EXHIBIT A

FINAL JUDGMENT

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. New York Produce Exchange, E. W. Saybolt & Inc., Joseph H. McCabe, and Randolph W. Sluter, d. b. a. Chas. Martin & Co., U.S. District Court, S.D. New York, 1959 Trade Cases ¶69,395, (Jun. 30, 1959)

United States v. New York Produce Exchange, E. W. Saybolt & Inc., Joseph H. McCabe, and Randolph W. Sluter, d. b. a. Chas. Martin & Co.

1959 Trade Cases ¶69,395. U.S. District Court, S.D. New York. Civil Action No. 147-349. Filed June 30, 1959. Case No. 1467 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exclusion from Trade—Business of Licensing "Petroleum Inspectors."—An exchange which issued "licenses" qualifying persons as "petroleum inspectors," in an action charging the exchange, a firm, and two individuals with excluding qualified individuals from entering the business of "petroleum inspection" through a policy of refusing licenses to persons other than those associated with the two individuals and their respective companies, was prohibited by a consent decree from rejecting, except in accordance with procedures provided for in the decree, any application for a petroleum inspector's license. The exchange was also prohibited from (1) permitting the individuals, or any person holding one of its licenses,. to participate in the granting, rejecting, suspending, or revoking of any license, (2) hindering any individual from applying for a license, (3) granting a license with geographical limitations, and (4) granting a license with functional limitations unrelated to the licensee's qualifications. The individuals were prohibited from urging or influencing the exchange to deny, suspend, or revoke a license, hindering any individual from applying to the exchange for a license, or hindering any individual from engaging in the business of petroleum inspection.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Publication of Uniform Standards for Licensing Petroleum Inspectors—Maintenance of Records—Reports.—An exchange which issued "licenses" qualifying persons as "petroleum inspectors" was ordered by a consent decree to publish uniform, reasonable, and non-discriminatory standards for the issuance of licenses, and to grant such licenses to all applicants qualified under those standards. The exchange was also ordered to (1) provide a copy of those licensing standards to any person requesting it, (2) maintain written records relating to the approval, rejection, suspension, or revocation of licenses, (3) file with the court an annual report showing the action taken on each application for a license and (4) cancel or amend any of its by-laws which were inconsistent with the decree.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provision—Discontinuance of Program of Licensing Petroleum Inspectors.—A consent decree which prohibited an exchange, a firm, and two individuals from hindering any person from engaging in the business of "petroleum inspection" provided that nothing contained in the decree should prohibit the exchange, after notice to the United States, from discontinuing its program of issuing petroleum inspectors' licenses by revoking all then existing licenses and refusing to grant any further licenses.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; and W. D. Kilgore, Jr., Baddia J. Rashid, Harry N. Burgess, Richard B. O'Donnell, John D. Swartz, Morris F. Klein, Donald A. Kinkaid, and J. Paul McQueen, Attorneys, Department of Justice.

For the defendants: Howard M. Holtzmann of Holtzmann, Wise & Shepard, New York, N. Y., for New York Produce :Exchange and Randolph W. Sluter, d. b. a. Chas. Martin & Co. ; William J. Walker, New York, N. Y., and Howard M. Holtzmann of Holtzmann, Wise & Shepard, New York, N. Y., for E. W. Saybolt & Co. and Joseph H. McCabe.

Final Judgment

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[*Consent Decree*]

ARCHIE O. DAWSON, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 30, 1959, the defendants having respectively appeared and filed their separate answers to such complaint denying the substantive allegations thereof, and the plaintiff and the defendants, by their respective attorneys herein, having severally consented to the entry of this Final judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto in respect of any issue of fact or law herein.

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

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states claims upon which relief may be granted against the defendants, and each of them, under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Petroleum" means crude oil and any product or products refined from crude oil;

(B) "Business of petroleum inspection" means the service of inspecting, weighing, measuring, sampling, testing or issuing certificates as to the quality or quantity of:

(1) cargoes and other shipments of petroleum or

(2) tankers and other carriers or containers used for the shipment of petroleum.

(C) "Petroleum inspectors' licenses" means and refers to any license granted by defendant New York Produce Exchange and relating to the business of petroleum inspection;

(D) "Exchange" means the defendant New York Produce Exchange;

(E) "Defendants" means defendants Exchange, E. W. Saybolt & Co., Inc., Joseph H. McCabe and Randolph W. Sluter d/b/a Charles Martin & Company;

(F) "Person" means any individual, corporation, partnership, association or any other legal or business entity.

III

[*Applicability—Notice of Decree*]

(A) The provisions of this Final Judgment, applicable to any defendant shall also apply to each of the subsidiaries, successors, or assigns thereof, and to each of its officers, directors, managers, partners, employees, nominees and agents and to all other persons in active concert or participation with any of the foregoing who shall receive actual notice of this Final Judgment by personal service or otherwise;

(B) Defendant Exchange is ordered and directed forthwith to serve, by registered mail, a copy of this Final Judgment upon (i) each member of its Board of Managers; (ii) each of its executive officers who is not a member of its Board of Managers and (iii) each member of defendant Exchange who, on the date of this Final Judgment, holds a petroleum inspector's license;

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(C) Defendant Exchange is ordered and directed, within sixty (60) days after the date of this Final Judgment to file with this Court and serve upon the plaintiff an Affidavit of its compliance with subsection (B) of this Section III setting forth in said Affidavit the name, position and address of each person upon whom a copy of this Final Judgment shall have been served as therein directed;

(D) Defendant Exchange is ordered and directed, for a period of five(5) years after the date of this Final Judgment, to furnish to any person requesting the same (i) a copy of this Final Judgment, and (ii) a copy of the standards for granting petroleum inspectors' licenses required by Section IV of this Final Judgment.

IV

[*Issuance of License—"Standards"*]

(A) Defendant Exchange is ordered and directed promptly to adopt and publish to the trade generally, uniform, reasonable and non-discriminatory standards for the granting by it of petroleum inspectors' licenses, and is ordered and directed to grant a petroleum inspector's license to any applicant who is qualified therefor under such standards;

(B) The standards required by the foregoing sub-section (A) of this Section IV shall be as objective in nature as the circumstances permit and must specifically provide:

(1) That any individual may apply to defendant Exchange for a petroleum inspector's license;

(2) That defendant Exchange will grant a petroleum inspector's license to any applicant who is qualified for a petroleum inspector's license under such standards;

(3) That membership in defendant Exchange shall not be a condition to the granting by defendant Exchange of a petroleum inspector's license;

(4) That the charge or fee to be assessed by defendant Exchange in connection with the handling and processing of any such application shall not exceed a reasonable and non-discriminatory charge intended solely to defray the costs of such licensing program.

(C) Defendant Exchange is ordered and directed, not later than November 1, 1959, to serve upon the plaintiff for its approval, a copy of the standards which it proposes to adopt pursuant to subsection (A) of this Section IV. Such standards shall not become effective for at least thirty (30) days after the date of such service upon the plaintiff. In the event the plaintiff, for any reason, shall within such thirty (30) days, in writing, disapprove such proposed standards, defendant Exchange is enjoined and restrained from placing such standards into effect or otherwise causing the same to become effective, without prior approval of this Court. In the event of disagreement between defendant Exchange and the plaintiff as to the content of such standards, the matter may be submitted to this Court for its determination by either the defendant Exchange or the plaintiff.

(D) Defendant Exchange is enjoined and restrained from adopting, promulgating, or otherwise making effective any amendments to such standards for a period of five (5) years after the initial effective date thereof except pursuant to the same procedures as are contained in sub-section (C) of this Section IV. After the expiration of five (5) years from the initial effective date of such standards, and for an additional period of five (5) years, defendant Exchange is ordered and directed to serve upon the plaintiff, sixty (60) days in advance of the effective date thereof, a copy of any modification or amendment of or to such standards;

(E) Defendant Exchange is enjoined and restrained from permitting any other defendant, or any partner, owner, officer, director or representative of such other defendant, or any person holding a petroleum inspector's license issued by defendant Exchange, to vote upon, or in any manner participate in the activities of any committee, board or other body of the Exchange in connection with any matter relating to the granting, rejecting, suspending or revoking of any petroleum inspector's license;

(F) The defendant Exchange is enjoined and restrained from rejecting any application made to it for a petroleum inspector's license except in accordance with the following procedures:

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(1) The meeting of the appropriate Board or Committee of defendant Exchange charged with approving or rejecting such application shall be attended by not less than a quorum thereof and the vote to reject such application shall be concurred in by the votes of not less than a majority of those so attending;

(2) A poll shall be taken of the vote of each member of such Board or Committee and the vote of each such member shall be duly noted in the official minutes thereof;

(3) Defendant Exchange shall advise the applicant, in writing, of the specific reason or reasons for rejection of his application and shall, where reasonably possible, afford the applicant an opportunity to correct the condition constituting the reason or reasons for such rejection;

(4) Defendant Exchange shall serve upon the plaintiff (i) a copy of each letter of rejection of an application for a petroleum inspector's license, and (ii) a certified copy of the official minutes of the meeting of the Board or Committee at which the vote was taken to reject such application;

(G) In any suit or proceeding instituted by the plaintiff pursuant to Section XI of this Final Judgment based upon the rejection by defendant Exchange of any application for a petroleum inspector's license, the defendant Exchange shall establish to the satisfaction of this Court that the applicant was not reasonably qualified for such license under the standards required by subsection (A) of this Section IV.

V

[*Prohibited Activities*]

Each defendant, other than defendant Exchange, is enjoined and restrained from, directly or indirectly:

(A) Voting upon, or participating in the activities of any committee, board or other body of the Exchange, in connection with the approval, rejection, suspension or revocation of any application for a petroleum inspector's license;

(B) Urging or influencing, or attempting to urge or influence, defendant Exchange to refuse or deny a petroleum inspector's license to any applicant or to suspend or revoke any such license after its issuance;

(C) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent:

(i) Any individual from applying to def end ant Exchange for a petroleum inspector's license; or (ii) Any person from engaging in the business of petroleum inspection.

VI

(A) Defendant Exchange is enjoined and restrained from hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent:

(i) Any individual from applying to it for a petroleum inspector's license; or

(ii) Any person from engaging in the business of petroleum inspection except that defendant Exchange may, pursuant to and in accordance with the provisions of Section IV of this Final Judgment, reject an application to it for a petroleum inspector's license.

(B) Defendant Exchange is enjoined and restrained from granting, or causing to be granted, any petroleum inspector's license, pursuant to the provisions of Section IV of this Final Judgment, which, in any manner, restricts or limits geographically the area or areas within which any person may engage in the business of petroleum inspection;

(C) Defendant Exchange is enjoined and restrained from granting or causing to be granted, any petroleum inspector's license pursuant to the provisions of Section IV of this Final Judgment, which, in any manner, is restricted or limited functionally except to the extent that any functional restriction or limitation imposed by defendant Exchange upon any such petroleum inspector's license may be related to the qualifications of the licensee under the standards required by Section IV of this Final Judgment.

VII

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[*Cancellation of By-Laws—Records*]

Defendant Exchange is ordered and directed:

(A) Not later than November 1, 1959, or such later time as may be fixed by order of this Court to cancel any and all of its bylaws, rules or regulations which are, or may be inconsistent with any of the provisions of this Final Judgment and to amend the same so as to conform to the provisions hereof;

(B) To maintain, for a period of ten (10) years, all of its written records relating to the approval, rejection, suspension or revocation of any petroleum inspector's license including specifically, but without limitation: (i) the application of such license; (ii) the minutes of the meeting of the Board or Committee voting upon the same; (iii) and the letter to the applicant pursuant to Section IV(F)(3) of this Final Judgment advising the applicant of the reason or reasons for rejection of his application for license.

VIII

[*Reports*]

Defendant Exchange is ordered and directed to file with this Court, and serve upon the plaintiff, not later than the first day of April of each of the five (5) years following the date of this Final Judgment a report showing, for the preceding calendar year, the name and address of each person who has applied to it during such preceding calendar year for a petroleum inspector's license and the action or disposition of defendant Exchange on each such application.

IX

[*Discontinuance of Program*]

Nothing contained in this Final judgment shall prohibit defendant Exchange, upon one hundred and twenty (120) days advance notice to the plaintiff, from discontinuing its program of issuing petroleum inspectors' licenses by revoking all then existing licenses and refusing to grant any further licenses. Upon service upon plaintiff of the 120 days' notice as specified herein nothing contained in this Final Judgment shall be construed to require defendant Exchange to consider further or take any further action upon any application for a petroleum inspector's license then pending or thereafter filed.

X

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the, Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office be permitted:

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

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

(C) Upon such written request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section X 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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XI

[*Jurisdiction Retained*]

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

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