

U. S. vs. CLIMAX MOLYBDENUM COMPANY, ET AL.

Civil No. 19-112.

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

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

CLIMAX MOLYBDENUM COMPANY; GREENE CANANEA COP-
PER COMPANY; ANACONDA SALES COMPANY; MOLYB-
DENUM CORPORATION OF AMERICA; KENNECOTT SALES
CORPORATION, DEFENDANTS.

FINAL JUDGMENT.

The complainant, United States of America, having filed its complaint herein on August 19, 1942; and all parties hereto having severally consented to the entry of this final decree herein without trial and without admission by any party in respect of any issue, and the complainant having moved the Court for this decree;

NOW, THEREFORE, before any testimony has been taken herein and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

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 acts amendatory thereof and supplemental thereto.

II.

1. Climax Molybdenum Company, a Delaware corporation, shall be hereinafter referred to as "Climax"; Greene Cananea Copper Company, a Minnesota corporation, shall be hereinafter referred to as "Cananea"; Anaconda Sales Company, a Delaware corporation, shall be hereinafter referred to as "Anaconda Sales"; Molybdenum Corporation of America, a Delaware corporation, shall be hereinafter referred to as "Mocorp"; Kennecott Sales Corporation, a New York corporation, shall be hereinafter referred to as "Kennecott Sales."

2. The term "products" means: Ferromolybdenum, calcium molybdate, molyte, briquettes manufactured from roasted molybdenite, and all other products containing molybdenum, except molybdenite concentrates and roasted molybdenite concentrates.

3. The term "concentrates" means: Molybdenite concentrates either roasted or unroasted.

III.

Each of the defendants, Climax, Cananea, Anaconda Sales, Mocorp, and Kennecott Sales, and its respective successors, subsidiaries, officers, employees, and agents, is hereby individually enjoined and restrained from doing any of the following acts:

(i) imposing or continuing territorial restrictions on either buyers of concentrates or on sellers of products;

(ii) dividing sales territories or allocating customers or markets, or agreeing to refrain, or, pursuant to any agreed-upon program, refraining from competing in any territory for any customer;

(iii) imposing on any purchaser of, or agent as to, concentrates restrictions of any kind on the use or re-

sale of concentrates or the sale or use of products by such purchaser or by such agent;

(iv) fixing or maintaining prices for the resale of concentrates or the sale of products by purchasers.

IV.

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters. The defendants, on such written request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceeding for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

V.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to the 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.

VI.

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"),¹ or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any national defense agency in effect at the time, provided that such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto, or in compliance with Section 12 of the Act of June 11, 1942 (Public Law 603, 77th Congress).

VII.

This decree shall have no effect with respect to operations or activities wherever performed, authorized, or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereto.

Dated August 21, 1942

VINCENT L. LEIBELL
United States District Judge

Judgment rendered
August 21, 1942.
George J. H. Follmer
Clerk

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,

*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the anti-trust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.