United States of America appearing by G. Carroll Todd, assistant to the Attorney General, Blackburn Esterline, special assistant to the Attorney General and Harry B. Tedrow, United States Attorney, and defendants appearing by L. D. Thomason, Lancaster, Simpson & Purdy, C. D. Joslyn, and L. C. Boyle, their solicitors, and the petitioner having moved the court for a decree in accordance with the prayer of the petition, and the defendants consenting thereto, it was, upon consideration thereof, ordered, adjudged, and decreed as follows, viz:

I. Defendant, The Colorado and Wyoming Lumber Dealers' Association, a corporation organized under the laws of the State of Colorado, with its principle office and place of business at Denver, and The Lumber Secretaries' Bureau of Information, a corporation organized under the laws of the State of Illinois, were, at the time of the filing of the petition, engaged in a combination and conspiracy to restrict and restrain trade and commerce in lumber and lumber products, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

II. Prior to and at the time of filing the petition the lumber trade was, and it now is, divided into the following classes:

1. Manufacturers, who operate at various points in the United States, and who receive logs from the forests and saw them into various sizes and lengths of timber and lumber required by the trade for building and manufacturing purposes and ship such products from the points of manufacture by railroad or steamship lines through and into the various States to the markets where such lumber products are required, including the State of Colorado. The various growths of the different varieties of timber are so distributed that no single State contains all of the varieties demanded and required by the trade. The products of pine timber, known as "yellow pine," are principally from manufacturers located in the States

where the timber is grown, i. e., North Carolina, Virginia, Mississippi, Alabama, Arkansas, Texas, and other States; of oak from North Carolina, South Carolina, Missouri, Arkansas, Tennessee, and other States; of maple from Ohio, Indiana, Michigan, Wisconsin, and other northern States; of spruce from Maine, West Virginia, and other States; of fir, red cedar, and redwood from Washington, Oregon, California, and other western States; of red oak from Indiana, Michigan, Minnesota, and other States; of northern pine from Minnesota, Wisconsin, and Michigan; of cypress from Louisiana, Mississippi, and Arkansas, and the products of other special varieties are from manufacturers in various localities and parts of the United States.

2. Wholesalers, who deal in lumber and lumber products and who are usually located at or near large markets or centers of trade, i. e., New York, Chicago, Pittsburgh, Baltimore, St. Louis, Kansas City, and Denver. In some instances the wholesaler maintains a yard for receiving and storing the lumber purchased by him from the manufacturer; in other instances he does not, but handles the manufactured product through orders from customers transmitted by wholesaler to manufacturer.

3. Retailers, who are located in cities and towns in Colorado, Wyoming, northern New Mexico, and other States of the United States, and who receive and store lumber and lumber products purchased either from manufacturer, wholesaler, or jobber and sell for building or manufacturing purposes in the city, town, or vicinity where the yard is located.

4. Mail-order houses, which are large stores located in Chicago, Davenport, St. Louis, and other large cities in nearly all of the States, which sell lumber and lumber products, as well as other merchandise, direct to the consumer, having purchased the same from the manufacturer, wholesaler, or jobber without the intervention of the retailer.

5. Cooperative associations, who are located in the farming communities of Iowa, Minnesota, Colorado, Utah,

Illinois, and other States, which purchase lumber in wholesale lots for the benefit of their own members only (regarded by some as retailers, by others as consumers, and by still others as separate and distinct classes).

6. Consumers, or ultimate users, who are classified by the trade as follows:

(a) The contracting or constructing builder who uses lumber for building houses, bridges, cofferdams, wharves, and repair and construction work of all kinds.

(b) The converter, or manufacturer, who converts the sawed lumber into furniture and "trim," such as molding, frames, sash, doors, blinds, boxes, and containers.

(c) The United States Government, and in some localities municipalities and railroads.

(d) The small consumer for small building, repair, and construction work.

(e) Cooperative unions of consumers located in country districts.

(f) Mail-order houses.

III. The Colorado and Wyoming Lumber Dealers' Association was, prior to April 17, 1903, a membership association composed of retail lumber dealers in Colorado, Wyoming, and northern New Mexico. It was incorporated on the date named, since which it has carried on business in Colorado and Wyoming. Its membership consists of dealers regularly engaged in the retail lumber trade, carrying an assorted stock reasonably commensurate with the demands of the community in which each is located. They buy lumber and lumber products in various States and receive and sell the same in Colorado, Wyoming, and northern New Mexico. The association elects officers and directors, has adopted a constitution and promulgated by-laws to manage and control the business, all with the knowledge and approval of the members. The purposes of the organization and its activities are to prevent sales of lumber from manufacturers and wholesalers in the various States to contractors, builders, and other consumers, and to collect and furnish information of such sales to the members of the association and the lumber trade at large.

IV. The Lumber Secretaries' Bureau of Information embraced a membership of secretaries of the various retail lumber dealers' associations who represented the associations. Defendant association was admitted to membership in defendant bureau by the admission of its secretary, H. H. Hemenway, on or about April 16, 1903, and has since remained, and now is, a member. Defendant association did thereby adopt, assent, and subscribe to, and has ever since adopted, assented, and subscribed to the constitution, by-laws, and declaration of purposes and principles of defendant bureau, the activities of which consisted of:

1. Planning ways and means whereby all manufacturers and wholesale dealers in lumber and lumber products should be compelled to market lumber and lumber products only through regular and recognized retail lumber yards located in the various States.

2. The publication of a bulletin, or report, containing information theretofore gathered and assembled with reference to manufacturers and wholesale dealers who were supplying the so-called "poachers," who were selling direct to consumers, and shipping to customers at points where the said "poachers" had no yards, and who were considered as peddlers; and the manufacturers and wholesalers who ship direct to consumers. The method of compilation and use of the bulletin, or report, was as follows: A retail lumber dealer, learning of a sale by a wholesaler to a consumer, made complaint in writing to the secretary of the association to which the retailer belonged. The secretary thereupon investigated, ascertained the facts in regard to the complaint, and submitted his report to the board of directors of Lumber Secretaries' Bureau of Information. The latter determined whether the matter should be reported in the next issue of the bulletin, and instructed the secretary accordingly. The bulletin when

issued was distributed among all the members of the several associations.

3. Cooperating with other retail lumber dealers' associations corresponding to The Colorado and Wyoming Lumber Dealers' Association who were members of the bureau.

4. Approving and recommending to the several retail dealers' associations the plan and use of "customers' lists."

5. Entering into agreements between defendants and wholesale dealers and manufacturers by which they established the rule of conduct of trade that sales and shipments should be confined to manufacturers and wholesale dealers and retail dealers exclusively.

6. Agreeing to exchange and exchanging information by means of letters, lists, memoranda, and verbal statements between the members and officers of the defendant association and the members and officers of the other retail lumber dealers' associations represented in the bureau.

7. Issuing and distributing black lists giving the names of manufacturers and wholesale dealers who sold and shipped lumber or quoted prices for lumber to consumers, contractors and builders, mail-order houses, and farmers' cooperative unions.

8. Maintaining a trade newspaper conducted under the direction of certain retail lumber dealers and their representatives and used by them and defendants as a medium for notifying the lumber trade of the names and particular sales and shipments of dealers who had sold or shipped lumber to persons other than regularly recognized retail lumber dealers.

9. Adopting rules and regulations in regular conventions held by the members of the various associations.

10. Adopting an agreement known as the "code of ethics" in joint conventions attended by representatives of manufacturers, wholesale dealers, and retail dealers, by which code it was agreed that the manufacturers and wholesale dealers should confine their sales and shipments to the regularly recognized retail dealers and that the

widest trade publicity should be given to violations of the code.

11. Contributing money and other assistance to detective bureaus and agencies employed to gather and distribute information of sale, and shipments contrary to the rule established by the code, threatening and intimidating manufacturers and wholesale dealers and certain so-called unethical retail dealers by means of letters, lists, memoranda, verbal statements, and publications, by which threats and intimidation the trade of the manufacturers and wholesale dealers was intended to be confined, interfered with, and restrained.

12. Directing classifications of the lumber trade to and through the lumber credit books known as the Blue Book, published by National Lumber Credit Manufacturers' Corporation, St. Louis, Mo., and the Red Book, published by Lumbermen's Credit Association, Chicago, by which manufacturers and wholesalers are guided in their business, and which classification confined the allowance of credit to retail yard dealers who complied with the rules of defendant association.

13. Maintaining and perpetuating the aforesaid regulations and rules of conduct by the preparation of the "customers' lists," which are made up annually, and show manufacturers and wholesalers from whom the members of the defendant association purchased their supplies. Such "customers' lists" have been and are exchanged with other associatoins and the members thereof, with a view to furnishing the entire retail trade with a list of manufacturers and wholesalers who have consented to abide by and to conduct their business in accordance with the arbitrary classification of the lumber trade.

V. The objects of said combination and conspiracy, which objects are hereby adjudged to be illegal and in violation of the act of Congress aforesaid, were and are—

1. To eliminate or unreasonably restrict competition for the trade of—

(a) Contractors and builders;

(b) Mail-order houses;

(c) Cooperative yards;

(d) The ultimate consumer, except certain consumers, i. e., United States Government, railroads, elevators, and bridges.

2. To force the ultimate consumer to buy at retail prices from regularly established and recognized retail lumber merchants operating in the vicinity where such lumber is to be used.

3. To prevent any wholesale dealer or manufacturer from quoting prices or selling and shipping to consumers.

VI. Defendants, and each of them, and their officers, agents, servants, employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited, directly or indirectly, from engaging in or carrying into effect the said combination and conspiracy hereby adjudged illegal, and from engaging in or entering into any like combination or conspiracy the effect of which would be to restrain trade or commerce in lumber or lumber products among the several States; and from making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, the effect of which would be to prevent the free and unrestricted flow of interstate commerce in lumber and lumber products from the manufacturer or wholesale dealer to the consumer.

VII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained and prohibited from combining, conspiring, or confederating with each other, or with others, expressly or impliedly, directly or indirectly—

1. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to any person, firm, corporation, or other organization not a retail

dealer in lumber and lumber products, or not classified or recognized as such retail dealer by the Colorado and Wyoming Lumber Dealers' Association, or the officers or members thereof, or not listed as such retail dealer in the so-called Blue Book and Red Book, published by the National Lumber Credit Manufacturers' Corporation and Lumbermen's Credit Association, respectively.

2. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to mail-order houses, cooperative associations, consumers, or any other person, firm, or corporation desiring to purchase.

3. To hinder or prevent any person, firm, corporation, or other organization from buying lumber or lumber products from manufacturers and wholesale dealers.

4. To hinder or prevent any person, firm, corporation, or other organization from buying or selling lumber and lumber products from or to whomsoever he, they, or it may desire.

5. To purchase lumber and lumber products from, or to favor with their custom and patronage, only those manufacturers and wholesale dealers who agree or who have agreed, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of retail dealers only and not also through mail-order houses, cooperative associations, consumers, or other persons, firms, or corporations.

VIII. Defendants, and each of them, their agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

1. To boycott, blacklist, or threaten with loss of custom or patronage any manufacturer or wholesale dealer engaged in interstate commerce of lumber and lumber products, for having sold, or being about to sell, lumber

or lumber products to mail-order houses, cooperative associations, consumers, or to any other person, firm, or corporation engaged in the business of retail dealing in lumber and lumber products, or to any other person, firm, or corporation.

2. To intimidate or coerce manufacturers or wholesale dealers in lumber or lumber products into selling only to such persons, firms, corporations, or other organizations as are classified or recognized by the Colorado and Wyoming Lumber Dealers' Association, or the Blue Book or the Red Book as legitimate retail dealers.

3. To do, or to refrain from doing, anything the purpose or effect of which is to hinder or prevent, by boycott, blacklist, threat, intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom any person, firm, corporation or other organization from buying or selling lumber or lumber products wherever, whenever, from whomsoever, and at whatsoever prices may be agreed upon by the seller and purchaser.

IX. Defendants, and each of them, and their directors, officers, agents, servants, and employees and all other persons acting under, through, by, or in behalf of them or either or any of them, or claiming so to act, be and they are hereby, perpetually enjoined, restrained, and prohibited, from publishing or distributing or causing to be published or distributed or aiding in the publication or distribution of—

1. The names of any manufacturers or wholesale dealers, or any list or lists of any manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to confine sales of lumber and lumber products to persons, firms, corporations, or other organizations engaged in the business of retail dealing in lumber and lumber products; or who are listed, or may be listed in said Blue Book and said Red Book, or any book, pamphlet, publication, or periodical, or list of like character, as manufacturers or wholesale dealers who agree or have agreed,

expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell lumber and lumber products to persons, firms, corporations, or other organizations, who are not engaged in the business of retail dealing in lumber and lumber products.

2. The names of any retail dealers, or any list or lists of retail dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to purchase lumber or lumber products from, or favor with their patronage and custom, only those manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to sell, distribute, or market their products through the medium of the retail dealers only, or who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell, distribute, or market their products directly to mail-order houses, cooperative associations, consumers, or any other persons whomsoever.

3. The names of any manufacturers of or wholesale dealers in lumber and lumber products who have been or are selling or shipping lumber or lumber products to any person, firm, corporation, or other organization not classified or recognized by the Colorado and Wyoming Lumber Dealers' Association, or its officers or members, as legitimate retail dealers, or who are not listed in the Blue Book or the Red Book as retail dealers, or the names of any manufacturers or wholesale dealers from whom any such person, firm, corporation, or other organization has been, is, or is supposed to be, purchasing or receiving lumber or lumber products.

X. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

To communicate, directly or indirectly, with any manufacturer, producer, or dealer for the purpose of inducing such manufacturer, producer, or dealer not to sell lumber or lumber products to any person, firm, corporation, association, or other organization not classified or recognized as a manufacturer or wholesale dealer by the Colorado and Wyoming Lumber Dealers' Association, National Credit Manufacturers' Corporation, or Lumbermen's Credit Association, or in the Blue Book or the Red Book, or by any other body or person, or in any other publication.

XI. The petitioner shall have and recover from the defendant its costs.

XII. The Colorado and Wyoming Lumber Dealers' Association, its officers and members, are not restrained from maintaining that organization for social or other purposes not inconsistent with this decree and not in violation of law.

DENVER, December 29, 1917.

ROBERT E. LEWIS,
United States District Judge.

United States v. The Cement Securities Company, et al.

Equity No. 7295

Year Judgment Entered: 1924

U. S. v. THE CEMENT SECURITIES COMPANY.

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF COLORADO.

In Equity No. 7295.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

THE CEMENT SECURITIES COMPANY,
The Colorado Portland Cement Company,
Union Portland Cement Company,
Three Forks Portland Cement Company,
The United States Portland Cement Company,
Oklahoma Portland Cement Company,
Nebraska Cement Company,
Charles Boettcher, Claude K. Boettcher, Harry C. James, R. J. Morse, Carl Leonardt, James Pingree, J. D. Slemons, J. E. Zahn, A. W. Kirkpatrick, F. R. Schmidt, C. D. Nichols, Murrell O. Matthews, E. E. Bruce, C. F. Seibold, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this term upon petition and answer, and was argued by counsel, and upon consideration thereof it is ordered, adjudged, and decreed as follows:

1. That defendant The Cement Securities Company is a combination in unlawful restraint of interstate trade and commerce in portland cement in violation of the Act of Congress of July 2, 1890 (26 Stat. 209) known as the Sherman Antitrust Act; and that defendants The Colorado Portland Cement Company, Union Portland Cement Company, Three Forks Portland Cement Company, The United States Portland Cement Company, Oklahoma Portland Cement Company, and Nebraska Cement Company are subsidiary companies of the Cement Securities Company and have been and are confederated with it in the unlawful combination aforesaid.

2. The combination of the aforesaid defendant companies, in so far as the same is unlawful, shall be forever dissolved, and to that end the plants, business, and assets of the Cement Securities Company shall be divided in the manner and into parts of separate and distinct ownership as follows, it being adjudged that such division will bring about competitive conditions and a situation in harmony with the law, to wit:

(A) The Cement Securities Company, which owns all of the capital stock of The United States Portland Cement Company, having a plant for the manufacture of Portland cement at Concrete, Colorado, with reasonable diligence and subject to approval by the court, shall sell and dispose of its entire interest in said plant, including all equipment, and all land now owned by said United States Company in Sections 15, 21, 22, 23, and 26. Township 19 S., Range 68 W., and one-half interest in 600 acres of land containing raw material deposits (situated in the E. ½ of Sec. 13 and the S. ½ of the SE. ¼ and the NE. ¼ of the SE. ¼ of Sec. 12, Township 19 S., Range 68 W., and the W. ½ of the W. ½ of Sec. 18, Township 19 S., Range 67 W.), to a person, firm, or corporation, intending to continue the business. The purchaser shall not be a defendant nor controlled by or affiliated with The Cement Securities Company or any of its subsidiary corporations, or any officer, director or agent thereof; and if such purchaser be a corporation, none of the defendants, either corporate or individual, and no officer, director or stockholder of The Cement Securities Company or any of its subsidiary corporations shall have any substantial interest in the stock or other securities of such purchaser; and neither The Cement Securities Company nor any of its subsidiary corporations shall have any officers or directors in common with such purchaser.

Said 600 acres of land containing raw material deposits shall be divided fairly and equally between the purchaser of the plant at Concrete and the owner of the plant at Portland (hereinafter called, respectively the purchaser and the seller), the division to be made by agreement between a representative of the purchaser, a representative of the seller, and the Attorney General, and in the event that they shall be unable to agree then the same shall be determined by this Court, after hearing the respective parties.

The ownership and operation of approximately five miles of railroad (with equipment) now known and operated as the United States Railroad Company, extending from the plant at Concrete to the aforesaid raw material deposits, shall be placed on a fair and equitable basis as between the purchaser of the plant at Concrete and the owner of the plant at Portland (hereinafter called, respectively, the purchaser and the seller), the basis of ownership and operation and the amount to be paid by the purchaser to be determined by a representative of the purchaser, a representative of the seller and the Attorney General, and in the event that they shall be unable to agree, then the same shall be determined by this Court, after hearing the respective parties.

(B) The Cement Securities Company, which owns approximately ninety-six per cent of the capital stock of the Three Forks Portland Cement Company, having

plants for the manufacture of portland cement at Trident and Hanover, Montana, with reasonable diligence and subject to approval by the court, shall sell and dispose of its entire interest in one of said plants, including all equipment and lands containing raw material deposits (2,090 acres at Trident and 889 acres at Hanover), to a person, firm, or corporation intending to continue business. The Cement Securities Company shall offer said plants (including equipment and lands containing raw material deposits) at Trident and Hanover for sale seperately and shall sell the plant for which the fairest and best offer shall be received. The fairest and best offer shall be determined by agreement between the Attorney General and a representative of The Cement Securities Company, and in the event they shall be unable to agree, then the same shall be determined by this court. The purchaser shall not be a defendant nor controlled by or affiliated with The Cement Securities Company or any of its subsidiary corporations, or any officer, director, or agent thereof; and if such purchaser be a corporation, none of the defendants either, corporate or individual, and no officer, director, or stockholder of The Cement Securities Company or any of its subsidiary corporations shall have any substantial interest in the stock or other securities of such purchaser; and neither The Cement Securities Company nor any of its subsidiary corporations shall have any officers or directors in common with such purchaser.

(C) Pending compliance with paragraphs (A) and (B) of Section 2 of this decree, the defendants shall not cause or permit the assets and properties, tangible or intangible, of The United States Portland Cement Company or the Three Forks Portland Cement Company to be substantially changed or diminished. Provided, however, that the ordinary and usual business activities of The United States Portland Cement Company and the Three Forks Portland Cement Company shall be continued, unless otherwise ordered by this court.

(D) In the event that The Cement Securities Company

shall not have disposed of the plant of The United States Portland Cement Company at Concrete, Colorado, and one of the plants of the Three Forks Portland Cement Company at Trident and Hanover, within two years from and after the date of the entry of this decree, then upon the request of the Attorney General the same shall be sold at public auction to the highest bidders at prices not less than minimum prices to be fixed by agreement between the Attorney General and The Cement Securities Company, and at a time and place so fixed; and in default of such agreement upon any of such matters, then the same shall be determined by this court. Provided, however, that upon twenty days' notice either side may apply to the court for a reduction or an extension of time within which to effect the sales of said plants.

3. That the contract heretofore existing between the Union Portland Cement Company, the entire capital stock of which is owned by the Cement Securities Company, and the Utah Sales Company, whereby said Sales Company agreed to take and sell certain of the output of said Union Portland Cement Company for a term of years having been abrogated since the beginning of this suit, the Union Portland Cement Company and the Cement Securities Company and their officers and agents are perpetually enjoined, restrained, and prohibited from directly or indirectly observing any of the terms and provisions of said sales contract, and/or from entering into any similar contract having the same purpose or effect.

4. That The Cement Securities Company and the several manufacturing companies which it is permitted to continue to own, operate and control, viz: The Colorado Portland Cement Company, Union Portland Cement Company, Three Forks Portland Cement Company, Nebraska Cement Company, and Oklahoma Portland Cement Company, are perpetually enjoined, restrained, and prohibited from hereafter agreeing with any other manufacturer of cement to do, or from doing pursuant to an agreement with any other cement manufacturer, any of the following acts:

(a) To establish uniform mill base prices for their product.

(b) To establish arbitrary freight basing points other than the points from which shipments are actually made.

(c) To sell their product f. o. b. point of delivery exclusively.

(d) To establish uniform charges for bags or uniform credits for bags returned in good condition.

(e) To establish a uniform rate of discount or uniform terms for payments of bills within a specified period of time.

(f) To limit the quantity of cement to be shipped to a dealer within a specified period of time.

(g) To prohibit the diversion or so-called missuse cement sold on specific job contracts.

(h) To establish and maintain a uniform differential in the price of cement sold to dealers and contractors.

(i) To fix or suggest the amount of commission or profit dealers should be required to make in sales of cement.

(j) To regulate or limit the amount of production of cement or the amount of stock to be kept on hand.

(k) To limit the time within which quotations on cement must be accepted and deliveries made, and to refuse to grant extensions in time of deliveries.

(l) To make changes in prices effective as of the date quotations are written, to avoid "price tipping."

(m) To guarantee prices against decline.

(n) To make uniform charges for bin tests, or to require the purchaser to pay for such tests.

(o) To divide territory and/or allot business.

(p) To exchange orders and supply bags for use in that connection.

5. That The Cement Securities Company and the several corporations which it is permitted to retain as subsidiaries are perpetually enjoined, restrained and prohibited from hereafter agreeing with other manufacturers of

cement to compile and distribute, and from compiling and distributing pursuant to such agreement, so-called freight rate books showing freight rates on cement from any arbitrarily established freight basing point to the points of delivery throughout the territory comprising their market.

But this shall not be construed as prohibiting said defendants from maintaining or subscribing to a traffic bureau to furnish rates or rules of transportation that may be contained in any public schedule or tariff, but all rates furnished shall be the actual rates between points of actual shipment and delivery, and shall not be based on any point or points other than those of actual shipment and delivery.

6. That nothing contained in this decree shall be construed as prohibiting said defendant from maintaining or subscribing to a credit bureau for the sole purpose of furnishing, upon specific requests, information as to the credit of the persons and corporations purchasing or attempting to purchase cement, but the defendants are perpetually enjoined, restrained and prohibited from agreeing with other manufacturers of cement to refuse to make sales to particular customers and/or from agreeing with other manufacturers of cement upon circumstances or conditions which shall exclude customers from being extended credit.

7. That nothing contained in this decree shall be construed as prohibiting the Cement Securities Company and the several manufacturing companies which it is permitted to continue to own, operate and control from doing or performing any of the foregoing acts, or from selecting their own trade, or from disposing of their own product to such persons and on such terms as they may choose, if done without combining, conspiring or agreeing with any other manufacturer of cement.

8. That the injunctions and directions herein contained against and to The Cement Securities Company and its several subsidiary corporations shall apply to and be binding upon such corporations and all sucessors thereof, and

their respective officers, directors, agents, employees and all other persons, firms or corporations acting under, for or in behalf of them or any of them or claiming so to act.

9. That jurisdiction of this case is retained for the purpose of enforcing this decree and of enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate, and the defendants or either of them, or their successors, to apply for its modification on the grounds that its provisions have become inappropriate or unnecessary.

10. That petitioner shall have and recover from the defendants its costs.

T. BLAKE KENNEDY,
United States District Judge.

December 13, 1924.

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF COLORADO.

In Equity No. 7295.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

THE CEMENT SECURITIES COMPANY (IDEAL CEMENT COMPANY substituted), THREE FORKS PORTLAND CEMENT COMPANY, and THE UNITED STATES PORTLAND CEMENT COMPANY, ET AL., DEFENDANTS.

ORDER MODIFYING DECREE.

This cause coming on to be heard upon the petition of Ideal Cement Company, Three Forks Portland Cement Company and The United States Portland Cement Company, for a modification of the decree of said court, to permit the cement plant of The United States Portland Cement Company at Concrete, Colorado, and the cement plant of Three Forks Portland Cement Company at Hanover, Montana, to be dismantled and disposed of in accordance with allocations and directions of the War Production Board, in order that the reuseable equipment and machinery and scrap materials contained in said plants may be made available for use and aid in the war effort.

And it appearing to the Court from statements of counsel and the letter of the War Production Board, dated January 29, 1943, copy of which hereto attached, that there is substantial need in the war effort, both for the reuseable equipment and machinery and for the scrap materials contained in these plants; therefore, it is

ORDERED, ADJUDGED AND DECREED:

1. That said decree heretofore entered herein on December 13, 1924, be modified to permit the reuseable equipment and machinery and the scrap materials contained in said plants to be disposed of in accordance with the allocations and directions of the War Production Board.

2. That nothing in said decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers or employees (1) in compliance with Section 12 of the Act of June 11, 1942 (Public Law 603 - 77th Congress), (2) in compliance with any action taken by any governmental agency under or pursuant to the Second War Powers Act of 1942 (Public Law 507 - 77th Congress), or (3) in compliance with such dispositions or allocations of machinery, equipment or material as may be provided by the War Production Board pursuant to the letter dated January 29, 1943, from Curtis E. Calder, Director General for Operations of the War Production Board to the Ideal Cement Company, a copy of which letter is attached hereto, marked "Exhibit A".

3. That each and every of the other terms and provisions of said decree be and remain in full force and effect.

Dated February 27, 1943.

United States District Judge.

United States v. Retail Lumbermen's Association, et al.

Civil No. 378

Year Judgment Entered: 1941

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Retail Lumbermen's Association et al., U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,166, 40 F. Supp. 448, (Oct. 24, 1941)

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United States of America v. Retail Lumbermen's Association et al.

1940-1943 Trade Cases ¶56,166. U.S. District Court, D. Colorado, Civil Action No. 378. October 24, 1941. 40 FSupp 448

Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act, perpetually enjoining defendants from combining and conspiring among themselves, or with others, to restrain trade and commerce in the retail sale of lumber and allied products. Among the activities restrained by the decree are price fixing; maintaining uniform mark-ups, discounts, rebates, and terms and conditions of sale; allocating business and sales quotas; classifying dealers; fostering governmental regulation; distributing price lists and discount sheets; compiling and disseminating information or statistics as to sales, costs, orders, shipments, inventories, and profits of retail lumber dealers; operating a bid depository; coercing retail lumber dealers in the free acceptance or rejection of orders; sponsoring price committees; furnishing customer's lists; and conducting meetings for the purpose of engaging in the unlawful activities prohibited. The defendants are further ordered to take necessary steps to dissolve the unlawful association.

Thomas J. Morrissey, U. S. District Attorney, Denver, Colo., Thurman Arnold, Assistant Attorney General, Tom C. Clark and James McI. Henderson, Special Assistants to the Attorney General, David J. Clarke, A. Andrew Hank, and C. L. Whittinghill, Special Attorneys, for plaintiff.

Horace Phelps, James D. Benedict and Horace F. Phelps, all of Denver, Colo., for The Hallack & Howard Lumber Co., East Denver Lumber Co., Andrew Kundert and George S. Yates, doing business as Denver Lumber Co., W. B. Barr Lumber Co., Chapin Lumber Co., E. W. Robinson Lumber Company, The Sterling Lumber and Investment Company, The North Denver Lumber Company, The Aurora Lumber Company, The Moore Lumber Company, Newt Olson Lumber Company, The R. E. Spencer Lumber Co., J. W. Accola doing business as The Beach Lumber Company, L. W. Deffen-baugh doing business as L. W. Deffenbaugh Lumber Yard, Duvall-Davison Lumber Co., The Wise and Ferguson Lumber Company, The Englewood Lumber Company, The American Lumber Company, The Conover Lumber Company, Burt Coldren, I. F. Downer, Fred G. Coldren, F. Charles Metz, Charles O. Ringsted, E. W. Robinson, W. B. Barr, Jay T. Chapin, C. W. Richardson, C. B. Nelson, Newton A. Olson, R. F. Frantz, W. G. Duvall, R. E. Spencer.

James H. Pershing, Robert G. Bosworth, Lewis A. Dick, and C. C. Dawson, Jr., all of Denver, Colo., for The Oregon Lumber Company and Carl F. Hansen, Jr.

Foster Cline, Denver, Colo., for The Pacific Lumber Company.

Dayton Denious and Hudson Moore, both of Denver, Colo., for Stark Lumber Company and John H. Stark.

Harold J. Spitzer, Denver, Colo., for The Ames Lumber Company.

Emory L. O'Connell, Denver, Colo., for The Arvada Lumber Company and The Littleton Lumber Company.

Ernest L. Rhoads, Denver, Colo., for The Carney Lumber Company.

Frank McDonough, Jr., and Gilbert L. McDonough, both of Denver, Colo.; for L. H. Wallis and W. E. Kellogg, doing business as Wallis-Kellogg Company.

Forrest C Northcutt, Denver, Colo., for W. S. Woodside, doing business as W. S. Woodside Lumber Co.

Theodore Epstein, Denver, Colo., for Mandel and Son Lumber Co.

Before Symes, District Judge.

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Consent Decree

The complainant, United States of America, having filed its complaint herein on October 24, 1941; all the defendants having appeared in answer to such complaint and deny the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

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

ORDERED, ADJUDGED, AND DECREED as follows:

[*Jurisdiction*]

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

II. For the purposes of this decree:

[*"Lumber and Allied Products" Defined*]

(a) The term "lumber and allied products," as used in this decree, shall be deemed to refer to those articles and products which are consumed and used by the public generally for building and construction purposes, and which are customarily distributed, sold, advertised, and offered for sale by retail lumber dealers throughout the United States, including all articles and products used in construction, building, alteration or repair work of any kind or type;

[*"Retail Lumber Dealer" Defined*]

(b) The term "retail lumber dealer," as used in this decree, shall be deemed to refer to individuals, partnerships, and corporations engaged in the retail sale and distribution of lumber and allied products to contracts and other consumers.

[*Activities Enjoined*]

III. Defendants, their directors, officers, agents, employees, their successor, and all persons acting under, through, or for defendants, or their successors, or any of them, be, and they hereby are, perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves, or with any other individual, association or corporation, whether through the collection, compilation, utilization, dissemination, publication of any information or statistics, re-specting sales, orders, shipments, deliveries, inventories, costs, prices, or through the auditing of the books of retail lumber dealers, or otherwise:

[*Price Fixing*]

(a) to raise, lower, fix, maintain or prevent changes in the retail prices to be charged for lumber and allied products;

[*Maintaining Uniform Mark-Ups*]

(b) to fix, determine, maintain, make uniform or prevent changes in mark-ups relating, to the retail sale and distribution of lumber and allied products;

[*Recommending Retail Mark Ups*]

(c) to advise, recommend or urge retail mark ups or prices for lumber and allied products;

[*Maintaining Uniform Discounts, Rebates, Etc.*]

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(d) to fix, determine, maintain, make uniform or prevent changes in discounts, terms and conditions of sale, rebates, or charges for specific operations, with respect to lumber and allied products;

[*Distributing Price Lists and Discount Sheets*]

(e) to prepare or distribute any price list or standard discount sheet;

[*Allocation of Sales Quotas*]

(f) to fix, determine, designate or maintain sales quotas or allocation of business, or to formulate, promote, place in effect or participate in any plan or policy for the determination of sales quotas, channels of distribution or allocation of business, with respect to the sale and distribution of lumber and allied products;

[*Classification of Dealers*]

(g) to classify or designate retail lumber dealers as "ethical" or "recognized" or otherwise classify or designate dealers as entitled to purchase or deal in lumber, lumber products or other building materials, or as entitled to any preferential treatment, or as dealers to be discriminated for or against or to coerce, compel, advise or persuade any manufacturer or wholesaler to sell to or to refrain from selling to, or to discriminate in favor of or against, or to grant preferential treatment to any purchaser or dealer on the basis of any such designation or classification;

[*Fostering Governmental Regulation*]

(h) to advise or recommend or seek to induce public authorities to establish by law or administrative regulation any preference or requirement for the use of lumber which is identified by a lumber manufacturers association grade mark or by a lumber manufacturers association inspection certificate, or to advise or recommend or seek to induce any specifier or purchaser of lumber to require the exclusive use of such lumber; provided that nothing herein shall forbid efforts to persuade public authorities specifiers or purchasers to give preference to lumber identified by the grade marks or inspection certificates of inspection agencies determined by such impartial agency as may be established or designated with the approval of the Court, to be competent and to be rendering an adequate and non-discriminatory lumber inspection service.

[*Dissemination of Sales, Etc., Information*]

(i) to gather, compile, or disseminate information or statistics as to the sales, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers unless all such information, data and statistics are openly and fairly gathered and disseminated; are fairly and accurately ascertained from actual past and completed transactions; are readily, fully and fairly available to all retail lumber dealers and to the public generally and by mail upon request, at the time of their initial dissemination; and un less such information, data and statistics do not disclose to competitors information as to the amount of sales, orders, shipments, deliveries, inventories, costs, or prices of any individual retail lumber dealer or invoices or data as to individual transactions or sales to named customers;

[*Dissemination of Costs, Etc., Statistics*]

(j) to gather, compile, or disseminate information or statistics as to the costs, margins, or profits of retail lumber dealers for items or classes of items of lumber and allied products, if such information or statistics contain information purporting to represent average or typical cost or average or typical elements of cost throughout a market or between competing retail lumber dealers; or if such information or statistics may readily be used as a basis for establishment of uniform prices, uniform, price movements, or a uniform formula for pricing between competitors.

[*Additional Activities Enjoined*]

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IV. Defendants, their directors, officers, agents, employees, their successors, and all persons acting under, through, or for defendants, or their successors, or any of them, be and they hereby are individually and perpetually enjoined and restrained from engaging in the following specific acts:

[*Coercion in Acceptance or Rejection of Orders*]

(a) restricting, coercing, persuading or in fluencing any retail lumber dealer in the free acceptance or rejection of orders or in the free and untrammeled individual establishment of prices for lumber and allied products in the conduct of his own business;

[*Operating Bid Depository*]

(b) formulating, promoting, operating, sponsoring, participating in, or carrying out any bid depository, or other system or program for the filing or listing of invoices, bids, quotas or estimates with respect to the sale or distribution of lumber and allied products;

[*Compilation of Statistical Information*]

(c) collecting, compiling, or utilizing information or statistics respecting the sales, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers for the purpose or with the effect of violating any of the pro visions of paragraph III hereof;

[*Conducting Meetings*]

(d) calling, sponsoring, directing, attending or participating in any meetings or conferences for the purpose or with the effect of engaging in any of the activities prohibited by paragraph III hereof;

(e) presenting or discussing at meetings or conferences, or through correspondence, or otherwise, information or data relating to sales, orders, shipments, deliveries, or prices of retail lumber dealers for the purpose or with the effect of carrying out any of the activities prohibited by paragraph III hereof;

[*Sponsoring Price Committees*]

(f) establishing, setting up, or sponsoring any price committees or other committees or agencies to carry out any of the activies prohibited by paragraph III hereof;

[*Securing Association's Permission to Sell*]

(g) establishing, setting up, or sponsoring any plan, system, policy or procedure, including the requesting of permission from any association, group or agency to make sales of lumber and allied products at relaxed prices, or the reporting of any variances from established prices or price lists, for the purpose or with the effect of enforcing or carrying out any of the activities prohibited by paragraph III hereof;

[*Furnishing Customer Lists*]

(h) furnishing or submitting revised and current lists of their respective regular customers to any association, group or agency;

[*Reporting Variances from Established Prices*]

(i) reporting to any association or group or agency any variances from established prices or price lists or coercing, compelling, urging or persuading any manufacturer or wholesaler to sell to or refrain from selling to, or discriminate in favor of or against, or to grant preferential treatment to any purchaser or dealer in lumber and allied products.

[*Lawful Activities Excepted*]

V. Except as specifically provided in paragraph IV of this decree nothing contained herein shall be deemed to affect relations which otherwise are lawful between a defendant, its directors, officers, employees, or agents or its subsidiaries or between subsidiaries of a defendant where such relations do not involve any agreements,

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combinations or conspiracies enjoined in this decree with any other defendant, its directors, officers, employees, or agents or its subsidiaries or with any other company, its directors, officers, employees, agents or subsidiaries.

[*Dissolution of Association*]

VI. Defendant Retail Lumbermen's Association is hereby ordered to take whatever steps as may be necessary to consummate its dissolution and it is hereby ordered to dissolve, and to cease functioning in any manner other than for the purpose of consummating its dissolution and defendant companies are ordered to take such steps as are necessary to consummate the dissolution of said Association and are hereby ordered to refrain from supporting, contributing to or otherwise permitting the continuance of said Association.

[*Activities Permitted to Secure Compliant*

VII. For the purpose of securing compliance with this decree, authorized repre sentatives of the Department of Justice upon the written request of the Attorney General or an Assistant Attorney General shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in the decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendant shall be permitted to interview officers & employees of defendants without interference, restraint, or limitation by defendants, provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon the written request of the Attorney General or an Assistant Attorney General, shall submit sub-reports with respect to any of the matter contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any persons other than a duly authorized representative of the Department of Justice except in the court of legal proceedings in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

VIII. Jurisdiction of this action is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of carrying out of this decree, for the modification thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

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United States v. W. C. Bell Services, Incorporated, et al.

Civil No. 380

Year Judgment Entered: 1941

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. W. C. Bell Services, Incorporated, Lumber Promotion of Oregon, Incorporated, Lumber Promotion, Incorporated, W. C. Bell, Roy Wilkinson, and R. D. Torbenson., U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,171, (Oct. 27, 1941)

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United States of America v. W. C. Bell Services, Incorporated, Lumber Promotion of Oregon, Incorporated, Lumber Promotion, Incorporated, W. C. Bell, Roy Wilkinson, and R. D. Torbenson.

1940-1943 Trade Cases ¶56,171. U.S. District Court, D. Colorado. Civil Action No. 380. October 27, 1941.

Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act perpetually restraining the defendants from combining and conspiring to restrain interstate trade and commerce in the sale of lumber and allied products. Among the activities enjoined are price fixing; maintaining uniform mark-ups; recommending retail mark-ups; fixing uniform discounts, terms and conditions of sale, rebates and charges for specific operations; allocating sales quotas; operating a bid depository; coercing retail lumber dealers in their acceptance and rejection of orders; and compiling and disseminating information as to sales,orders, shipments, deliveries, inventories, costs and margins of profit of retail lumber dealers.

Thurman Arnold, Assistant Attorney General, Tom C. Clark and James McI. Henderson, Special Assistant to the Attorney General, David J. Clarke, A. Andrew Hauk and Charles L. Whittinghill, Special Attorneys, and Thomas J. Morrissey, U. S. District Attorney, Denver, Colo., for plaintiff.

Joseph B. Keenan, Washington, D. C, for defendants.

Before Symes, District Judge.

Final Judgment

The complainant, United States of America, having filed its complaint herein on October 27, 1941; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue;

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

ORDERED, ADJUDGED, and DECREED as follows:

[*Jurisdiction*]

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

II. For the purposes of this decree:

[*"Lumber" and "Allied Products" Defined*]

(a) The term "lumber and allied products," as used in this decree, shall be deemed to refer to those articles and products which are con sumed and used by the public generally for building and construction purposes, and which are customarily distributed, sold, advertised, and offered for sale by retail lumber dealers throughout the United States, including all articles and products used in construction, building, alteration or repair work of any kind or type.

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[*"Retail Lumber Dealer" Defined*]

(b) The term "retail lumber dealer," as used in this decree, shall be deemed to refer to in dividuals, partnerships, and corporations engaged in the retail sale and distribution of lumber and allied products to contractors and other consumers.

[*Activities Enjoined*]

III. Defendants, their directors, officers, agents, employees, their successors, and all persons acting under, through, or for defendants, or their successors, or any of them, be, and they hereby are, perpetually en joined and restrained from agreeing, com bining, or conspiring among themselves, or with any other individual, association or corporation, whether through the collection, compilation, utilization, dissemination; publication of any information or statistics respecting sales, orders, shipments, deliveries, inventories, costs or prices through the auditing of the books of retail lumber dealers, or otherwise.

[*Price Fixing*]

(a) to raise, fix, maintain or prevent change in the retail prices to be charged for lumber or allied products:

[*Maintaining Uniform Mark-ups*\

(b) to fix, determine, maintain, make uni form, or prevent changes in mark-ups relating to the retail sale or distribution of lumber and allied products;

{*Recommending Retail Mark-ups*]

(c) to advise, recommend, or urge retail mark ups or prices for lumber and allied products

[*Fixing Uniform Discounts, Rebates, etc.*]

(d) to fix, determine, maintain, make uni form or prevent changes in discounts, terms of conditions of sale, rebates or charges for spe cific operations with respect to lumber and allied products;

[*Allocating Sales Quotas*\

(e) to fix, determine, designate or maintain sales quotas, or allocations of business, or to formulate, promote, place in effect, or par ticipate in, any plan or policy for the deter mination or assignment of sales quotas or allo cations of business with respect to the sale or distribution of lumber and allied products.

[*Additional Activities Enjoined*]

IV. Defendants, their directors, officers agents, employees, their successors and all persons acting under, through or for defendants or their successors, or any of them, be and they hereby are individually and perpetually en-joined and restrained from engaging in the following specific acts:

[*Coercion in the Acceptance or Rejection of Orders*]

(a) restricting, coercing, persuading or in fluencing any retail lumber dealer in the free acceptance or rejection of orders or in the free and untrammeled individual establishment of prices for lumber and allied products in the conduct of his own business;

[*Operating Bid Depository*]

(b) formulating, promoting, operating, sponsoring, participating in, or carrying out any bid depository, or other system or program for the filing or listing of invoices, bids, quotas or estimates with respect to the sale or dis tribution of lumber and allied products;

[*Compiling Statistical Information*]

(c) gathering, compiling, or disseminating information or statistics as to the saies, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers unless all such information, data and statistics are openly and fairly gathered and disseminated; are fairly and accurately ascertained from

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actual past and completed transactions; are readily, fully and fairly available to all retail lumber dealers and to the public generally and by mail upon request, at the time of their intial dissemination; and unless such information, data and statistics do not disclose to competitors information as to the amount of sales, orders, shipments, deliveries, inventories, costs, or prices of any individual retail lumber dealer or invoices or data as to individual transactions or sales to named customers;

(d) gathering, compiling, or disseminating information or statistics as to the costs, margins, or profits of retail lumber dealers for items or classes of items of lumber and allied products, if such information or statistics contain information purporting to represent average or typical cost or average or typical elements of cost throughout a market or between competing retail lumber dealers; or if such information or statistics may readily be used as a basis for establishment of uniform prices, uniform price movements, or a uniform formula for pricing between competitors.

[*Lawful Activities Excepted*]

V. Except as specifically provided in Paragraph IV of this decree nothing contained herein shall be deemed to affect relations which otherwise are lawful between a defendant, its directors, officers, employees, or agents or its subsidiaries or between subsidiaries of a defendant where such relations do not involve any agreements, combinations or conspiracies enjoined in this decree with any other defendant, its directors, officers, employees or agents or its subsidiaries or with any other company, its directors, officers, employees, agents or subsidiaries;

[*Examination of Records to Secure [Compliance*]

VI. For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department, of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

VII. Jurisdiction of this action is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

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United States v. National Retail Lumber Dealers Association, et al.

Civil No. 406

Year Judgment Entered: 1942

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Retail Lumber Dealers Association, Arizona Retail Lumber & Builders Supply Association, Carolina Lumber and Building Supply Association, Illinois Lumber & Material Dealers Association, Indiana Lumber and Builders Supply Association Iowa Retail Lumbermen's Association, Kentucky Retail Lumber Dealers Association Louisiana Building Material Dealers Association, Michigan Retail Lumber Dealers Association, Mountain States Lumber Dealers Association, Middle Atlantic Lumbermen's Association, New Jersey Lumbermen's Association, New York Lumber Trade Association, Northeastern Retail Lumbermen's Association, Northwestern Lumbermen's Association, Ohio Association of Retail Lumber Dealers, Southwestern Lumbermen's Association, Tennessee Lumber, Mill work & Supply Dealers Association, Utah: Lumber Dealers' Association, Western Retail Lumbermen's Association, West Virginia Lumber & Builders' Supply Dealers Association, and Wisconsin Retail Lumbermen's Association, U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,181, (Jan. 3, 1942)

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United States v. National Retail Lumber Dealers Association, Arizona Retail Lumber & Builders Supply Association, Carolina Lumber and Building Supply Association, Illinois Lumber & Material Dealers Association, Indiana Lumber and Builders Supply Association Iowa Retail Lumbermen's Association, Kentucky Retail Lumber Dealers Association Louisiana Building Material Dealers Association, Michigan Retail Lumber Dealers Association, Mountain States Lumber Dealers Association, Middle Atlantic Lumbermen's Association, New Jersey Lumbermen's Association, New York Lumber Trade Association, Northeastern Retail Lumbermen's Association, Northwestern Lumbermen's Association, Ohio Association of Retail Lumber Dealers, Southwestern Lumbermen's Association, Tennessee Lumber, Mill work & Supply Dealers Association, Utah: Lumber Dealers' Association, Western Retail Lumbermen's Association, West Virginia Lumber & Builders' Supply Dealers Association, and Wisconsin Retail Lumbermen's Association

1940-1943 Trade Cases ¶56,181. U.S. District Court, D. Colorado. January 3, 1942.

Upon consent of all parties a decree is entered in proceedings under the Sherman Anti-trust Act restraining the defendants from combining and conspiring to restrain interstate commerce in the retail sale of lumber, lumber products, and other building materials. Among the activities enjoined are price fixing; determining uniform mark-ups, price differentials, allowances, discounts and terms and conditions of sale; distributing price lists; operating a; bid depository; establishing sales territories; allocating markets, customers and orders; classifying dealers; inducing legislative or administrative adoption of grade marks or inspection certificates; coercing manufacturers to sell or refrain from selling to particular purchasers compiling and disseminating statistical information as to sales, orders shipments deliveries, inventories, costs and prices; publishing suggested future retail prices; and conducting meetings for the purpose of carrying out the unlawful activities enjoined.

For the plaintiff: Thurman Arnold. Assistant Attorney General, Thomas J. Morrissey, U.S. Attorney, Denver, Colo., Tom C. Clark, James Mcl. Henderson and Wallace Howland, Special *Assistant* to the Attorney General.

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For the defendants Charles M. Price Gene S. Cunningham, Basil M. Boyd, Joseph W. Townsend, Edward O. Snethen, Neill Garrett, P. McKinley Harris, Ben L. Johnston, Donald P. Schurr, James Quigg Newton, Jr., J. Frederick Martin, Raymond D. Torbenson, John J. McCloskey, Verne Foley, Fred N. Furber, Ralph M. Lucas, Frank E. Tyler, Louis H. Hibbitts, Beverly S; Clendenin, William P. Lehman, and, Ralph J. Drought.

Before Symes, District Judge

Final Judgment

The complainant, United States of America, having filed its complaint herein on the 3d day of January, 1942, all of the defendants having appeared and severally filed their answers to such complaint denying the substantive allegation thereof, all parties hereto by their, respective attorneys having severally consented to the entry of this final decree herein and without admission by any party in respect of any such issue;

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

ORDERED, ADJUDGED AND DECREED as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter and of the parties; the complaint states a cause of action against said 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" and the acts amendatory thereof and supplemental thereto.

II

[*"Lumber and Lumber Products" and "Other Building Materials" Defined*]

The term "lumber and lumber products" as used, in this decree shall be deemed to refer to all the products manufactured from the tree commonly used for building and construction purposes including but not limited to board splanks, dimension timbers, shingles, and such fabricated products and by products as millwork, plywood, wall board and shredded wood or bark wool insulation; the term other building materials as used in this decree shall be deemed to refer to other products and materials commonly used for building and construction purposes including but,not limited to asphalt, asbestos and otheir composition roofing materials, building paper, wire products, metal lath, cement, plaster and lime.

[*"Retail Lumber Dealer" Defined*]

The term "retail lumber dealer" as used in this decree shall be deemed to refer to all corporations; partnerships and individuals engaged in the business of purchasing procuring, and receiving lumber, lumber products and other building materials from manufacturers and wholesalers for the pose of supplying the demand therefor by contractors, industrial concerns and other consumers.

[*"Manufacturer" Defined*]

The term "manufacturer" as "used in this decree shall be deemed to refer to all saw-mill, planing-mill, or factory owner who manufactures or converts timber into lumber and lumber products or who manufactures or fabricates the said building materials from raw materials.

[" *Wholesaler" Defined*]

The term "wholesaler" as used in this decree shall be deemed to refer to all corporations, partnerships or individuals engaged in the business of purchasing, procuring, or ordering lumber; lumber" products and other buildihg material's from the manufacturers thereof for sale, shipment, and delivery to retail lumber dealers, an to include all concerns known to the trade as, wholesalers, jobbers, commission men and brokers.

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III

[*Activities Enjoined*]

Each of the defendants, their successors, officers, directors, agents and employees, and all persons acting under, through, or for them, or any of them, be and they are hereby enjoined and restrained from doing or attempting to do, or inducing others to do the, following acts or practices, or any of them:

[Price Fixing]

(a)Formulating, promoting, or participating in any plan or program to raise lower fix, adhere to or maintain prices of lumber, lumber products or other building materials:

[*Determining Uniform Mark-Ups, etc.*]

(b) Formulating, promoting or participating in any plan or program to fix, determine adhere to or to bring about the use of uniform mark-ups price differentials, allowances, discounts, or terms and conditions of sale with respect to lumber, lumber products, or other building materials:

[*Distributing Price Lists, etc.*]

(c) Preparing or distributing any price list, or statement of terms or conditions of sales, or of shipping practices, or any discount sheet, or any statement of agreed arbitrary or average weights;

[*Sponsoring Bid Depository*]

(d) Formulating, promoting, operating, sponsoring, participating in or carrying out any bid depository or other system or program for the filing or listing of invoices, bids, or estimates with respect to the present or future sale or distribution of lumber, lumber products or other building materials, for the purpose or with the effect of fixing prices, or allocating business, or making available to any competitor, or representative thereof, such invoices, bids, or estimates with respect to the present or future sale or distribution of lumber, lumber products, or other building materials;

[*Establishing Sales Territories*]

(e) Designating or establishing any geographical line or boundary beyond which or within which one or more retail lumber dealers shall or shall not sell or shall sell only at certain prices or on certain terms or conditions of sale;

[*Allocating Markets*]

(f) Formulating, promoting or participating in any plan or program for defining, limiting, or allocating markets, customers, or orders among retail lumber dealers;

[*Classifying Dealers*]

(g) Classifying or designating certain retail lumber dealers as the only dealers entitled to purchase or deal in lumber, lumber products, or other building materials, or as entitled to any preferential treatment, or as dealers to be discriminated in favor of, whether such dealers shall be termed as "ethical," "recognized," members of associations, or otherwise; or coercing, compelling, advising, or persuading any manufacturer or wholesaler to sell or to refrain from selling, or to discriminate in favor of or against, or to grant preferential treatment to any purchaser or dealer on the basis of any such designation or classification.

[*Inducing Legislative or Administrative Adoption of Grade Marks*]

(h) Advising or recommending or seeking to induce public authorities to establish by law or administrative regulation any preference or requirement for the use of lumber which is identified by a lumber manufacturers association grade mark or by a lumber manufacturers association . inspection certificate, or advising or recommending or seeking to induce any specifier or purchaser of lumber to require the exclusive use of such lumber; provided, that nothing herein shall forbid efforts to persuade public authorities, specifiers or purchasers to give preference to lumber identified by the grade marks or inspection certificates of inspection agencies determined by such impartial agency as may be established

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or designated with the approval of the Court, to be competent and to be rendering an adequate and non-discriminatory lumber inspection service;

[*Coercing Manufacturers and Wholesalers*]

(i) Formulating, promoting or participating in any plan or program to intimidate, coerce, compel, or exert undue pressure upon manufacturers or wholesalers of lumber, lumber products or other building materials, to sell or to refrain from selling, or to discriminate in favor of, or against any particular purchaser or purchasers, or any particular class or classes of purchasers;

[*Disseminating Information on Sales, etc*]

(j) Gathering, compiling, or disseminating information or statistics as to the sales, orders, shipments, deliveries, inventories, costs or prices of retail lumber dealers unless all such information, data and statistics are openly and fairly gathered and disseminated; are fairly and accurately ascertained from actual past and completed transactions; are readily, fully and fairly made available to all retail lumber dealers and the public generally at the time of their initial dissemination and by mail upon request; and unless such information, data and statistics do not consist of mere averages or disclose to competitors information as to the amount of sales, orders, shipments, deliveries, inventories, costs or prices of any individual retail lumber dealer or invoices or data as to individual transactions or sales to named customers ;

[*Publishing Suggested Future Retail Prices*]

(k) Gathering, publishing or disseminating to sellers of lumber, lumber products, or other building materials information as to suggested future retail prices on lumber, lumber products or other building materials;

[*Conducting Meetings*]

(1) Authorizing, sponsoring, or participating in any meetings or conferences of any associations, or committees or organizations for the purpose or with the effect of engaging in any of the activities prohibited by this paragraph III.

IV

[*Activities Permitted to Secure Compliance*]

For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

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

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United States v. Ideal Cement Company, et al.

Civil No. 415

Year Judgment Entered: 1942

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Ideal Cement Company, Colorado Portland Cement Company, Monolith Portland Midwest Company, Colorado Builders Supply Company, Denver Mortar and Materials Company, Francis J. Fisher, Incorporated, Rig Grande Fuel Company, Spratlen-Brannan, Inc., Merle R. Jones, Sr., Frank F. Wagner George S. Yates, Lloyd S. Brannan, Frank P. Spratlen, Jr., G. R. Joslyn, C. L. Good: Elmer H. Peterson, Harry O. Warner and Stanley W. Russell., U.S. District Court, D. Colorado, 1940-1943 Trade Cases ¶56,199, (Feb. 12, 1942)

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United States of America v. Ideal Cement Company, Colorado Portland Cement Company, Monolith Portland Midwest Company, Colorado Builders Supply Company, Denver Mortar and Materials Company, Francis J. Fisher, Incorporated, Rig Grande Fuel Company, Spratlen-Brannan, Inc., Merle R. Jones, Sr., Frank F. Wagner George S. Yates, Lloyd S. Brannan, Frank P. Spratlen, Jr., G. R. Joslyn, C. L. Good: Elmer H. Peterson, Harry O. Warner and Stanley W. Russell.

1940-1943 Trade Cases ¶56,199. U.S. District Court, D. Colorado. No. 415. November Term, 1941. February 12, 1942.

In a civil proceeding under the Sherman Anti-Trust Act, a consent decree was entered directing defendant cement dealers to revoke and rescind contracts and agreement between them, the purpose of which was to establish a minimum resale price for Portland cement within the State of Colorado. The contracts were purportedly made and entered into under authority of the Colorado Fair Trade Act. The cement dealers were further enjoined and restrained for a period of two years from the date of entry of the decree from making or entering into contracts or agreements under the Colorado Fair Trade Act or otherwise establishing a minimum resale price for cement.

Thurman Arnold, Assistant Attorney General, Washington, D. C., James C. Wilson James Mcl. Henderson and John W. Porter, Special Assistants to the Attorney General Denver, Colo., for plaintiff.

James D. Benedict, George A. Crowder, Terrell C. Drinkwater, Francis Kidneigl Harry H. Rubenstein, Wilbur M. Alter, Rodney J. Bardwell, Jr., and Clarence L. Barthe lie, all of Denver, Colo., for defendants.

Before Symes, District Judge.

Final Judgment

The complainant, United States of America, having filed its complaint herein on February 12, 1942; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party respect of any such issue; and the con plainant having moved the Court for the decree;

NOW, THEREFORE, before any testimonial has been taken herein, and without trial adjudication of Rany issue of fact or la herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

[*Jurisdiction*]

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

II

[*Revocation of State Fair Trade Contracts*]

(A) That the defendants Ideal Cement Company, The Colorado Portland Cement Company, and Harry O. Warner, on or before ten days from the date of entry of this decree, rescind and revoke each and all of the several contracts and agreements now in effect between the said defendant The Colorado Portland Cement Company, by the defendant Harry O. Warner, and dealers in the Denver area, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562).

(B) That the defendants Denver Mortar and Materials Company, Spratlen-Brannan, Inc., Colorado Builders Supply Company, Francis J. Fisher, Inc., Rio Grande Fuel Company, Frank F. Wagner, Lloyd S. Brannan, Frank P. Spratlen, Jr., George R. Joslyn, C. L. Goody, Elmer H. Peterson, George S. Yates, and Merle R. Jones, on or before ten days from date of entry of this decree, rescind and revoke each several contract and agreement now in effect between each of the aforesaid defendants and the defendant The Colorado Portland Cement Company, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562).

(C) That the defendants Ideal Cement Company, The Colorado Portland Cement Company, Harry O. Warner, Colorado Builders Supply Company, Denver Mortar & Materials Company, Francis J. Fisher, Inc., Rio Grande Fuel Company, Spratlen-Brannan, Inc., Merle R. Jones, Frank F. Wagner, George S. Yates, Elmer H. Peterson, C. L. Goody, G. R. Joslyn, Frank P. Spratlen, Jr., and Lloyd S. Brannan, be and they hereby are permanently, perpetually enjoined and restrained from observing, enforcing, or otherwise in any manner giving effect to the several contracts and agreements, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562), now in effect between the said defendant The Colorado Portland Cement Company, by the defendant Harry O. Warner, and the said defendants Colorado Builders Supply Company, Denver Mortar & Materials Company, Francis J. Fisher, Inc., Rio Grande Fuel Company, Spratlen-Brannan, Inc., Merle R. Jones, Frank F. Wagner, George S. Yates, Elmer H. Peterson, C. L. Goody, G. R. Joslyn, Frank P. Spratlen, Jr., and Lloyd S. Brannan.

III

(A) That the defendants Ideal Cement Company, The Colorado Portland Cement Company, and Harry O. Warner be and they hereby are enjoined and restrained for a period of two years from the date of entry of this decree from proposing, making, or entering into contracts or agreements under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562), or otherwise, establishing a minimum resale price for Portland cement produced by the defendant Ideal Cement Company and sold by the defendant The Colorado Portland Cement Company to dealers within the State of Colorado for resale to builders, contractors, and other users.

(B) That the defendants Ideal Cement Company, The Colorado Portland Cement Company, Harry O. Warner, Colorado Builders Supply Company, Denver Mortar & Materials Company, Francis J. Fisher, Inc., Rio Grande Fuel Company, Spratlen-Brannan, Inc., Merle R. Jones, Frank F. Wagner, George S. Yates, Elmer H. Peterson, C. L. Goody, G. R. Joslyn, Frank P. Spratlen, Jr., and Lloyd S. Brannan be and they hereby are enjoined and restrained for a period of two years from the date of entry of this decree from proposing, making, or entering into contracts or agreements, purporting to be made or entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562), or otherwise, establishing a minimum resale price for Portland cement produced by the defendant Ideal Cement Company and sold by the defendant The Colorado

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Portland Cement Company to dealers within the State of Colorado for resale to builders, contractors, and other users.

IV

(A) That the defendants Monolith Portland Midwest Company and Stanley W. Russell, on or before ten days from the date of entry of this decree, rescind and revoke each and all of the several contracts and agreements now in effect between the said defendant Monolith, by the defendant Stanley W. Russell, and dealers in the Denver area, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562).

(B) That the defendants Francis J. Fisher, Inc., Rio Grande Fuel Company, C. L. Goody, Elmer H. Peterson, George S. Yates, and Merle R. Jones, on or before ten days from date of entry of this decree, rescind and revoke each several contract and agreement now in effect between each of the aforesaid defendants and the defendant Monolith Portland Midwest Company, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562).

(C) That the defendants Monolith Portland Midwest Company, Stanley W. Russell, Francis J. Fisher, Inc., Rio Grande Fuel Company, Merle R. Jones, George S. Yates, Elmer H. Peterson, and C. L. Goody, be and they hereby are permanently and perpetually enjoined and restrained from observing, enforcing, or otherwise in any manner giving effect to the several contracts and agreements, purportedly made and entered into under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562), now in effect between the said defendant Monolith, by the defendant Stanley W. Russell, and the said defendants Francis J. Fisher, Inc., Rio Grande Fuel Company, Merle R. Jones, George S. Yates, Elmer H. Peterson, and C. L. Goody.

V

(A) That the defendants Monolith Portland Midwest Company and Stanley W. Russell be and they hereby are enjoined and restrained for a period of two years from the date of entry of this decree from proposing, making, or entering into contracts or agreements, under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562) or otherwise, establishing a minimum resale price for Portland cement produced and sold by the said defendant Monolith to dealers within the State of Colorado for resale to builders, contractors, and other users.

(B) That the defendants Colorado Builders Supply Company, Denver Mortar & Materials Company, Francis J. Fisher, Inc., Rio Grande Fuel Company, Spratlen-Bran-nan, Inc., Merle R. Jones, Frank F. Wagner, George S, Yates, Elmer H. Peterson, C. L. Goody, G. R. Joslyn, Frank P. Spratlen, Jr., and Lloyd S. Brannan be and they hereby are enjoined and restrained for a period of two years from the date of entry of this decree from proposing, making, or entering into contracts or agreements, under the authority of the Colorado Fair Trade Act (Colorado Session Laws 1937, Chapter 146, pp. 559-562) or otherwise, establishing a minimum resale price for Portland cement produced and sold by the said defendant Monolith to dealers within the State of Colorado for.resale to builders, contractors, and other users.

VI

[*Retention of Jurisdiction*]

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

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United States v. National Alfalfa Dehydrating and Milling Company, et al.

Civil No. 6111

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Alfalfa Dehydrating: and Milling Company and Grain Elevator Warehouse Company., U.S. District Court, D. Colorado, 1963 Trade Cases ¶70,665, (Mar. 15, 1963)

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United States v. National Alfalfa Dehydrating: and Milling Company and Grain Elevator Warehouse Company.

1963 Trade Cases ¶70,665. U.S. District Court, D. Colorado. Civil Action No. 6111. Entered March 15, 1963. Case No. 1398. in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Divestiture of Stock or Assets—Dehydrated Alfalfa—Consent Judgment.—A manufacturer of dehydrated alfalfa was required to divest itself of seven alfalfa dehydrating plants under the terms of a consent judgment. Also, for a period of five years, the manufacturer would be prohibited from acquiring all or any part of producing, marketing or storing facilities.

Acquiring Competitors—General Injunctive Relief—Leasing of Gas Storage Facilities —Consent Judgment.—A grain elevator company was required under the terms of a consent judgment to lease ten per cent of its gas storage facilities to any eligible applicants each year for a period of five years.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Wm. D. Kilgore, Jr., Earl A. Jinkinson, and Raymond P. Hernacki, Attorneys, Department of Justice.

For the defendants: Dawson, Nagel, Sherman & Howard, by Arthur K. Underwood, Jr., Hugh A. Burns, and James E. Hautzinger, for National Alfalfa Dehydrating and Milling Company and Grain Elevator Warehouse Company; and Shapiro, Rosenfeld, Stalberg and Cook, by Harry Shapiro, for National Alfalfa Dehydrating and Milling Company.

Final Judgment

ARRAJ, Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 27, 1958, and having joined Grain Elevator Warehouse Company as a party defendant by an amended complaint filed on March 22, 1961 and defendants having appeared by their attorneys, and filed their answers to such complaint and amended complaint, denying the substantive allegations thereof, and plaintiff and defendants having severally consented to this Final Judgment without trial or adjudication of any issue of fact or law herein, and without said judgment constituting evidence or any admission by plaintiff or defendants in respect to any issue of fact or law herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of or any admission with respect to any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Clayton Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states claims for relief under Section 7 of said Act.

II

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[*Definitions*]

As used in this Final Judgment:

(a) "National Alfalfa" shall mean defendant National Alfalfa Dehydrating and Milling Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Kansas City, Missouri;

(b)"Grain Elevator" shall mean defend ant Grain Elevator Warehouse Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Camden, New Jersey;

(c)(c)"Person" shall mean any individual, firm, association, partnership, corporation, company or other legal or business entity;

(d)"Eligible person" shall mean any person or persons other than (i) any person in which defendants own any stock or financial interest, directly or indirectly, (ii) any one or more officers, directors, agents or employees of defendants, or (iii) any other person or persons acting for or under the control of defendants ;

(e)"Crop year" shall mean the period from May 1 through the following April 30.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendants shall be binding upon defendants, their officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with defendants who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Acquisitions Prohibited*]

For a period of five (5) years from the date of entry of this Final Judgment, defendants are enjoined and restrained from acquiring from any person, directly or indirectly, whether by way of acquisition of assets or capital stock, all or any part of, or interest in, the business in the United States of producing, marketing or storing dehydrated alfalfa conducted by such person; provided, however, that nothing contained in this Final Judgment shall prohibit defendants from

(a) Obtaining facilities for the storage of dehydrated alfalfa under temporary leases when additional storage is needed due to production or market fluctuations;

(b) Acquiring supplies or materials in the normal course of business or acquiring assets to replace deteriorated or outmoded equipment;

(c) Acquiring, directly or indirectly, any or all of the assets or capital stock of any of their respective subsidiaries or of each other, or forming subsidiaries and transferring thereto stock or assets of defendants or of their subsidiaries; or

(d) Acquiring, directly or indirectly, any or all of the assets or capital stock of any such person where such acquisition shall be consented to by the Department of Justice, or where it shall be shown to the satisfaction of this Court, upon application by defendants and reasonable notice to plaintiff, that the effect of such acquisition will not be substantially to lessen competition or to tend to create a monoply in any line of commerce in any section of the United States.

V

[*Divestiture Required*]

Within a reasonable time after the date of entry of this Final Judgment, defendant National Alfalfa shall sell to an eligible person as a reasonable price all of the assets itemized in Schedule (1) attached hereto and hereby made a part hereof. Such sale shall be made in good faith and shall be absolute, unqualified and unconditional. If

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said assets itemized in Schedule (1) are not sold for cash, nothing herein contained shall be deemed to prohibit defendant National Alfalfa from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security (except equity in the securities of purchaser) on said assets for the purpose of securing to defendant National Alfalfa full payment of the price at which said assets are sold, provided that any such assets repossessed shall be again divested in the same manner as provided above.

Following the entry of this Final Judgment, defendant National Alfalfa shall render annual reports to this Court, with copies to plaintiff, outlining in reasonable detail the efforts made by defendant National Alfalfa to dispose of said assets. If the plaintiff herein is, at any time, dissatisfied with the progress or efforts being made in the sale of said assets, it may file a petition with this Court, on reasonable notice to defendant National Alfalfa, for such further orders and directions as may be necessary to effect the sale of said assets by defendant National Alfalfa.

VI

[*Leasing of Gas Storage Facilities Required*]

Defendant Grain Elevator is hereby ordered, directed and required to lease to any applicants who are eligible persons, at a reasonable rental, ten per cent (10%) of its gas storage facilities at such locations in the United States as defendant Grain Elevator may determine. Defendant Grain Elevator shall give reasonable notice to the dehydrated alfalfa industry at least 90 days prior to May 1 of each year of the location and capacity of such gas storage facilities as will be available for the next crop year. Unless defendant Grain Elevator consents otherwise, such gas storage facilities shall be offered for rental in units of 1100 tons in capacity or multiples thereof. In the event that gas storage facilities so offered are not rented by an eligible person by April 30 of the crop year within which such notice has been given, defendant Grain Elevator will be free to rent or use such facilities during the next crop year as defendant Grain Elevator may determine. In the further event that ten per cent (10%) of defendent Grain Elevator's gas storage facilities are not rented by any eligible person or persons for any portion of a period consisting of three (3) successive years, this Section VI will be void and of no effect. Further, this Section VI shall in any event terminate and be of no further effect five (5) years after the date of entry of this Final Judgment.

VII

[*Inspection*]

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 the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendants made to their principal offices, be permitted:

(a) Access, during the office hours of defendants, to all books, ledgers, ac counts, correspondence, memoranda, and other records and documents in the possession of or under control of said defendants related to any of the matters contained in this Final Judgment; and

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

Upon such written request the defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VII 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.

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VIII

[*Jurisdiction Retained*]

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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Schedule (1)

Location	Description of Property
May Valley Colorado	Equipment, Buildings and Plant Site.
Ordway, Colorado	Equipment, Buildings and Plant Site.
Wiley, Colorado	Equipment, Buildings and Plant Site.
Longton, Kansas	One Drum, Equipment, Buildings and Plant Site.
Valley, Nebraska	One Drum, Equipment, Buildings and Plant Site.
Bradner, Ohio	One Drum, Equipment, Buildings and Plant Site.
Phillippy, Tennessee	One Drum, Equipment, Buildings and Plant Site.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 6111

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
vs.	:	STIPULATION and ORDER
NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY and GRAIN ELEVATOR WAREHOUSE COMPANY,	:	FILED MAR 4 1964
Defendants	:	

COME NOW the parties, by their attorneys, and stipulate and agree to the following:

1. Defendant, NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY (the surviving corporation of the merger of National Alfalfa Dehydrating and Milling Company and Grain Elevator Warehouse Company, which became effective October 31, 1963) will be deemed to have complied with Paragraph VI of the Final Judgment entered herein on March 15, 1963 for the crop year beginning May 1, 1964, and for that crop year only, if Defendant, NATIONAL ALFALFA, shall give reasonable notice to the dehydrated alfalfa industry by placing two successive weekly advertisements in the newspaper "Feedstuffs" published by Miller Publishing Company of Minneapolis, Minnesota, commencing on or before March 10, 1964 of the location and capacity of such gas storage facilities as will be available for use during the crop year beginning May 1, 1964.

2. Defendant, NATIONAL ALFALFA, will be deemed to have complied with Paragraph VI of the said Final Judgment for the crop years beginning May 1, 1965 and thereafter if it shall

give reasonable notice to the dehydrated alfalfa industry in the same manner by placing two successive weekly advertisements in the said newspaper "Feedstuffs" commencing on or before February 1, 1965 and on or before February 1st of any subsequent years required by Paragraph VI of the said Final Judgment, of the location and capacity of such gas storage facilities as will be available for rental during the crop year beginning May 1st of such year.

3. In the event that gas storage facilities so offered are not rented by any eligible person or persons by May 30th of any year, Defendant, NATIONAL ALFALFA, will be free to rent or use such facilities during the remainder of such crop year as Defendant may determine.

4. In all other respects, the provisions of the Final Judgment entered herein on March 15, 1963 shall apply without modification.

5. It is agreed that this Stipulation will be submitted to the Court for its approval.

Dated: , 1964.

For the Plaintiff:
UNITED STATES OF AMERICA

Earl A. Jindrison

Raymond P. Hernacki

Attorneys, Department of Justice

For the Defendant:
NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY

SHAPIRO, ROSENFELD, STALLINGS & COOK

By: Leonard J. Cook

Attorneys for Defendant, National Alfalfa Dehydrating and Milling Company

ENTERED MAR 4 1964

ORDER

Pursuant to the stipulation and agreement of the parties, it is hereby

ORDERED, ADJUDGED and DECREED that the Final Judgment entered in this action on March 15, 1963 be and the same hereby is modified as set forth in the above Stipulation.

Dated: March 4, 1964.

/s/ Alfred A. Arraj
Chief Judge
United States District Court

United States v. Band-It Company, et al.

Civil No. 7796

Year Judgment Entered: 1963

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, Plaintiff, v. BAND-IT COMPANY and VALDEMAR LODHOLM, Defendants.	Civil Action No. 7796 Date: March 15, 1963

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on November 15, 1962, each of the defendants having appeared and having filed their answers denying the substantive allegations of said complaint, and the plaintiff and each of the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the plaintiff and each defendant, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a cause of action against the defendants, and each of them, upon which relief may 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.

II

As used in this Final Judgment:

(A) "Corporate defendant" means the defendant herein BAND-IT COMPANY, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at Denver, Colorado, its officers, directors, and employees.

(B) "Banding devices and/or related products" shall mean steel bands, buckles, clamps, brackets, nipples, couplers, swivel adapters, menders and tools for fastening or use in connection with such equipment, which are sold by the corporate defendant.

(C) "Person" means any individual, partnership, firm, corporation, association, trustee or any other business or legal entity other than the corporate defendant.

(D) "Distributor" shall mean any person which, at any time, purchases any banding devices and related products from the corporate defendant for resale.

(E) "United States" means the 50 States of the United States, the District of Columbia and any of its territories or possessions. For the purposes of this Final Judgment any sale to any agency or instrumentality of the United States, wherever located, shall be deemed to be a sale within the United States.

III

The provisions of this Final Judgment shall apply to the individual defendant, the corporate defendant, and to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns and to all other persons in active concert

or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program with any other person, directly or indirectly to:

(A) Fix, determine, or stabilize the price or prices, terms or conditions at or upon which any banding devices and/or related products shall be resold by any such person or other person within the United States.

(B) Exchange, with any such person or other person within the United States, any information, whether in the form of price lists, suggested price lists, circular or policy letters or otherwise, regarding the price or prices, terms or conditions at or upon which any banding devices and/or related products shall be resold within the United States.

V

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

(A) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any person within the United States, including specifically (but not limited to) any distributor from offering to sell, or selling, any banding devices and/or related products (i) to any other person or class of persons or (ii) at or upon any price or prices, terms or conditions which such person may individually determine;

(B) Cancelling, or threatening to cancel, the distributorship contract, or any like or similar contract with any person within

the United States, in whole or in part, because of the price or prices, terms or conditions at or upon which any such person has sold, or offered to sell any banding devices and/or related products purchased purchased from any defendant;

(C) For a period of five (5) years after the date of the entry of this Final Judgment, issuing or circulating any list or lists within the United States containing any price or purported price for any banding devices and/or related products except those prices at which the corporate defendant itself regularly offers to sell such banding devices and/or related products directly to any distributor, use or other class of customer.

VI

The corporate defendant is ordered and directed:

(A) Forthwith, and in any event, not later than sixty (60) days after the entry of this Final Judgment to notify, in writing, each of its present distributors within the United States that such distributors are thereafter free to sell any banding devices and/or related products purchased from the corporate defendant at any price or prices, and upon any terms or conditions which such distributors may individually determine.

(B) (i) Forthwith, and in any event, not later than sixty (6) days after the date of the entry of this Final Judgment to notify, in writing, each of its present foreign distributors and, (ii) upon the appointment of any new foreign distributors within three (3) years from the date of entry of this Final Judgment, to notify, in writing, such distributors at the time of the appointment that such distributors are free to sell to any agency or instrumentality of the United States Government, wherever located, any banding devices and/or related products

purchased from the corporate defendant at any price or prices, and upon any terms or conditions which such distributors may individually determine.

(C) Not later than ninety (90) days after the date of the entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit setting forth the fact and manner of its compliance with the subsections (A) and (B)(1) of this Section VI.

(D) To notify, in writing, each distributor within the United States who will be appointed within three (3) years from the entry of this Final Judgment, at the time of such appointment, that such distributor will be free to sell any banding devices and/or related products purchased from the corporate defendant at any price or prices, and upon any terms or conditions which such distributor may individually determine.

(E) For a period of five (5) years after the date of the entry of this Final Judgment, to furnish a copy of this Final Judgment to any person upon request and without charge.

VII

For the purposes of determining and securing compliance with this Final Judgment 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 or his 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 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 such defendant who may have counsel present, regarding any such matters; and upon such request such 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 this Final Judgment. No information obtained by the means provided in this Section VII 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

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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: March 15, 1963

/s/ ALFRED A. ARRAJ
United States District Judge

United States v. El Paso Natural Gas Company, et al.

Civil No. C-2626

Year Judgment Entered: 1971

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. El Paso Natural Gas Co., and Pacific Northwest Pipeline Corp., U.S. District Court, D. Colorado, 1972 Trade Cases ¶73,975, (Jun. 25, 1971)

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United States v. El Paso Natural Gas Co., and Pacific Northwest Pipeline Corp.

1972 Trade Cases ¶73,975. U.S. District Court, D. Colorado. Civil Action No. C-2626. Filed June 25, 1971; findings, conclusions, opinion amended as to "The Court's Plan for Divestiture and Allocation of Reserves," July 26, 1971. Case No. 1354, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions and Mergers—Injunctive Relief—Natural Gas—Divestiture and Allocation of Reserves.— Pursuant to the Supreme Court's decision in *Utah Ptiblic Sendee Commission v. El Paso Natural Gas Co.* (1969 TRADE CASES ¶ 72,824), a plan for divestiture and allocation of reserves was drafted. The procedure encompassed (1) an allocation of gas reserves as required by *Utah*, (2) reopening of consideration of which applicant should acquire the divested property, and consideration of whether an award to a particular applicant will have any anticompetitive effects either in the California market or in other markets, and (3) provision for complete divestiture to the selected applicant. Various issues of divestiture were reserved.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., John W. Dougherty and Joseph J. Saunders, Dept. of Justice, Washington, D. C, James L. Treece, U. S. Atty., and Carolyn J. McNeill, Asst. U. S. Atty., Denver, Colo.

For defendants: Leon M. Payne, A. H. Ebert, Jr., and P. Dexter Peacock, of Andrews, Kurth, Campbell & Jones, Houston, Tex., G. Scott Cuming, E. G. Najaiko, and David F. Mackie, El Paso, Tex., for El Paso Natural Gas Co.

For intervenors: Gary Nelson, Atty. Gen., Phoenix, Ariz., for Ariz., ex rel. Ariz. Corp. Com.; Nicholas H. Powell, of Snell & Wilmer, Phoenix, Ariz., for Ariz. Public Serv. Co.; A. Y. Holesapple, of Holesapple, Conner, Jones, McFall & Johnson, Tucson, Ariz., for Tucson Gas & Elec. Co.; Louis F. Callister, of Callister, Kesler & Callister, Salt Lake City, Utah, for Ariz. Public Serv. Co. and Tucson Gas & Elec. Co.; John T. Miller, Washington, D. C, and Frederic L. Kirgis, of Gorsuch, Kirgis, Campbell, Walker & Grover, Denver, Colo., for Ariz., ex rel. Ariz. Corp. Com., Ariz. Public Serv. Co., and Tucson Gas & Elec. Co.; Evelle I. Younger, Atty. Gen., and Iver E. Skjeie, Deputy Atty. Gen., Sacramento, Cal., for Cal.; James E. Faust, Salt Lake City, Utah, for Cal. Pacific Utilities Co.; Sheldon Rosenthal, San Francisco, Cal., for Public Utilities Com. of Cal.; Richard B. Hooper and Wilbert C. Anderson, of Jones, Grey, Kehoe, Bayley, Hooper and Olsen, Seattle, Wash., for Cascade Natural Gas Co.; Duke W. Dunbar, Atty. Gen., John E. Archibold and Robert E. Commins, Asst. Attys. Gen., Denver, Colo., for Colo., ex rel. Colo. Public Utilities Com.; Paul W. Williams and Don B. Stookey, of Cahill, Gordon, Sonnett, Reindel & Ohl, New York, N. Y., for Committee of El Paso Natural Gas Co. Institutional Bond and Debenture Investors; W. Anthony Park, Atty. Gen., Idaho Public Utilities Com., Larry D. Ripley, Spec. Asst. Atty. Gen., of Elam, Burke, Jeffersen, Evans and Boyd, Boise, Idaho, for Idaho, ex rel. Idaho Public Utilities Com.;Claude Marcus, of Marcus & Marcus, Boise, Idaho, for Intermountain Gas Co.; Joseph S. Jones, and John Crawford, Jr., Salt Lake City, Utah, for Mountain Fuel Supply Co.; Robert List, Atty. Gen., Carson City, Nev., for Public Serv. Com. of Nev.; David L. Norvell, Atty. Gen., Santa Fe, N. M., William J. Cooley and Joel B. Burr, Jr., Agency Asst. Attys. Gen., Farmington, N. M., for N. M. Public Serv. Com.; Harold W. Pierce, Portland, Ore., for Northwest Natural Gas Co.; Lee Johnson, Atty. Gen., and Richard W. Sabin, Asst. Atty. Geti., Salem, Ore., for Ore., ex rel. Public Utility Commissioner of Ore.; Malcolm W. Furbush, Daniel E. Gibson, and Joseph S. Englert, Jr., San Francisco, Cal., for Pacific Gas & Elec. Co.; David R. Pigott and Donald J. Richardson, Jr., of Chickering & Gregory, San Francisco, Cal., for San Diego Gas & Elec. Co.; Rollin E. Woodbury, Rosemead, Cal. and R. Clyde Hargrove, Shreveport, La, for Southern Cal. Edison Co.; John Ormasa, W. H. Owens, and P. Dennis Keenan, Los Angeles, Cal., for Southern Cal. Gas Co.; Charles H. McCrea, and Lawrence V. Robertson, Jr., Las Vegas, Nev., for Southwest Gas Corp.; Edward F. Richards, of Gustin and Richards, Salt Lake City, Utah, for Utah Gas Serv. Co.; Vernon B. Romney, Atty. Gen., Joseph P. McCarthy and H. Wright Volker, Asst. Attys. Gen.,

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Salt Lake City, Utah, for Utah Public Serv. Com.; John W. Chapman, of Cartano, Botzer & Chapman, Seattle, Wash., for Wash. Natural Gas Co.; Slade Gorton, Atty. Gen., Frank P. Hayes and Robert E. Simpson, Asst. Attys. Gen., Olympia, Wash., for Wash. Utilities and Transportation Com.; Robert L. Simpson, of Paine, Lowe, Coffin, Herman & O'Kelly, Spokane, Wash., and A. Wally Sandack, of Draper, Sandack & Saperstein, Salt Lake City, Utah, for Wash. Water Power Co.; Don M. Empfield, Spec. Asst. Atty. Gen., Cheyenne, Wyo., for Public Serv. Com. of Wyo.

For *amicus curiae:* Gordon Gooch, George P. Lewnes and John P. Mathis, Washington, D. C, for FPC.

For applicants for acquisition: James D. Voorhees, of Moran, Riedy & Voorhees, Denver, Colo., A. John Cressey, Minneapolis, Minn., and William R. Cormole, of Connole & O'Connell, Washington, D. C, for Banister Continental Corp.; David K. Watkiss, of Pugsley, Hayes, Rampton & Watkiss, Salt Lake City, Utah, James D. McKinney, of Ross, Marsh & Foster, Washington, D. C, C. H. McCall, Houston, Tex., and John W. Hammett and Charles F. White, Oklahoma City, Okla., for Alas. Interstate Arco-Gulf-Tipperary Grant; Walter W. Sapp, Colorado Springs, Colo., James L. White, Robert T. Connery, and David G. Owen, of Holland and Hart, Denver, Colo., for Colo. Interstate Corp.; Jefferson D. Giller and Howard Wolf, of Fulbright, Crooker, Freeman, Bates and Jaworski, Houston, Tex., and Jack Ware, Crystal City, Tex., for Copaco, Inc.; Marvin J. Bertoch, of Ray, Quinney & Nebeker, Salt Lake City, Utah, George S. Dibble, Jr., Cody, Wyo., and Royce H. Savage, of Boone, Ellison & Smith, Tulsa, Okla., for Husky Oil Ltd.; C. Keefe Hurley and Earle C. Cooley, of Hale and Dorr, Boston, Mass., and Brigham E. Roberts, of Rawlings, Roberts & Black, Salt Lake City, Utah, for Paradox Production Corp.; Benjamin H. Parkinson, of Ackerman, Johnston, Norberg & Parkinson, San Francisco, Cal., Hugh J. McClearn, of Van Cise, Freeman, Tooley & McClearn, Denver, Colo., J. Evans Atwell and Lynn R. Coleman, of Vinson, Elkins, Searls & Smith, Houston, Tex., J. Donald Brinkerhoff, Menlo Park, Cal., Edward O. Werner, of Hardy, Peal, Rawlings & Werner, New York, N. Y., and Robert Paradise, Los Angeles, Cal., for Western Sunset Transmission Co.

Findings of Fact, Conclusions of Law, and Opinion on Divestiture and Allocation of Gas Reserves

CHILSON, D. J.: This case was originally commenced in the United States District Court for the District of Utah, Central Division, as Civil Action No. 143-57. In October 1970, it was transferred to this Court for the convenience of parties and witnesses.

Preliminary Statement

The following is a brief summary of the facts and background which lead to the present phase of this litigation. A more detailed account is found in three decisions of the Supreme Court:

California v. Federal Power Commission [1962 TRADE CASES ¶ 70,302], 369 U. S. 482.

United States v. El Paso Natural Gas Co., et al. [1964 TRADE CASES ¶ 71,073], 376 U. S. 651.

Cascade Natural Gas Corp. v. El Paso Natural Gas Co., et al. [1967 TRADE CASES ¶ 72,019], 386 U. S. 129 (Referred to as Cascade).

Prior to the year 1954, El Paso Natural Gas Company (El Paso) was engaged in the business of transporting natural gas interstate to the California border for sale to distributors who distributed the gas to users in Southern California. At that time,El Paso was the sole out-of-state supplier to the California market.

In 1954, Pacific Northwest (PNW) received the approval of the Federal Power Commission to construct and operate a pipeline from the San Juan Basin in New Mexico to the State of Washington to supply gas to the then unserved Pacific Northwest area. The pipeline was completed and service was begun in 1956.

PNW had obtained authorization to receive large quantities of Canadian gas and, in addition, had acquired Rocky Mountain gas reservoirs along its route and gas reserves in the San Juan Basin. In 1954, PNW tried to enter the rapidly expanding California market by transportation of Canadian gas to Pacific Gas & Electric Co. (PG & E) in Northern California, and the effort was renewed in 1955. In 1956, PNW negotiated with Southern California Edison Co. (Edison) to supply it with natural gas.

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Although PNW had no pipeline into California and its efforts to enter the California market were unsuccessful, these efforts were a substantial competitive factor in the California market and led to a price reduction and other concessions to the ultimate benefit of Edison.

El Paso had been interested in acquiring PNW since 1954. The first offer from El Paso was in December 1955, an offer PNW rejected. Negotiations were resumed by El Paso in the summer of 1956, while, PNW was still trying to obtain entry to the California market.

In November of 1956, El Paso offered to exchange El Paso shares for PNW shares. This offer was accepted by PNW directors and by May 1957, El Paso had acquired 99.8 percent of PNW's outstanding stock.

In July 1957, the Department of Justice filed suit against El Paso in the U. S.-District Court for the District of Utah charging that the stock acquisition violated Section 7 of the Clayton Act.

In August 1957, El Paso applied to the Federal Power Commission for permission to acquire the assets of PNW, and on December 23, 1959, the Commission approved and the merger of PNW with El Paso was effected on December 31, 1959. California, an intervenor in the proceedings, obtained a review by the Court of Appeals, which affirmed the Commission [1961 TRADE CASES ¶ 69,967] (111 U. S. App. D. C. 226, 296 F. 2d 348). The Supreme Court granted certiorari and set aside the Commission's approval, holding that it should not have acted until the District Court had passed on the Clayton Act issues. *California v. Federal Power Commission*, 369 U. S. 482 (supra).

Meanwhile, (in October 1960) the United States amended its complaint in the District Court so as to include the asset acquisition by merger in the charge of violation of the Clayton Act. Upon trial of this action, the District Court found for El Paso; the U. S. appealed; the Supreme Court, on review of the record which was composed largely of undisputed evidence, concluded that the effect of the acquisition "may be substantially to lessen competition" within the meaning of Section 7 of the Clayton Act, reversed the judgment and remanded with directions to the District Court "to order divestiture without delay." *United States v. El Paso Natural Gas Company, et at*, 376 U. S. p. 651 (supra).

Upon remand to the District Court, motions to intervene by the State of California, Southern California Edison Company, (Edison and Cascade Natural Gas Company (Cascade Company)) were denied, and the District Court entered a decree of divestiture which had been agreed upon by the Department of Justice and El Paso.

California, Edison, and Cascade Company appealed from the denial of their motions to intervene. The Supreme Court in *Cascade Natural Gas Corporation v. El Paso Natural Gas Company et al.* [1967 TRADE CASES ¶ 72,019], 386 U. S. 129 (Cascade) reversed the District Court and remanded with directions to allow each appellant to intervene as a matter of right and that the proceedings be reopened to give California, Edison, and Cascade Company an opportunity to be heard as intervenors.

The Court also held that the agreed decree, entered by the District Court, was not in accord with the Supreme Court's mandate in 376 U. S. 651 (supra) which required that PNW, or a new company, be at once restored to a position where it could compete with El Paso in the California market; ordered the District Court to vacate the orders of divestiture previously entered; "have de novo hearings on the type of divestiture" the Court envisioned and made plain in its opinion in 376 U. S. 651; directed "... there be a divestiture without delay"; suggested guidelines that should be followed in ordering the divestiture and ordered that a different District Judge be assigned to hear the case.

On April 18, 1967, the undersigned was assigned to the District of Utah to conduct the further proceedings required by Cascade. During the years 1967 and 1968, this-Court conducted "de novo hearings" including extensive evidentiary hearings in which the plaintiff, defendant, the Federal Power Commission as Amicus Curiae, twenty-two intervenors and nine applicants for acquisition of the properties to be devested, participated in all or part of those proceedings.

On June 21, 1968, the Court entered tentative Findings of Fact, Conclusions of Law and Opinion [1968 TRADE CASES ¶ 72,533] which with some modifications were made a final judgment of the Court on August 29, 1968, hereafter referred to as the 1968 Decree. Minor amendments were thereafter made, the last of which were

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entered November 7, 1968, at which time, the Findings, Conclusion and Opinion became the final judgment of this Court.

Upon review, the Supreme Court in *Utah Public Service Commission v. El Paso Natural Gas Company et al.* [1969 TRADE CASES ¶ 72,824] 395 U. S. 464 (hereafter referred to as Utah, vacated the 1968 Decree and remanded the case "for proceedings in conformity with this opinion."

The reasons for the remand stated in *Utah* are:

> "We find that the decree of the District Court does not comply with our mandate; it does not apportion the gas reserves between El Paso and New Company in a manner consistent with the purpose of the mandate, and it does not provide for complete divestiture. We therefore vacate the judgment and remand the case for further proceedings."

The purpose and object of the apportionment of reserves and the standards therefore are stated in the opinion as follows:

> "The purpose of our mandate was to restore competition in the California market. [1] An allocation of gas reserves should be made which is "equitable" with that purpose in mind. The position of the New Company must be strengthened and the leverage of El Paso not increased. That is to say, an allocation of gas reserves—particularly those in the San Juan Basin—must be made to rectify, if possible, the manner in which El Paso has used the illegal merger to strengthen its position in the California market. The object of the allocation of gas reserves must be to place New Company in the same relative competitive position vis-a-vis El Paso in the California market as that which Pacific Northwest enjoyed immediately prior to the illegal merger."

The opinion also states:

> "A reallocation of gas reserves under this standard may permit an applicant other than Colorado Interstate Corporation to acquire New Company and make it a competitive force in California. Thus, the District Court is directed to effect this reallocation of gas reserves, and in light of the reallocation, to reopen consideration of which applicant should acquire New Company. Such consideration should, of course, include whether an award to a particular applicant will have any anti-competitive effect either in the California market or in other markets."

We determined the procedure to comply with *Utah* should be:

> First, make an allocation of gas reserves as required by *Utah;*
>
> Second, reopen consideration of which applicant should acquire the divested property, and in so doing, to consider whether an award to a particular applicant will have any anti-competitive effects either in the California market or in other markets; and
>
> Third, provide for a "complete divestiture" to the selected applicant as required by the *Utah* opinion.

Following this procedure, we ordered submission by the parties of proposals or suggestions for allocation of gas reserves which would meet the requirements of *Utah*, held evidentiary hearings thereon, and ordered permissive filing of briefs. The briefs have been received and considered by the Court, and the Court is now prepared to make an allocation of reserves in accordance with the *Utah* opinion.

Allocation of Gas Reserves Findings of Fact, Conclusions of Law and Opinion

To expedite the hearings, the evidence admitted in the 1967-68 hearings, insofar as that evidence is pertinent to the reserves and their allocation, was admitted as evidence in the current hearings.

We found from the evidence received in the 1967-68 hearings that the total system reserves were not sufficient to serve the requirements of both the Northwest and Southern divisions and at the same time, provide New Company with sufficient reserves to support a New Company project to California, and that to divest to New

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Company sufficient reserves from the San Juan Basin so that New Company could supply a project to California, would invade reserves which were dedicated to the service of the Southern division.

But the evidence at the previous hearings also supported the Court's finding:

> "The Court is satisfied that capable management of New Company can obtain the reserves necessary to compete in the California market without invading the reserves dedicated to the service of the Southern division." [1968 TRADE CASES ¶ 72,533], (291 F. Supp. 20).

Plaintiff correctly states at Page 20 of its brief filed March 24, 1971, that at the previous hearings, new gas supplies were believed to be abundant. The evidence at the recent hearings discloses for the first time in these proceedings, an entirely different picture with respect to domestic reserves.

Two members of the staff of the Federal Power Commission (Thompson and Breene) testified that domestic sources of supply are unable to keep pace with the demands; that reserve inventories are declining; that the demand is increasing while the discoveries of new domestic supplies are decreasing; in 1968, more gas was consumed than was discovered, and the indications-are that existing proved reserves from which gas flows generally to the Western states will be exhausted by 1979. No evidence to the contrary was offered, and the plaintiff, defendant, intervenors, and most of the applicants for acquisition have accepted this evaluation without question.

The domestic reserves of the defendant are no exception. The defendant estimates that after divestiture of the reserves as proposed by it, that the deliverability life of the reserves remaining to serve the certificated commitments of the Southern division is three years, i. e., the period before which El Paso will be unable to meet the requirements which the Federal Power Commission has certificated for the Southern division. (Federal Power Commission brief, Page 5-15, FPC Staff Exhibits 1000 and 1006 and El Paso Exhibit 151.)

Mr. Breene, of the Federal Power Commission staff, testified that in 1969, he estimated the deliverability life of the reserves for the Southern division at five years. No evidence was offered to the contrary and the briefs indicate that the parties generally accept the evidence of the staff witnesses as a true picture of the present domestic supply and reserve conditions, and that the estimates of deliverability life of the reserves remaining to supply the Southern division is from three to five years.

The evidence will permit no finding other than that at the present time a divestiture of more San Juan Basin reserves to New Company than that ordered in the 1968 Decree and now proposed by defendant would jeopardize the ability of the defendant to serve the certificated requirement of the Southern division.

The Court finds that the defendant presently is not a competitor for incremental demands in the California market and that it cannot be such a competitor unless and until it obtains additional gas supplies and reserves over and above those necessary to assure continued service of its present commitments under the Southern division.

If additional supplies and reserves are acquired by defendant which are not physically available for service through the Southern division, those supplies and reserves could be used by the defendant to compete for new increments of demands in the California market. (For example, service of liquefied natural gas derived from foreign sources.)

As the evidence disclosed a drastic decrease in the ability of domestic supplies and reserves to meet increasing demands in the short time since the 1967-68 hearings, so also does the evidence disclose the possibilities of a very substantial increase in domestic supplies and reserves.

The evidence reveals that the domestic areas which have traditionally served to supply the Western United States have a gas supply potential of 180.5 trillion cubic feet (TCF), almost four times their present proved reserves. The Bureau of Mined has estimated that 317 TCF are contained in formations along the Rocky Mountains which may be susceptible to recovery by nuclear stimulation. It is estimated that recoverable coal reserves in the United States contain a potential of 12,000 TCF of synthetic pipeline gas and that the processing of oil shale reserves in Colorado alone would yield about 6,000 TCF of pipeline gas (FPC staff Exhibits 1000 and 1006). In addition to the potential domestic gas supplies and reserves, Western Canada and the Arctic Islands

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have a potential of over 530 TCF, (El Paso Exhibit 120 Page 17), and Alaska's estimated potential is about 420 TCF. (Staff Exhibit 1000 Page 3.)

The transportation of liquified natural gas by ocean tanker may well render vast quantities of overseas supplies physically available to American markets., (FPC Staff Exhibit 1006-D Page 60-64.)

El Paso is now furnishing to the gas market on the Eastern seaboard of the United States, liquified natural gas from Algeria.

In the light of this evidence, the Court cannot find that El Paso will not be a competitor for increments of demand in the California market in the future and perhaps the near future.

Therefore, we must take into consideration the possibility of the defendant again becoming a competitor in the California market and include In the divestiture decree provisions which will accomplish the objects and purposes set forth in the *Utah* opinion.

In the light of the foregoing, we consider the proposals of the parties.

Plaintiff's Proposals

Plaintiff assumes the divestment of reserves proposed by defendant and its proposals are in addition thereto.

Plaintiff frankly recognizes that a divestiture at this time of additional San Juan Basin reserves to New Company, over and above those defendant proposes to divest to enable it to compete at once for new increments of demand in the California market would jeopardize El Paso's ability to meet the supply requirements of the Southern division which the Federal Power Commission has certificated, and that such a divestiture at the present time would be at the expense of those California gas users presently served by the Southern division.

The plaintiff, therefore, does not propose a divestiture of additional San Juan reserves to New Company at this time to be used by it to compete for incremental demands in the California market. What plaintiff proposes is a divestiture by El Paso of a portion of the physical facilities of the Southern division (specifically the 34-inch San Juan main line) ; a takeover by New Company of a portion of El Paso's commitments to California customers, and a divestment to New Company of sufficient San Juan reserves to supply the service commitments which New Company proposes to take over from El Paso.

As an alternate proposal, plaintiff proposes a take over by New Company of a part of the service commitments of El Paso to its California customers; a transfer to New Company of San Juan reserves sufficient to supply those commitments, and that El Paso be required to transport this gas for New Company from the San Juan Basin to the California customers upon "reasonable terms".

Plaintiff acknowledges that its proposals will not restore New Company as a competitor in the California market, but contends that its proposals arc the *only weans* by which to place New Company in a position to compete with El Paso for new increments of demand in the California market if and when gas supplies become available to New Company for that purpose.

Until these new supplies become available to New Company, the plaintiff's proposals, if adopted, would result in the same gas, in the same volumes, being delivered to the same customers, in the same amounts and through the same facilities as at present.

Plaintiff's proposals are opposed by all parties and all applicants for acquisition with the exception of Paradox and Bannister. Paradox supports the plaintiff's proposals and also proposes a variation—divestment of the 24-inch San Juan main line in lieu of the 34-inch line proposed by plaintiff.

Bannister supports the plaintiff's alternate proposal—the transportation agreement.

Consideration of Plaintiff's Proposals

The Court has considered plaintiff's proposals and the evidence in support of and in opposition thereto and determines that neither of the plaintiff's proposals nor the Paradox variation thereof should be adopted by the Court for the reasons which follow.

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The Court has not considered the question of whether or not it has the power to divest a portion of the Southern division pipelines which were constructed before the merger and consequently, were not acquired as a result of the merger. Nor has the Court considered the question of its authority to order a divestment by El Paso of a portion of its gas supply contracts which were the basis for the Federal Power Commission certifications.

The Court has elected to consider plaintiff's proposals on their merits, and has assumed that it has the power and authority to adopt the proposals of the plaintiff or Paradox.

In the Court's opinion, the adoption of any or all of the proposals of the plaintiff and Paradox would be a clear violation of that portion of the *Utah* opinion which states:

> "The severance of all managerial and financial connections between El Paso and the New Company must be complete for the decree to satisfy our mandate."

The evidence is undisputed that the Southern division pipeline system is an integrated system of many pipelines which extend from the Permian Basin in West Texas, the Hugoton-Anadarko producing area in the Texas-Oklahoma Panhandle, and the San Juan Basin. These producing areas produce the gas which is supplied by the Southern division. The Southern division consists of the California main line which delivers gas to Pacific Lighting Service Company at Blythe, California, and in general, consists of parallel 26-inch and 30-inch pipelines. The San Juan main line delivers gas to the California border at Topoc and consists in general of 24-inch, 30-inch and 34-inch parallel pipelines. The California main line system is connected to the San Juan main line system by crossover pipelines referred to as the Permian-San Juan crossover, the San Juan-Maricopa crossover, and the Havasu crossover. (See FPC Exhibit 1005.) All of these pipelines are operated as one integrated system generally referred to as the Southern division. The evidence is undisputed and it is obvious that to sever one portion of this complex, integrated system and make it operate with efficiency and reliability would require an operating agreement between New Company and El Paso and a joint exercise of managerial skill and judgment. This would increase rather than decrease the managerial and financial ties between New Company and El Paso, contrary to the mandate of *Utah*.

Plaintiff contends that the adoption of one of its proposals is *necessary* to enable New Company to compete with El Paso for new increments of demand in the California market when New Company acquires the necessary gas supplies. The evidence does not establish the plaintiff's contention. The evidence is that of the reserves proposed to be divested to New Company there may be 100,000 MCF per day, on an annual basis, available from New Company's San Juan Basin reserves which New Company could use to supply new increments of demand in the California market.

Southern California Gas Company (So Cal) has offered to purchase this gas from New Company delivered near Ignacio, Colorado, and arrange for its transportation to California to serve So Cal's incremental demands. So Cal has also offered that when New Company has accumulated sufficient reserves to support daily deliveries at a level of 200,000 MCF per day, to purchase such gas from New Company delivered to California through a new pipeline to be constructed by New Company to supply the increasing demands for gas in the California market. So Cal will purchase additional quantities up to 600,000 MCF per day until January 1, 1977. This offer of So Cal supplies New Company with an entree to the California market immediately and with an assured market and without managerial or financial connections with the defendant. This makes it unnecessary to adopt either of the plaintiff's proposals to enable New Company to enter the California market and compete with El Paso for new increments of demand.

The evidence does not suggest that plaintiff's proposals are either necessary or helpful to New Company in competing in the California market with Canadian gas.

Plaintiff admits that the adoption of its proposals would result in an increase in the cost of service under the Southern division. There is a conflict in the evidence as to the amount of this increase. Plaintiff contends it is de minimus. The Court finds from the evidence that the increase in cost of service if either of the plaintiff's proposals were adopted would be substantial.

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The Court finds that the severance and divestiture to New Company of either the 34-inch or 24-inch pipeline would result in a decrease in the efficiency and reliability of the system which is inherent in the common control and operation of the system as it now exists.

Admittedly, the present deliverability life of the San Juan Basin reserves remaining to serve the Southern division is only three to five years. If the Court adopts one of the plaintiff's proposals, it would divest a portion of these reserves to New Company to serve that portion of El Paso's service commitments which New Company would take over. In order for New Company to maintain its ability in the future to meet the commitments which it would take over, will require New Company to obtain new supplies for this purpose. This means that any new supplies obtained by New Company which are available to the Southern division must first be devoted to assuring New Company's ability to continue to supply the commitments which it takes over from El Paso, before it can use such new gas supplies to compete for and serve new increments of demand in the California market. To this extent, the plaintiff's proposals if adopted, might well delay rather than expedite the restoration of New Company as a competitive force in the California market.

It is the opinion of the Court that it would be unwise if not improper for the Court to require New Company to adopt any plan or proposal for competing in the California market. New Company management should be permitted to exercise its own judgment and discretion as to how and under what circumstances it will compete.

Defendant's Proposal

The defendant's proposal is concisely summarized in its Exhibit 118 as follows:

> "Basically, El Paso proposes to divest a total of 11.383 trillion cubic feet (tcf) of gas reserves to New Company, as compared with 9.256 tcf proposed in 1967. This 11,383 tcf is the balance remaining after deducting 1.178 tcf of production between 1967 and 1970. Thus, on a basis comparable with that set forth in El Paso's Plan of Divestiture dated August 4, 1967, 3.305 tcf have been added to the reserves proposed to be transferred to New Company at that time.
>
> "The total is comprised of the reserves which El Paso proposed to divest in, 1967, together with the reserves which were added by the elimination of the Sumas Exchange Agreement, plus additional increments to be imported from Canada at Sumas pursuant to agreements referred to as Sumas III and Sumas IV."

No additional San Juan Basin reserves are included in defendants' proposal beyond those which the Court ordered to be divested in the 1968 Decree.

The evidence establishes and the plaintiff and intervenors admit that, under conditions as they exist today, to require an immediate divestiture of additional San Juan reserves in any significant quantity would jeopardize the ability of the defendant to serve the certificated requirements under the Southern division. This situation will continue until defendant acquires additional reserves and supplies in excess of those required to serve the Southern division requirements.

A divestiture of San Juan Basin reserves which will deprive the presently served customers in California of a portion of their present supplies would not be fair or equitable to those customers, and, over all, would not increase the gas supply to the California market.

We have previously pointed out in our findings, the potential which exists for future gas reserves and supplies to supply present and future demands in the Western United States, including California.

We cannot ignore this potential in developing a plan of divestiture and allocation of gas supplies to meet the requirements of *Utah*.

We cannot ignore this potential in developing a plan of divestiture and allocation of gas supplies to meet the requirements of *Utah*.

The defendant's proposal is based on today's conditions without consideration of the potential to which we have just referred.

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Therefore, we cannot accept the defendant's proposal. To accomplish the purposes and objects of *Utah*, we must consider the supply conditions as they exist today and the potential of tomorrow.

The Court's Plan for Divestiture and Allocation of Reserves

With this in mind, the divestiture and allocation of gas reserves shall be as follows:

1. Defendant shall divest to New Company, the reserves proposed to be divested by it and summarized at Tab A of El Paso Exhibit 118;

2. Prior to three years after the certification by Federal Power Commission of the operation by New Company of the property to be divested, defendant shall not increase the present level of its service commitments to customers in California served by the Southern division, (except for transportation of an annual volume of up to 36,500,000 MCF for Southern California Gas Company, to the extent that Southern California Gas Company purchases such volume from New Company), or use its present or future reserves in the San Juan Basin or permit the same to be used for any purpose other than the service of customers under the Southern division, or serve new increments of demand in the California market unless and until:

(a) Defendant shall divest to New Company additional reserves from the San Juan Basin, or such other source or sources as may be agreeable to New Company, in an amount which will supply New Company with not less than a daily average of 200,000 MCF with a deliverability life of at least ten years; or

(b) New Company shall be serving the California market at an average daily rate of at least 250,000 MCF, or

(c) Until the further order of this Court amending or modifying the foregoing and the Court retains continuing jurisdiction for this purpose.

3. Any reserves divested to New Company pursuant to paragraph 2(a) above shall be used by New Company solely to supply new increments of demand in the California market. If New Company, within one year after a divestment pursuant to paragraph 2(a) has not contracted to serve new increments of demand in the California market with such divested reserves and applied to the Federal Power Commission for authority therefor, the reserves divested pursuant to paragraph 2(a) shall revert to the defendant and the restrictions upon the defendant set forth in paragraph 2 shall terminate.

In the Court's opinion, the divestiture above described will accomplish the objects and purposes of *Utah.*

After this divestiture, New Company will be immediately restored to a position to compete for new increments of demand in the California market to the extent of an average annual amount of 100,000 MCF per day by utilizing that amount of its San Juan Basin supply and So Cal's offer to purchase and transport the gas to the California market.

On the other hand, El Paso immediately after the divestiture, will not be a competitor in the California market and under the Court's plan, it cannot become a competitor prior to the expiration of three years after the certification by the Federal Power Commission of the operation by New Company of the property to be divested, unless it makes the additional divestiture of reserves provided in paragraph 2(a) or unless New Company, in the meantime, shall have established itself as a substantial competitor in the California market.

New Company will also have the advantage of relatively easy access to Canadian gas supplies which are not presently available to El Paso. The evidence indicates that the future sources of supply of the incremental market in the West and particularly in California, will most likely be in large part from Canada and Alaska and not from the Permian and San Juan Basins. The Federal Power Commission, in its Amicus Curiae brief at Page 30 states:

> "Thus, New Company, with access to Canada, is in a better overall position to compete for incremental demand through pipeline-supplied gas than is El Paso."

We believe this plan of divestiture and allocation places New Company in the same, if not a better relative competitive position vis-a-vis El Paso in the California market as that which Pacific Northwest enjoyed immediately prior to the illegal merger.

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Proposal to Divest an Undivided Interest in the San Juan Reserves

Bannister, an applicant for acquisition, proposes the divestiture of San Juan reserves not on an individual lease or contract basis, but rather by the divestiture of an undivided interest in the entire "San Juan Common System and reserves."

We reject the proposal because it is clearly in violation of the mandate in *Utah*, requiring the severance of all managerial and all financial connections between El Paso and New Company. It is obvious that if El Paso and New Company own their reserves in common, joint management of those reserves would be required to determine production schedules, drilling programs, and other management problems, thereby increasing rather than severing the managerial and financial connections between the two companies.

Divestiture of Other Assets

The final decree of divestitures will deal in detail with all of the assets to be divested. Some of the parties in interest have expressed in their briefs, varying opinions as to the disposition which should be made of certain assets other than gas reserves. Some of the briefs raise other questions concerning the plan of divestiture. The Court believes these matters are better dealt with at or after the subsequent hearings.

Entered this 25th day of June, 1971.

Footnotes

1 Competition in the California market is explained and defined in *United States v. El Paso Gas Company* [1964 TRADE CASES ¶ 71,073], 376 U. S. p. 651 at 659-660, as follows:

"In this regulated industry a natural gas company (unless it has excess capacity) must compete for, enter into, and then obtain Commission approval of sale contracts in advance of constructing the pipeline facilities. In the natural gas industry, pipelines are very expensive; and to be justified they need long-term contracts for sale of the gas that will travel them. Those transactions with distributors are few in number.... *The competition then is for the new increments of demand that may emerge with an expanding population and with an expanding industrial or household use of gas."*

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-2626

FILED
UNITED STATES DISTRICT COURT
DENVER COLORADO
JAN 3 1975
JAMES R. MANSPEAKER
CLERK
BY _____ DEP CLERK

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
vs.	§	O R D E R
	§	
EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPE-LINE CORPORATION,	§	
	§	
Defendants.	§	

By Motion dated December 17, 1974, El Paso Natural Gas Company and Northwest Pipeline Corporation requested the modification of the Decree of Divestiture entered on June 16, 1972, as supplemented by Court Order dated October 19, 1973, to allow El Paso to retain its stock interest in Northwest Production Corporation for the reasons as set forth in said Motion; and,

By Motion also dated December 17, 1974, Northwest Pipeline Corporation and El Paso Natural Gas Company petitioned the Court to amend certain documents, viz., the Basic Agreement, the Voting Trust Agreement and the Restrictive Provisions which are included in the Implementing Documents approved by the Court Order dated October 19, 1973; and to affirm the authority of the Voting Trustee to receive the Common Stock of Northwest Energy Company in substitution for the Common

Stock of Northwest Pipeline Corporation held pursuant to the terms of the Voting Trust; all in the manner and for the reasons as set forth in said Motion; and

By Order dated December 19, 1974, the Court required any party desiring to file any comments upon or objections to either of such Motions to file such comments or objections with the Clerk of the Court no later than January 3, 1975.

No such objections or comments having been received, and the Court being of the opinion that both of said Motions should be granted it is;

ORDERED, ADJUDGED and DECREED that this Court's Order of June 16, 1972 in this cause is hereby amended as follows:

(1) El Paso Natural Gas Company may retain the Northwest Production Company Common Stock which it now owns; provided, however,

(2) Should El Paso desire to sell or otherwise transfer the Northwest Production stock which it now owns to any third party (other than an affiliated or subsidiary company) at any time within ten years after January 31, 1974, such sale or transfer may only be made to a person or persons satisfactory to the Court.

It is further ORDERED, ADJUDGED and DECREED that the amendments to the Basic Agreement, the Voting Trust Agreement and the Restrictive Provisions as set forth in the Agreement

attached as Exhibit "A" to the Motion for Amendment of Certain Court-Approved Documents dated December 17, 1974 are hereby approved.

It is further ORDERED, ADJUDGED and DECREED that the Voting Trustee may exchange all the shares of Common Stock of Northwest Pipeline Corporation held in the Voting Trust established pursuant to the Voting Trust Agreement for a like number of shares of Common Stock of Northwest Energy Company and to thereafter surrender such Common Stock of Northwest Energy Company to holders of Voting Trust Participation Certificates upon compliance by such Certificate holders with the terms of the Voting Trust Agreement.

ENTERED this 3rd day of January, 1975.

BY THE COURT:

United States District Judge

United States v. Metro Denver Concrete Association, et al.

Civil No. C-2478

Year Judgment Entered: 1972

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Metro Denver Concrete Assn., Pre-Mix Concrete, Inc., Walt Flanagan and Co., Ready Mixed Concrete Co., Jefferson Transit Mix Co., Mobile Concrete, Inc., and Suburban Reddi-Mix Co., U.S. District Court, D. Colorado, 1972 Trade Cases ¶73,819, (Feb. 28, 1972)

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United States v. Metro Denver Concrete Assn., Pre-Mix Concrete, Inc., Walt Flanagan and Co., Ready Mixed Concrete Co., Jefferson Transit Mix Co., Mobile Concrete, Inc., and Suburban Reddi-Mix Co.

1972 Trade Cases ¶73,819. U.S. District Court, D. Colorado. Civil Action No. C-2478. Entered February 28, 1972. Case No. 2125, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Allocation of Territories—Ready Mix Concrete—Dissolution of Trade Association.—A ready mix concrete supplier's organization and five of its members were enjoined from agreeing to fix prices for ready mix concrete; from submitting collusive or rigged bids; dividing, allocating or apportioning markets or communicating price or contract terms information to any other person before the information is made public. In addition, the parties were ordered to dissolve the supplier's association and each of the suppliers was enjoined from joining or participating in the activities of any trade association whose activities are inconsistent with the consent order. For a period of five years the suppliers were ordered to submit a certification with each bid that it was not the result of an agreement with any other party. See ¶ 3050, 4630, 4680.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Robert J. Ludwig, John E. Sarbaugh, Bertram M. Long, John L. Burley, Carolyn J. McNeill, and William F. Costigan, Dept. of Justice.

For defendants: Donald C. McKinlay, for Metro Denver Concrete Assn., Earl A. Jinkinson, for Pre-Mix Concrete, Inc., Benjamin F. Stapleton, for Walt Flanagan and Co., Holmes Baldridge, for Ready Mixed Concrete Co. and Jefferson Transit Mix Co., John Evans, for Suburban Reddi-Mix Co.

Final Judgment

ARRAJ, D. J.: Plaintiff, United States of America, having filed; its Complaint herein on. August 6, 1970, and plaintiff and defendants, Metro Denver Concrete Association; Pre-Mix Concrete, Inc.; Walt Flanagan and Company; Ready Mixed Concrete Company; Jefferson Transit Mix Co.; and Suburban Reddi-Mix Company, by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto, and the Complaint states claims 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 Antitrust Act, as amended.

II

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[*Definitions*]

As used in this Final Judgment:

A "Person" means any individual, corporation, partnership, association, firm or other business or legal entity;

B "Ready mix concrete" means a product resulting from a combination of cement and other materials, such as sand, stone, water and, at times, other additives;

C "Ready mix concrete supplier" means a person who is engaged in the business of producing and selling ready mix concrete;

D "Corporate defendants" means Pre-Mix Concrete, Inc.; Walt Flanagan and Company; Ready Mixed Concrete Company; Jefferson Transit Mix Co. and Suburban Reddi-Mix Company.

III

[*Applicability*]

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

IV

[*Prohibitions*]

Each consenting defendant is enjoined and restrained individually and collectively from entering into, adhering to, enforcing or claiming any rights under, any contract, agreement, understanding, plan or program with any person, directly or indirectly, to:

A Fix, establish, determine, maintain, stabilize, increase or adhere to prices, discounts or other terms or conditions of sale of ready mix concrete to any third person;

B Submit collusive or rigged bids or quotations for the sale of ready mix concrete ;

C Divide, allocate or apportion markets, territories or customers, or refrain from soliciting any customer;

D Communicate to or exchange with any other person selling ready mix concrete any actual or proposed price, price change,, discount, or other term or condition of sale at or upon which ready mix concrete is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally.

V

[*Dissolution of Association*]

A The corporate defendants are each ordered and directed, within sixty (60) days after the entry of/ this Final Judgment, to institute and to prosecute with due diligence, appropriate proceedings, to dissolve and disband the defendant Metro Denver Concrete Association, and within seventy-five (75) days to file with the Court and plaintiff an affidavit of compliance herewith.

B The corporate defendants are each enjoined and restrained from joining, belonging to or participating in any activities of any trade association, organization or industry group with knowledge that the activities or objectives of any such trade association, organization or industry group are inconsistent with any of the terms of this Final Judgment.

VI

[*Certification of Bids*]

Each corporate defendant is ordered and directed for a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted

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by it for the sale of ready mix concrete, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling ready mix concrete.

VII

[*Informing Customers*]

Within sixty (60) days of the entry of said Final Judgment each corporate defendant shall distribute a copy of this Final Judgment to each of its customers who has established credit with and has purchased ready mix concrete from such corporate defendant within the past twelve (12) months; and within seventy-five (75) days of the entry of said Final Judgment each corporate defendant shall make an affidavit of compliance herewith to the Court and plaintiff.

VIII

[*Inspection and Compliance*]

For the purpose of determining or 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 defendant made to its principal office, 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 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,directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the.Antitrust Division, made to its principal office, shall submit such reports in writing 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 the United States, except in the court 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 Retained*]

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 or directions as may be necessary or appropriate for the construction or the 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 hereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer of ready mix concrete and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any person other than the recipient of such bid and will not be communicated to any person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001, relating to the making of false statements.

Notice of Voluntary Dismissal of Complaint as to the Defendant Mobile Concrete, Inc.

To: Attorneys for the Defendants

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Please Take Notice that the United States of America, by its attorneys, hereby dismisses without prejudice this action as to defendant Mobile Concrete, Inc., pursuant to Rule 41(a)(I)(i) of the Federal Rules of Civil Procedure, and states the reasons for dismissal as follows:

1. On August 6, 1970 plaintiff filed this complaint against Metro Denver Concrete Association and 6 ready mix concrete companies, including Mobile Concrete, Inc. alleging a combination and conspiracy in unreasonable restraint of interstate trade and commerce in the sale of ready mix concrete in the Metropolitan Denver area, in violation of Section 1 of the Sherman Act.

2. Defendant Mobile Concrete, Inc., as of the date of this notice, has not served plaintiff with its answer or with a motion for summary judgment.

3. In November 1971, Dayton Denious, counsel for Mobile Concrete, Inc. and Pre-Mix Concrete, Inc. reported to plaintiff that Mobile Concrete, Inc. and Pre-Mix Concrete, Inc. were merged on November 12, 1971 with Pre-Mix Concrete, Inc. being the surviving corporation, and the records of the State of Colorado confirm this merger.

4. Pre-Mix Concrete, Inc., the surviving corporation, has consented to be enjoined from engaging in the aforesaid activities and other related activities by the Final Judgment filed in this Court on .....; no useful purpose would be achieved by attempting to also enjoin, Mobile Concrete, Inc., the merged corporation.

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