APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

U.S. v. AMERICAN AMUSEMENT TICKET MANUFACTURERS ASSOCIATION, ET AL.

Civil No.: 46422

Year Judgment Entered: 1926

UNITED STATES OF AMERICA v. AMERICAN AMUSEMENT TICKET MANUFACTURERS ASSOCIATION ET AL DEFENDANTS.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
HOLDING AN EQUITY COURT

In Equity No. 46422.

UNITED STATES OF AMERICA, PETITIONER,

VS.

AMERICAN AMUSEMENT TICKET MANUFACTURERS ASSOCIATION, ET AL, DEFENDANTS.

FINAL DECREE.

The United States of America having filed its petition in the above-entitled cause on the 30th day of December, 1926, against the following defendants:

1. American Amusement Ticket Manufacturers Association.
2. Globe Ticket Company.
3. The Ansell Ticket Company.
4. The Arcus Ticket Company.
5. Automatic Ticket Register Corporation of New York.
6. Columbia Printing Company.
7. Elliott Ticket Company, Inc.
8. Hancock Bros., Inc.
9. International Ticket Company.
10. Rees Ticket Company.
11. The Simplex Ticket Company, Inc.
12. Trimount Press.
13. Weldon, Williams & Lick.
14. World Ticket & Supply Company, Inc.
15. P. C. Snow.
16. George Clendenning.
17. James S. Arcus.
18. Edgar S. Bowman.
19. John W. Bornhoeft.
20. Clifford Elliott.
21. J. F. Hancock.
22. Charles Manshel.
23. Samuel Rees.
24. E. L. Gosnell.
25. W. L. Peabody.
26. John M. Cummings.
27. C. A. Lick, Senior.

28. J. C. Enslen.

All of said defendants named herein appeared by counsel, namely, Charles Conradis.

Comes now the United States of America, by Peyton Gordon, its attorney for the District of Columbia, William J. Donovan, Assistant to the Attorney General, and Russell Hardy, Special Assistant to the Attorney General, and come also the defendants by counsel as aforesaid, and the petitioner moved the court for an injunction against the defendants as prayed. Thereupon all of the defendants herein, through counsel, consented to the following decree:

ORDERED, ADJUDGED AND DECREED:

That the court has jurisdiction of the subject matter of the petition, and that the petition states facts constituting a cause of action.

That the combination and conspiracy in restraint of interstate trade and commerce, and the acts and agreements amongst the defendants in restraint of interstate trade and commerce in amusement tickets as described in the petition herein, are violative of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

That the defendants, their officers, agents or employees, are perpetually enjoined and prohibited—

1. From assigning or allotting any buyer of amusement tickets as the exclusive customer of any of the defendants, whether by agreement or understanding amongst the defendants, or by regarding or designating any buyer who has been or is trading with any of the defendants as the exclusive customer of that defendant, or otherwise.

2. From agreeing that no defendant shall sell amusement tickets to any buyer at prices less than those at which such buyer shall have purchased amusement tickets from any defendant.

3. From exchanging, directly or indirectly, or through the instrumentality of a trade association or other common agent,—

(a) information as to prices and terms and conditions for the sale of amusement tickets, for the purpose of effectuating or enabling the defendants to observe agreements upon prices or assignments and allotments of customers, or for the purpose of restraining the independence or freedom of any defendant with regard to prices, terms and conditions of sale to be quoted for amusement tickets.

(b) information as to discounts, deviations or enhancements from and upon prices theretofore quoted or published by any of the defendants, which discounts, deviations or enhancements shall have been quoted or charged to particular buyers, for the purpose of effectuating or enabling the defendants to observe agreements upon prices or assignments and allotments of customers, or for the purpose of restraining the independence or freedom of any defendant with regard to prices, terms, and conditions of sale to be quoted for amusement tickets.

(c) information relative to the reasons for such discounts, deviations or enhancements, or relative to the reasons for the failure to make sales to persons to whom prices, terms and conditions of sale shall have been quoted; Provided that nothing contained in this decree shall be construed to prohibit an exchange of information regarding facts of past transactions.

4. From arbitrating or composing disputes or controversies amongst any of the defendants relative to prices, terms and conditions of sale for amusement tickets quoted or charged by any defendant.

5. That jurisdiction of this cause is hereby retained for the following purposes: (a) Enforcing this decree. (b) Enabling any of the parties to apply to the court for a modification or enlargement of its provisions on the ground that they have become inadequate, inappropriate or unnecessary.

By the court:
A. A. HOEHLING (signed)
Justice.

December 30, 1926.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
HOLDING AN EQUITY COURT
UNITED STATES OF AMERICA, PETITIONER,

VS.

AMERICAN AMUSEMENT TICKET MANUFACTURERS ASSOCIATION, ET AL, DEFENDANTS.

In Equity No. 46422.

ORDER FOR MODIFICATION OF FINAL DECREE.

Upon consideration of the petition filed in this cause on the 10th day of May, A. D. 1935 by the defendants herein, for modification of the Final Decree made and entered herein on the 30th day of December, A. D. 1926, and the said defendants appearing by Charles Conradis and Albert E. Conradis, and consenting to the entry of this order; and the United States appearing by Leslie C. Garnett, United States Attorney, and consenting to the entry of this order; it is by the Court this 10th day of May, A. D. 1935,

ADJUDGED, ORDERED and DECREED, that the Final Decree made and entered herein on the 30th day of December, A. D. 1926, be and it is hereby modified so as to incorporate therein the following additional provisions:

"Nothing in this decree shall be deemed or construed to prevent any defendant, or the officers, agents, servants, employees or persons acting under, through, by or in behalf of any defendant, or claiming so to act, from doing any of the acts authorized, permitted or required by the Code of Fair Competition for the Graphic Arts Industries, approved by the President of the United States on February 17, 1934, pursuant to the Act of Congress of June 16, 1933, known as the National Industrial Recovery Act, and by any modifications, amendments or supplements of said Code, which have been or may be duly approved, or by any other Code or agreement, or any amendments, modifications, or supplements thereof, applicable to the defendants or any of them, which have been or may

be duly approved, under said National Industrial Recovery Act, during such time as and to the extent to which the same shall remain in effect.

"The United States may at any time apply to the Court for further relief herein, on the ground that operations under, or purporting to be under, said Code of Fair Competition for the Graphic Arts Industries or modifications, amendments, or supplements thereof, or such other code or agreement, or amendments, or supplements thereof, applicable to the defendants, or any of them, which have been or may be approved and applicable to the defendants, are promoting monopolies, or are eliminating, oppressing or discriminating against small enterprises, or are promoting monopolistic practices, or are not in accordance with the National Industrial Recovery Act.

"The right of the defendants or any of them is hereby reserved to make such motions herein for modification of this decree or otherwise as they may be advised."

By the Court:

(s) F. DICKINSON LETTS,
Justice.

May 10, 1935.

U.S. v. ATLANTIC CLEANERS AND DYERS, INC., ET AL.

Civil No.: 49417

Year Judgment Entered: 1931

UNITED STATES OF AMERICA, PETITIONER

VS.

ATLANTIC CLEANERS AND DYERS, INC., ET AL., DEFENDANTS.

DECREE.

This cause came on to be heard at this term on plaintiff's motion to strike the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, and the Court being of opinion that the amended answers of said defendants are insufficient in law to constitute a defense to the cause of action alleged in the petition, it is, by the Court, this 5th day of November, 1931,

Ordered, adjudged, and decreed that the amended answers of defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, be and the same are hereby stricken from the files.

And said defendants, by their attorneys, appearing in open Court and electing to stand upon their said amended answers to the petition, it is, by the Court, upon consideration thereof, this 5th day of November, 1931, further

Ordered, adjudged and decreed, as follows:

1. That this Court has jurisdiction of the subject matter and of all the parties hereto; that the petition herein states a good cause of action against the defendants herein under the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies." and under the common law.

2. That the petition herein be and the same is hereby

dismissed as to the defendants, Majestic Cleaning and Dye Works, Inc., Isidore Janet, The Mutual Cleaning Company and Joseph A. Geier.

3. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, have been and are engaged in a combination and conspiracy in restraint of trade and commerce in the District of Columbia in cleaning, dyeing and/or otherwise renovating clothes, as described in the petition, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and of the common law.

4. That the defendants, Atlantic Cleaners and Dyers, Inc., Globe Dry Cleaners and Dyers, Arcade-Sunshine Co., Vogue Dry Cleaning Company, Samuel Rubenstein, Charles Rubenstein, John F. McCarron, Samuel Grozbean, Harry Viner and Samuel Goldenberg, their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, be and they are hereby perpetually enjoined and restrained from—

(*a*) Further carrying out the combination and conspiracy in restraint of trade and commerce in the District of Columbia in cleaning, dyeing, and/or otherwise renovating clothes, herein mentioned;

(*b*) Agreeing upon or making effective any assignment or allotment of the business of retail dyers and cleaners of clothing;

(*c*) Agreeing upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes;

(*d*) Doing any acts to effectuate or enable them to observe any agreement for an assignment or allotment of the business of retail dyers and cleaners of clothing, or any agreement upon prices, terms and conditions to be charged and received by them for cleaning, dyeing and renovating clothes.

5. That jurisdiction of this cause be retained by this Court for the purpose of enforcing this decree.

6. That plaintiff recover from said defendants its costs, to be taxed by the Clerk, and that it have execution therefor.

ALFRED A. WHEAT,
Chief Justice.

Filed Nov. 5, 1931.

U.S. v. PLUMBING AND HEATING INDUSTRIES ADMINISTRATIVE ASSOCIATION, INC., ET AL.

Civil No.: 5226

Year Judgment Entered: 1939

UNITED STATES OF AMERICA v. PLUMBING AND HEATING INDUSTRIES, ADMINISTRATIVE ASS'N, ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 5226.

UNITED STATES OF AMERICA, COMPLAINANT

vs.

PLUMBING AND HEATING INDUSTRIES ADMINISTRATIVE ASSOCIATION, INC., JOSEPH G. HILDEBRAND, JOHN M. BOTTS, J. H. MCCARTHY, ELMON J. EWING, JOSEPH A. HIGH, THEO. R. NEWMAN, MARK MORAN, W. HOWARD GOTTLIEB, MAURICE R. COLBERT, FRANK J. LUCAS, EDGAR O. OLSON, DEFENDANTS.

JUDGMENT.

This cause came on to be heard on this 22nd day of December 1939 the complainant being represented by

David A. Pine, United States Attorney for the District of Columbia, and Gordon Dean, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this judgment;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts.

Now, therefore, upon motion of complainant without taking any testimony or evidence, and without making any adjudication of the facts, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED:

1. That the Court has jurisdiction of the subject matter set forth in the complaint and of all the parties hereto with full power and authority to enter this judgment and that the complaint alleges a combination in restraint of trade and commerce in the District of Columbia in the restriction and elimination of competitive bidding among plumbing and heating contractors in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and states a cause of action under said Act.

2. That defendant corporation, Plumbing and Heating Industries Administrative Association, Inc., be dissolved by action of the defendant officers and members of said corporation.

3. That the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act

on behalf of the defendants or any of them be and they are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination to restrain trade or commerce in the District of Columbia in the restriction and elimination of competitive bidding among plumbing and heating contractors such as is alleged in the complaint, and from entering into or carrying out, directly or indirectly, by any means whatsoever, any combination of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) from doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

(a) Operating any organization or engaging in any plan or procedure whereby the elimination or restriction of low bids on any project is accomplished;

(b) Interfering or agreeing to interfere in any way with free and open competitive bidding on any and all construction projects in the District of Columbia.

4. That for the purpose of securing compliance with the judgment authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

5. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this judgment and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

6. And that complainant recover its costs.

(S.) JAMES M. PROCTOR,
Judge.

Dated at Washington, D. C., this 22nd day of December 1939.

U.S. v. UNION PAINTERS ADMINISTRATIVE ASSOCIATION, INC., ET AL.

Civil No.: 5225

Year Judgment Entered: 1939

UNITED STATES OF AMERICA v. UNION PAINTERS ADMINISTRATIVE ASS'N INC., ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 5225.

UNITED STATES OF AMERICA, COMPLAINANT

VS

UNION PAINTERS ADMINISTRATIVE ASSOCIATION, INC., W. H. SHEEHAN, THOMAS H. REID, F. Y. DENSON, EDWARD W. MINTE CO., INC., EDWARD W. MINTE, F. J. RICE, A. WILLIAM DUNBAR, DEFENDANTS.

JUDGMENT.

This cause came on to be heard on this 2nd day of December 1939 the complainant being represented by David A. Pine, United States Attorney for the District of Columbia, and by Gordon Dean, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this judgment;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause or to take testimony therein or that any adjudication be made of the facts.

Now, therefore, upon motion of complainant, without taking any testimony or evidence, and without making any adjudication of the facts, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED:

1. That the Court has jurisdiction of the subject matter set forth in the complaint and of all the parties hereto with full power and authority to enter this judgment and that the complaint alleges a combination in restraint of trade and commerce in the District of Columbia in the elimination of competitive bidding among painting contractors in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and states a cause of action under said Act.

2. That charter of the defendant corporation, Union Painters Administrative Association, Inc., is hereby forfeited.

3. That the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them be and they are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination to restrain trade or commerce in the District of Columbia in the elimination of competitive bidding among painting contractors such as is alleged in the complaint and from entering into or

carrying out, directly or indirectly, by any means whatsoever, any combination of like character or effect and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) from doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

a. Operating any organization or engaging in any device or scheme such as that commonly known as a bid depository whereby the elimination or restriction of low bids on any project in the District of Columbia is accomplished;

b. Interfering or agreeing to interfere in any way with free and open competitive bidding on any and all construction projects in the District of Columbia;

4. That for the purpose of securing compliance with the judgment authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

5. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this judgment and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

6. And that complainant recover its costs.

(S.) JAMES M. PROCTOR,
Judge.

Dated at Washington, D. C., this 22nd day of December 1939.

U.S. v. EXCAVATORS ADMINISTRATIVE ASSOCIATION, INC., ET AL.

Civil No.: 5227

Year Judgment Entered: 1939

UNITED STATES OF AMERICA v. EXCAVATORS ADMINISTRATIVE ASS'N, ET. AL., DEFENDANTS

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 5227.

UNITED STATES OF AMERICA, COMPLAINANT

vs.

EXCAVATORS ADMINISTRATIVE ASSOCIATION, INC., LOGAN PINGREE COMPANY, INC., THE M. CAIN COMPANY, INC., CRANE SERVICE COMPANY, INC., RAYMOND HARTZELL, HERMAN MORAUER, RAYMOND MORAUER, JAMES PARRECO, THEODORE PARRECO, WILLIAM PARRECO, EDWARD PARRECO, LOGAN PINGREE, F. J. RICE, M. CAIN,

DEFENDANTS.

JUDGMENT.

This cause came on to be heard on this 22nd day of December 1939, the complaint being represented by David A. Pine, United States Attorney for the District of Columbia, and Gordon Dean, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this judgment;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause or to take testimony therein, or that any adjudication be made of the facts.

Now, therefore, upon motion of complainant, without taking any testimony or evidence, and without making any adjudication of the facts, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED:

1. That the Court has jurisdiction of the subject matter set forth in the complaint and of all the parties hereto with full power and authority to enter this judgment, and that the complaint alleges a combination in restraint of trade and commerce in the work of excavating and the competitive bidding thereon in violation of the Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Anti-trust Act, and states a cause of action under said Act.

2. That defendant corporation, Excavators Administrative Association, Inc., be and the same is hereby dissolved.

3. That the defendants and each of them and each and all of their respective officers, directors, members, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be and they are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining or extending, directly or indirectly, any combination to restrain trade and commerce in the work of excavating and the competitive bidding thereon, such as is alleged in the complaint, and from entering into or carrying out, directly or indirectly, by any means whatsoever, any combination of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) from doing, per-

forming, agreeing upon, entering upon, or carrying out any of the following acts or things:

(a) Operating any organization or engaging in any plan or procedure such as that commonly known as a bid depository whereby the elimination or restriction of low bids on any project in the District of Columbia is accomplished;

(b) Interfering or agreeing to interfere in any way with free and open competitive bidding on any and all construction projects in the District of Columbia.

4. That for the purpose of securing compliance with the judgment authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

5. That jurisdiction of this case and of the parties hereto be, and it hereby is, retained by the Court for the purpose of giving full effect to this judgment and for the enforcement of a strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

6. And that complainant recover its costs.

(S.) JAMES M. PROCTOR,
Judge.

Dated at Washington, D. C., this 22nd day of December 1939.

U.S. v. MASON CONTRACTORS ASSOCIATION OF THE DISTRICT OF COLUMBIA, ET AL.

Civil No.: 6169

Year Judgment Entered: 1940

UNITED STATES OF AMERICA v. MASON CONTRACTORS ASS'N, ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

Civil Action No. 6169.

UNITED STATES OF AMERICA, COMPLAINANT

vs.

MASON CONTRACTORS ASSOCIATION OF THE DISTRICT OF COLUMBIA; NORMAN P. SMITH COMPANY, INC.; AN-

CHOR FIREPROOFING COMPANY, INC.; THE MERANDO COMPANY, INC.; HORTON MYERS & RAYMOND, INC.; GRECO & CAROSELLA CO., INC.; F. J. KELLEY; WILLIAM F. NELSON; E. A. RULE; A. R. MYERS; C. M. RAYMOND; D. B. WEISIGER; HOMER T. BOOTH; ROY E. SHOOK; CHARLES W. HAMMETT; E. F. GREENSTREET; SAM MERANDO; RAYMOND PUMPHREY; DENNIS DONOVAN; JOHN GARVY; THOMAS F. ELAM; AND CARROLL LARKIN, DEFENDANTS.

JUDGMENT.

This cause came on to be heard on this 12th day of March 1940, the complainant being represented by David A. Pine, United States Attorney for the District of Columbia, and Walter R. Hutchinson, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this judgment;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts.

Now, therefore, upon motion of the complainant, without taking any testimony or evidence, and without making any adjudication of the facts, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED:

I. That the Court has jurisdiction of the subject matter set forth in the complaint and of all the parties hereto with full power and authority to enter this judgment, and that the complaint alleges a combination in restraint of trade and commerce in contracting for

masonry work and the competitive bidding thereon in violation of § 3 of the Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act, and states a cause of action under said Act.

II. That the defendants and each of them and each and all of their respective officers, directors, members, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be, and they are hereby, perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination to restrain trade and commerce in contracting for masonry work and the competitive bidding thereon, such as is alleged in the complaint, and from entering into or carrying out, directly or indirectly, by any means whatsoever, any combination of like character or effect, and, more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing), from doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

(A) Operating any organization or engaging in any plan or procedure such as that commonly known as a bid depository whereby the elimination or restriction of low bids on any project in the District of Columbia is accomplished;

(B) Interfering or agreeing to interfere in any way with the right of any mason contractor to bid or to rebid on any project in the District of Columbia or with the right of any general contractor to request or receive bids or rebids from any qualified mason contractor and to enter into contracts or agreements with any such mason contractor;

(C) Interfering or agreeing to interfere in any way with free and open competitive bidding on any and all construction projects in the District of Columbia.

III. That for the purpose of securing compliance with the judgment, authorized representatives of the

Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

IV. That jurisdiction of this case and of the parties hereto be, and it hereby is, retained by the Court for the purpose of giving full effect to this judgment and for the enforcement of a strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

V. And that complainant recover its cost.

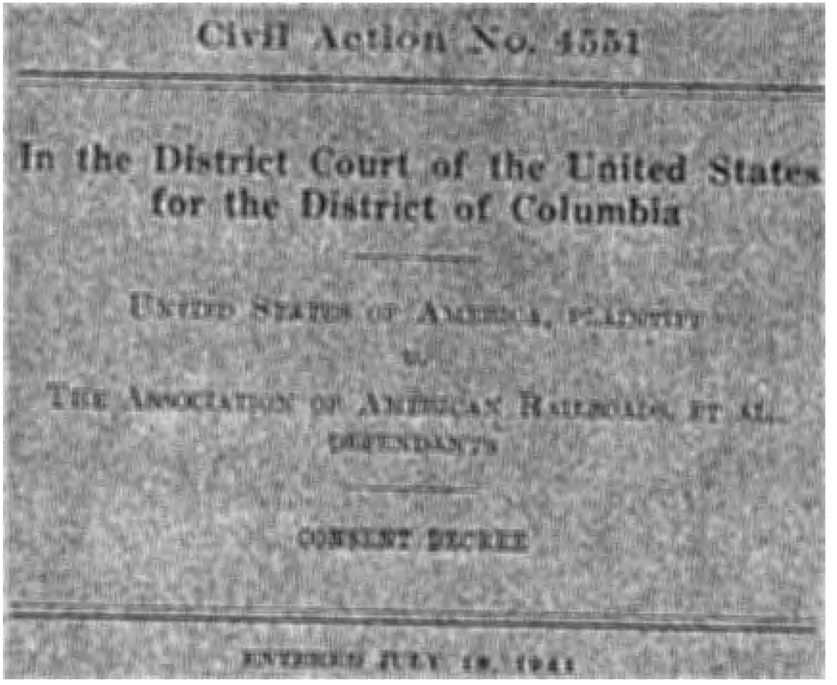
F. DICKINSON LETTS, *Judge.*

Dated at Washington, D. C., this 12th day of March, 1940.

U.S. v. THE ASSOCIATION OF AMERICAN RAILROADS, ET AL.

Civil No.: 4551

Year Judgment Entered: 1941



Civil Action No. 4551

In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ASSOCIATION OF AMERICAN RAILROADS, ET AL., DEFENDANTS

CONSENT DECREE

ENTERED JULY 19, 1943

In the District Court of the United States for the District of Columbia

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Civil Action No. 4551

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ASSOCIATION OF AMERICAN RAILROADS,

John J. Pelley,
Augustus F. Cleveland,
Edward H. Bunnell,
Robert V. Fletcher,
Ralph Budd,
Martin W. Clement,
Charles E. Denney,
Edward M. Durham,
George B. Elliott,
Edward J. Engel,
Edward S. French,
William M. Jeffers,
Duncan J. Kerr,
James N. Kurn,
Ernest E. Norris,
Legh R. Powell, Jr.,
Henry A. Scandrett,
Daniel Upthegrove,
Daniel Willard,
Frederick E. Williamson,

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George E. Hagenbuch and Harry B. Stewart, Trustees,
Akron, Canton & Youngstown Railroad Company,
Alton & Southern Railroad Company,
Alton Railroad Company,
Norman B. Pitcairn and Franck C. Nicodemus, Jr., Receivers, Ann Arbor Railroad Company,
Manistique & Lake Superior Railroad Company,
Atchison, Topeka & Santa Fe Railway Company,
Gulf, Colorado & Santa Fe Railway Company,
Panhandle & Santa Fe Railway Company,
Atlanta, Birmingham & Coast Railroad Company,
Atlantic & Yadkin Railway Company,
Atlantic Coast Line Railroad Company,
Baltimore & Ohio Chicago Terminal Railroad Company,
Baltimore & Ohio Railroad Company,
Staten Island Rapid Transit Railway Company,
Bessemer & Lake Erie Railroad Company,
Boston & Maine Railroad Company,
Buffalo Creek Railroad Company,
Burlington-Rock Island Railroad Company,
Butte, Anaconda & Pacific Railway Company,
Canadian National Railway Company,
Duluth, Winnipeg & Pacific Railway Company,
Central Vermont Railway Company,
Grand Trunk Western Railroad Company,
Muskegon Railway & Navigation Company,
International Bridge Company,
St. Clair Tunnel Company,
Canadian Pacific Railway Company,

Henry D. Pollard, Receiver, Central of Georgia Railway Company,
Louisville & Wadley Railroad Company,
Wadley Southern Railway Company,
Wrightsville & Tennille Railroad Company,
Central Railroad Company of New Jersey,
Wharton & Northern Railroad Company,
Charleston & Western Carolina Railway Company,
Chesapeake & Ohio Railway Company,
Benjamin Wham, Trustee, Chicago & Eastern Illinois Railway Company,
Chicago & Illinois Midland Railway Company,
Charles P. Megan and Charles M. Thomson, Trustees, Chicago & Northwestern Railway Company,
Chicago, St. Paul, Minneapolis & Omaha Railway Company,
Chicago & Western Indiana Railroad Company,
Charles F. Propst, Receiver, Chicago, Attica & Southern Railroad Company,
Chicago, Burlington & Quincy Railroad Company,
Holman D. Pettibone, Trustee, Chicago, Indianapolis & Louisville Railway Company,
Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees, Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, Chicago, Rock Island & Pacific Railway Company,
Peoria Terminal Company,
Louis H. Phettiplace,
Colorado & Southern Railway Company,

Columbus & Greenville Railway Company,
Delaware & Hudson Railroad Corporation,
Greenwich & Johnsonville Railway Company,
Schoharie Valley Railway Company,
Delaware, Lackawanna & Western Railroad Company,
Wilson McCarthy and Henry Swan, Trustees, Denver & Rio Grande Western Railroad Company,
Denver & Salt Lake Railway Company,
Detroit & Mackinac Railway Company,
Detroit, Toledo Shore Line Railroad Company,
Detroit, Toledo & Ironton Railroad Company,
Duluth, Missabe & Iron Range Railway Company,
Edward A. Whitman and James L. Homire, Trustees,
Duluth, South Shore & Atlantic Railway Company,
Mineral Range Railroad Company,
Durham & Southern Railway Company,
Elgin, Joliet & Eastern Railway Company,
Charles E. Denney and John A. Hadden, Trustees,
Erie Railroad Company,
Chicago & Erie Railroad Company,
New Jersey & New York Railroad Company,
New York, Susquehanna & Western Railroad Company,
William R. Kenan, Jr., and Scott M. Loftin, Receivers,
Florida East Coast Railway Company,
Clyde H. Crooks, Receiver, Fort Dodge, Des Moines & Southern Railroad Company,
Fort Worth & Denver City Railway Company,
Galveston, Houston & Henderson Railroad Company,
Charles A. Wickersham, General Manager, Georgia Railroad Company,

William V. Griffin and Hugh W. Purvis, Receivers, Georgia & Florida Railroad Company,
Great Northern Railway Company,
Farmers Grain & Shipping Company's Railroad,
Spokane, Coeur d'Alene & Palouse Railway Company,
Gulf, Mobile & Northern Railroad Company,
Huntingdon & Broad Top Mountain Railroad & Coal Company,
Illinois Central Railroad Company,
Yazoo & Mississippi Valley Railroad Company,
Gulf & Ship Island Railroad Company,
Illinois Terminal Railroad Company,
Indianapolis Union Railway Company,
Kansas City Southern Railway,
Arkansas Western Railway Company,
Kentucky & Indiana Terminal Railroad Company,
Lake Superior & Ishpeming Railroad Company,
Lehigh & Hudson River Railway Company,
Lehigh & New England Railroad Company,
Lehigh Valley Railroad Company,
Louisiana & Arkansas Railway Company,
Louisville & Nashville Railroad Company,
McCloud River Railroad Company,
Maine Central Railroad Company,
Midland Valley Railroad Company,
Kansas, Oklahoma & Gulf Railway Company,
Oklahoma City-Ada-Atoka Railway Company,
Lucian C. Sprague, Receiver, Minneapolis & St. Louis Railroad Company,
George W. Webster and Joseph Chapman, Trustees, Minneapolis, St. Paul & Sault Ste. Marie Railway,

Mississippi Central Railroad Company,
Missouri-Kansas-Texas Railroad Company,
Missouri-Kansas-Texas Railroad Company of Texas,
Beaver, Meade & Englewood Railroad Company,
Guy A. Thompson, Trustee, Missouri Pacific Railroad Company,
Doniphan, Kensett & Searcy Railway Company,
New Orleans & Lower Coast Railroad Company,
Natchez & Southern Railway Company,
New Orleans, Texas & Mexico Railway Company,
St. Louis, Brownsville & Mexico Railway Company,
San Antonio, Uvalde & Gulf Railroad Company,
Beaumont, Sour Lake & Western Railway Company,
International-Great Northern Railroad Company,
Missouri-Illinois Railroad Company,
Missouri & Arkansas Railway Company,
Charles E. Ervin and Thomas M. Stevens, Receivers, Mobile & Ohio Railroad Company,
Montour Railroad Company,
Nashville, Chattanooga & St. Louis Railway Company,
Nevada Northern Railway Company,
New York Central Railroad Company,
Owasco River Railway Company,
Chicago River & Indiana Railroad Company,
Indiana Harbor Belt Railroad Company,
Pittsburgh & Lake Erie Railroad Company,
Lake Erie & Eastern Railroad Company,
New York, Chicago & St. Louis Railroad Company,

Howard S. Palmer, James Lee Loomis, and Henry B. Sawyer, Trustees, New York, New Haven, and Hartford Railroad Company,
New York, Ontario & Western Railway Company,
Norfolk & Western Railroad Company,
Morris S. Hawkins and Louis H. Windholz, Receivers, Norfolk Southern Railroad Company,
Northern Pacific Railway Company,
Minnesota & International Railway Company,
Northwestern Pacific Railroad Company,
Pennsylvania Railroad Company,
Pennsylvania & Atlantic Railroad Company,
Rosslyn Connecting Railroad Company,
Waynesburg & Washington Railroad Company,
Baltimore & Eastern Railroad Company,
Long Island Railroad Company,
Pennsylvania-Reading Seashore Lines,
Peoria & Pekin Union Railway Company,
Pere Marquette Railway Company,
Manistee & Northeastern Railway Company,
Pittsburgh & Shawmut Railroad Company,
Pittsburgh, Lisbon & Western Railroad Company,
John D. Dickson, Receiver, Pittsburgh, Shawmut & Northern Railroad Company,
Prescott & Northwestern Railroad Company,
Railway Express Agency, Inc.,
Raritan River Railroad Company,
Reading Company,
Richmond, Fredericksburg & Potomac Railroad Company,
Cass M. Herrington, Receiver, Rio Grande Southern Railroad Company,

Luis G. Morphy, Receiver, Rutland Railroad Company,
St. Louis & Hannibal Railroad Company,
James M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company,
Birmingham Belt Railroad Company,
St. Louis, San Francisco & Texas Railway Company,
Berryman Henwood, Trustee, St. Louis Southwestern Railway Company,
Dallas Terminal Railway & Union Depot Company,
San Diego & Arizona Eastern Railway Company,
Legh R. Powell, Jr., and Henry W. Anderson, Receivers, Seaboard Air Line Railway Company,
Skaneateles Railroad Company,
Southern Pacific Company,
Texas & New Orleans Railroad Company,
Southern Railway Company,
Alabama Great Southern Railroad Company,
Asheville & Craggy Mountain Railway Company,
Blue Ridge Railway Company,
Carolina & Northwestern Railway Company,
Carolina & Tennessee Southern Railway Company ,
Cincinnati, Burnside & Cumberland River Railway Company,
Cincinnati, New Orleans & Texas Pacific Railway Company,
Danville & Western Railway Company,

Georgia Southern & Florida Railway Company,
Harriman & Northeastern Railroad Company,
High Point, Randleman, Asheboro & Southern Railroad Company,
New Orleans & Northeastern Railroad Company,
New Orleans Terminal Company,
Northern Alabama Railway Company,
St. Johns River Terminal Company,
State University Railroad Company,
Woodstock & Blockton Railway Company,
Yadkin Railroad Company,
Edgar S. McPherson, Trustee, Spokane International Railway Company,
Spokane, Portland & Seattle Railway Company,
Gales Creek & Wilson River Railroad Company,
Tennessee, Alabama & Georgia Railway Company,
Tennessee Central Railway Company,
Terminal Railroad Association of St. Louis,
St. Louis Southwestern Railway Company of Texas,
Savannah & Atlanta Railway Company,
Texas & Pacific Railway Company,
Texas Mexican Railway Company,
Tremont & Gulf Railway Company,
Union Pacific Railroad Company,
Union Railway Company,
Union Railroad Company,
Virginian Railway Company,
Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, Wabash Railway Company,
Western Maryland Railway Company,

Thomas M. Schumacher and Sidney N. Ehrman, Trustees, Western Pacific Railroad Company,
Western Railway Company of Alabama,
Atlanta & West Point Railroad Company,
Wichita Falls & Southern Railroad Company,
Wichita Valley Railway Company,
Winston-Salem Southbound Railway Company,

DEFENDANTS

FINAL DECREE

The United States of America filed its complaint herein on October 25, 1939. This Court has held that the rescission by the Board of Directors of defendant Association, as alleged in defendants' Motion for summary judgment and admitted by plaintiff, of the two resolutions of September 20, 1935, and the one of June 25, 1937, as set forth respectively in paragraphs 22, 23, and 24 of the complaint, did not and has not rendered this cause moot. Defendants have appeared and filed their joint Answer. The complaint has been amended as to the parties defendant by stipulation filed herein as of this day. Each of the defendants has consented to the entrance of this decree without the taking of any testimony and without findings of fact;

And it appearing to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint herein; and it further appearing that by reason of the aforesaid consent of the parties, it is unnecessary to proceed with the trial of the cause

or to take testimony therein or to make any adjudication of the facts;

NOW THEREFORE, upon motion of complainant and upon the consent of all parties hereto and without taking any testimony or evidence, it is hereby

ORDERED, ADJUDGED, AND DECREED:

I. That this Court has jurisdiction of the subject matter as set forth in the complaint, and all parties hereto, with full power and authority to enter this decree.

II. 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," commonly known as the Sherman Antitrust Act.

III. That the defendants, and each of them, and each and all of their respective agents, representatives, employees, officers, directors and members, and all persons acting or claiming to act on behalf of the defendants, or any of them, are hereby perpetually enjoined and restrained from according any force or effect to the aforesaid resolutions of the Board of Directors of defendant Association, or to any agreement, concert, or understanding, existing by virtue of, growing out of, or in any way attributable to, said resolutions, and from soliciting, encouraging, or coercing by any manner or means any of the defendants, or the officers, directors, agents, servants, or employees thereof, to abide by such resolutions, agreements, concerts or understandings, or to accord them any force or effect.

IV. That the defendants, and other parties described in paragraph III above, be perpetually enjoined and restrained from entering into any agreement, concert or understanding with the defendant Association, its officers, directors or its membership, the effect of which is to restrain, or tend to restrain, the freedom and independence of each of the defendant railroads in accordance with its own individual managerial discretion in the matter of the establishment of through routes, joint rates, joint billing arrangements, the advancing of charges, and other mutual practices, in connection with interchange of persons and property between such defendant railroads and motor carriers.

V. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice, be permitted (1) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters enjoined by this decree, (2) subject to the reasonable convenience of said defendants, and without restraint or interference from them, to interview officers or employees of said defendants, in the presence of counsel, regarding any such matters; and said defendants, on such 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 proceedings in which the United States is a party or as otherwise required by law.

VI. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time (upon due and reasonable notice to the adverse party or parties) for such further orders and directions as may be necessary or appropriate for the construction of or the carrying out of this decree, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated July 18, 1941.

BOLITHA J. LAWS,
United States District Judge.

We hereby consent to the entry of the foregoing decree:

For the United States of America:

THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General.

For the defendants:

R. V. FLETCHER.
J. CARTER FORT.
J. M. SOUBY.
GREGORY S. PRINCE.

U. S. GOVERNMENT PRINTING OFFICE: 1941

U.S. v. THE STANDARD REGISTER COMPANY

Civil No.: 36040

Year Judgment Entered: 1949

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	Filed 12-13-49
Plaintiff,	:	Civil Action
v.	:	No. 36040
THE STANDARD REGISTER COMPANY,	:	
Defendant.	:	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on July 30, 1946, and having filed an amendment to the complaint on February 24, 1948; the defendant, The Standard Register Company, a corporation, having appeared and filed its original answer to said complaint, and its supplemental answer to the amended complaint, denying the substantive allegations thereof; and the plaintiff and said defendant by their respective attorneys having consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein, other than the determinations made in the opinion and in the order of this Court dated June 26, 1947, on plaintiff's motion for summary judgment;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, other than as hereinabove stated, and without any admission by any party in respect to any such issue and upon the consent of the parties hereto, 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 to this judgment; the complaint and amended complaint state a cause of action against the defendant, The Standard Register Company, under Sections 1, 2, and 3 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act" and under Section 3 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," said Act being commonly known as the "Clayton Act."

II.

When used in this final judgment, the following terms have the meanings assigned respectively to them below:

(a) "Standard Register" means the defendant, The Standard Register Company, a corporation organized and existing under the laws of the State of Ohio, having its principal office at Dayton, Ohio, and having an office and transacting business in the District of Columbia.

(b) "Marginally punched continuous forms" means such continuous forms, unilaterally or bilaterally punched, which are or may be used over defendant Standard Register's platens or auxiliary equipment, whether such forms are manufactured or supplied by defendant Standard Register or by others.

(c) "Platens" means devices of the type similar

to those known as "Registrator Platens", utilized for the purpose of positively feeding, aligning, and registering marginally punched continuous forms, and installed in and for use in producing machine written records in typewriters, billing machines, tabulating machines, some types of addressing machines, and other accounting and business machines.

(d) "Auxiliary equipment" means addressograph attachments and other mechanisms, other than platens, (some of which auxiliary equipment contains built-in platens), utilizing marginally punched continuous forms for machine written records usually in a secondary operation.

(e) "Patents" means all presently issued United States Letters Patent, and renewals, reissues, divisions, and extensions thereof, owned or controlled by defendant Standard Register, or under which it has power to issue licenses or sublicenses, relating to platens and auxiliary equipment, consisting of the United States Letters Patent shown on the attached schedule made a part of this judgment and marked Exhibit A; and all United States Letters Patent subsequently issued upon all Applications for United States Letters Patent now pending, owned or controlled by defendant Standard Register, relating to platens and auxiliary equipment, together with any renewals, reissues, divisions, and extensions thereof, the serial numbers of which pending applications are shown on the attached schedule made a part of this judgment and marked Exhibit B.

III.

The provisions of this judgment applicable to defendant Standard Register shall apply to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, nominees, employees, or any other person acting or claiming to act under, through, or for such defendant Standard Register.

IV.

Defendant Standard Register is hereby enjoined and restrained from:

A. Leasing, selling, or making or adhering to any contract for the lease or sale of, either platens or auxiliary equipment, whether patented or unpatented, or fixing a price charged therefor or discount from or rebate upon such price, on or accompanied by any condition, agreement, or understanding, that the lessee or purchaser thereof shall not purchase for use in connection with said platens or auxiliary equipment marginally punched continuous forms manufactured or supplied by anyone other than the defendant Standard Register.

B. Leasing, selling, or making or adhering to any contract, agreement, or understanding for the lease or sale of, either platens or auxiliary equipment, whether patented or unpatented, or fixing a price charged therefor or discount from or rebate upon such price, on condition that the lessee or purchaser shall purchase from the defendant Standard Register any volume, quota, percentage, or value of marginally punched continuous forms.

C. Refusing to sell or lease, or except as to the warranty described in the first sentence of subparagraph H of this paragraph, discriminating in the sale or lease of, platens or auxiliary equipment or parts or to make repairs thereof because the purchaser or lessee thereof procures or uses marginally punched continuous forms supplied by others than the defendant Standard Register or any other source designated by the defendant Standard Register.

D. Refusing to sell, or except as to the warranty described in the first sentence of subparagraph H of this paragraph, discriminating in the sale of, marginally punched continuous forms because the purchaser thereof procures or uses platens or auxiliary equipment supplied by others than the defendant Standard Register or any other source designated by the defendant Standard Register.

E. Removing platens or auxiliary equipment from the premises of any lessee or purchaser thereof, because such lessee or purchaser purchases, uses, or deals in marginally punched continuous forms manufactured or supplied by any person other than the defendant Standard Register or any other source designated by defendant Standard Register.

F. Conditioning any license or immunity, express or implied, to practice any invention related to platens or auxiliary equipment by the tying of any license or immunity for such invention to the procurement or use of marginally punched continuous forms from defendant Standard Register or any other source designated by defendant Standard Register.

G. Except as to the warranty described in the first sentence of subparagraph H of this paragraph, conditioning (a) any other warranties, directly applicable to its marginally punched continuous forms, upon the use of defendant Standard Register's platens or auxiliary equipment, or conditioning (b) any other warranties, directly applicable to its platens or auxiliary equipment, upon the use of defendant Standard Register's marginally punched continuous forms.

H. Offering, making or issuing to its customers any

instruments formally and expressly warranting the use of defendant Standard Register's marginally punched continuous forms in combination with its platens or auxiliary equipment, or in combination with platens or auxiliary equipment made under and in accordance with defendant Standard Register's supervision, unless there is included in such instrument a statement to the effect that such warranty does not imply that forms purchased from sources other than defendant Standard Register either will or will not perform satisfactorily. The word "instrument" as used in this subparagraph is not applicable to and does not include advertisements, sales literature and presentations, and sales promotional material.

Defendant Standard Register is furthermore required to instruct its salesmen and other agents, and to otherwise use its best efforts, to make their activities and conduct consistent with the provisions of this subparagraph H.

I. Entering into, adopting, adhering to, or furthering any agreement or course of conduct for the purpose of, or which in effect constitutes, the making or adhering to, a contract or arrangement containing a condition contrary to the provisions of subparagraphs A, B, F and G of this paragraph; or from adopting or adhering to any course of conduct which in effect is contrary to subparagraphs C, D and E of this paragraph.

J. Instituting or threatening to institute or maintaining any suit, counter-claim, or proceeding, judicial or administrative, for infringement, or to collect charges, damages, compensation, or royalties, alleged to have occurred or accrued prior to the date of this judgment under any existing platen patents or existing auxiliary equipment patents, as defined in paragraph II, subsection (e), of this judgment.

V.

Defendant Standard Register is hereby ordered and directed to offer to sell platens and auxiliary equipment of the types from time to time being manufactured by it, to any person other than to its competitors and other than to persons purchasing on behalf of or for sale to defendant Standard Register's competitors, providing the person to whom such offer is made has a proper credit rating or, in the absence of such rating, is willing to pay cash. Defendant Standard Register shall offer to sell such platens or auxiliary equipment at non-discriminatory prices, and at prices and under terms having a commercially reasonable relationship to prices and terms at which its similar devices are then being leased. Sales of platens and auxiliary equipment shall be free from any reservation of rights or privileges on the part of defendant Standard Register, including any right to repurchase,

other than a right which may be reserved to defendant Standard Register to repurchase auxiliary equipment, on terms and conditions not in conflict with any of the provisions of this judgment.

VI.

A. Defendant Standard Register is hereby ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend, or any one or more of these rights, under any, some, or all platen and auxiliary equipment patents as herein defined.

B. Defendant Standard Register is hereby enjoined and restrained from making any sale or other disposition of any of said patents which deprives it of the power or authority to grant such licenses, unless it sells, transfers, or assigns such patents and requires, as a condition of such sale, transfer, or assignment, that the purchaser, transferee, or assignee shall observe the requirements of paragraphs IV, V, and VI of this judgment, and the purchaser, transferee, or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Paragraphs IV, V, and VI of this judgment.

C. Defendant Standard Register is hereby enjoined and restrained from including any restriction whatsoever in any license or sublicense granted by it pursuant to the provisions of this paragraph, except that:

(1) The license may be non-transferable;

(2) A reasonable royalty may be charged, but such royalty shall not be discriminatory between licensees procuring the same rights under the same patents;

(3) Reasonable provision may be made for periodic inspection of the books and records of the licensee to make, use, and vend, by an independent auditor or any person acceptable to the licensee, who shall report to the licensor only the amount of the royalty due and payable;

(4) Reasonable provision may be made for cancellation of the license to make, use, and vend, upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided; and

(5) The license must provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving thirty days' notice in writing to the licensor.

D. Upon receipt of written request for a license under the provisions of this paragraph, defendant Standard Register shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty days from the date such request for the license was received by defendant Standard Register, the applicant therefor or defendant Standard Register may apply to this Court for the determination of a reasonable royalty, and defendant Standard Register shall,

upon receipt of notice of the filing of such application, or upon the making of an application by defendant Standard Register, promptly give notice thereof to the Attorney General. In any such proceeding, the burden of proof shall be on defendant Standard Register to establish the reasonableness of the royalty requested by it, and the reasonable royalty rates determined by the Court shall apply to the applicant and all other licensees having the same rights under the same patent or patents. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, use and vend, or any one or more of these rights under the patents to which his application pertains without payment of royalty or other compensation; provided, however, that upon the final determination of the reasonable royalty, defendant Standard Register shall issue a license providing for the periodic payment of royalties and providing for the rights to which the licensee shall be entitled under this judgment. Such final determination shall be retroactive for the licensee-applicant to the date upon which licensee-applicant shall have acquired the right to make, use, and vend, or any one or more of these rights, under the patent to which the application pertains. The final determination as aforesaid shall be retroactive, for all other licensees having the same rights under the same patents, to the date the licensee-applicant files his application with the Court. If the applicant for a license fails to accept such license, the applicant for a license shall pay the court costs in such proceeding.

E. Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents, nor shall this judgment be construed as importing any validity or value to any of said patents.

VII.

Defendant Standard Register is hereby ordered and directed, within ninety (90) days after the entry of this judgment, to notify all present lessees of its platens and all present owners of its auxiliary equipment of the changes in their agreements with defendant Standard Register in compliance with this final judgment and informing them of their rights under this final judgment. Such notice shall be deemed completed when mailed by defendant Standard Register by registered mail, addressed to the respective last known post office addresses of defendant Standard Register's present lessees of its platens and owners of its auxiliary equipment.

VIII.

Defednant Standard Register is hereby ordered and directed to file with this Court and with the Attorney General of the United States, or with the Assistant Attorney General in charge of the Anti-Trust Division, a report within 120 days after the date of the entry of this judgment, of all action taken by it to comply with or conform to the terms of this judgment.

IX.

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written

request of the Attorney General or an Assistant Attorney General, and on reasonable notice to defendant Standard Register, made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

For the purpose of securing compliance with this judgment, defendant Standard Register, upon the written request of The Attorney General or an Assistant Attorney General, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

X.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this 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 judgment, for the amendment, modification, or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ Bolitha Laws
United States District Judge

Dated: December 13, 1949

We hereby consent to the entry of the foregoing final judgment:

/s/HERBERT A. BERGSON
HERBERT A. BERGSON
Assistant Attorney General

/s/Sigmund Timberg
SIGMUND TIMBERG
Special Assistant to the
Attorney General

/s/ Victor H. Kramer
VICTOR H. KRAMER
Trial Attorney

/s/ Herbert N. Maletz
HERBERT N. MALETZ
Attorney

Attorneys for plaintiff

STEPTOE & JOHNSON

By/s/ Donald O. Lincoln
DONALD O. LINCOLN

Attorneys for Defendant
The Standard Register Company

EXHIBIT A

PATENT NO.	DATE OF ISSUANCE	INVENTOR
1,894,065	1/10/33	John Q. Sherman et al.
1,896,032	1/31/33	John Q. Sherman et al.
1,974,368	9/18/34	John Q. Sherman
2,000,649 re.20,888	5/7/35	John Q. Sherman
2,000,650	5/7/35	John Q. Sherman et al.
2,000,651	5/7/35	John Q. Sherman et al.
2,004,395	6/11/35	John Q. Sherman et al.
2,012,282	8/27/35	Albert W. Metzner
2,012,289	8/27/35	John Q. Sherman et al.
2,033,868	3/10/36	John Q. Sherman et al.
2,047,233	7/14/36	John Q. Sherman
2,067,210	1/12/37	John Q. Sherman
2,067,211 re.21,842	1/12/37	John Q. Sherman et al.
2,095,292	10/12/37	John Q. Sherman
2,095,293	10/12/37	John Q. Sherman
2,098,978	11/16/37	John Q. Sherman
2,102,651	12/21/37	John Q. Sherman et al.
2,112,833	4/5/38	Henry G. Dyvbig
2,113,579	4/12/38	Henry G. Dyvbig
2,128,924	9/6/38	Henry G. Dyvbig
2,149,316	3/7/39	John Q. Sherman
2,160,916	6/6/39	John Q. Sherman et al.
2,172,414	9/12/39	John Q. Sherman
2,173,864	9/26/39	John Q. Sherman et al.
2,177,675	10/31/39	John Q. Sherman
2,200,308	5/14/40	John Q. Sherman et al.
2,237,320	4/8/41	Spayd et al.
2,252,720	8/19/41	Albert W. Metzner

PATENT NO.	DATE OF ISSUANCE	INVENTOR
2,252,733	8/19/41	John Q. Sherman et al.
2,252,734	8/19/41	John Q. Sherman
2,252,735	8/19/41	John Q. Sherman
2,252,736	8/19/41	John Q. Sherman et al.
2,275,475	3/10/42	John Q. Sherman
2,277,156	3/24/42	John Q. Sherman et al.
2,277,693	3/31/42	Henry G. Dyvbig
2,280,095	4/21/42	Albert W. Metzner
2,291,658	8/4/42	John Q. Sherman
2,293,769	8/25/42	John Q. Sherman
2,307,809	1/12/43	John Q. Sherman
2,309,656	2/2/43	Albert W. Metzner
2,311,702	2/23/43	John Q. Sherman
2,318,020	5/4/43	John Q. Sherman et al.
2,327,377	8/24/43	Albert W. Metzner et al.
2,328,582	9/7/43	Raymond G. Ratchford et al.
2,345,008	3/28/44	John A. Schmidt
2,346,163	4/11/44	Hiles
2,353,194	7/11/44	John Q. Sherman et al.
2,355,668	8/15/44	Morse
2,355,690	8/15/44	Abram T. Zent
2,361,421	10/31/44	John Q. Sherman
2,368,674	2/6/45	Albert W. Metzner
2,368,683	2/6/45	John Q. Sherman
2,377,896	6/12/45	Albert W. Metzner
2,380,949	8/7/45	John T. Davidson
2,384,807	9/18/35	Bruce T. Bickel
2,392,838	1/15/46	John T. Davidson
2,440,302	4/27/48	John Q. Sherman
2,452,591	11/2/48	Albert Metzner
2,476,326	7/19/49	John Q. Sherman

EXHIBIT B

SERIAL NO.	FILING DATE	INVENTOR
62,798	12/1/48	John T. Davidson et al.
83,196	3/24/49	John T. Davidson et al.
685,457	7/22/46	Stimpson et al.
749,640	5/22/47	John T. Davidson et al.
122,459	10/20/49	John T. Davidson
128,774	11/22/49	John T. Davidson

U.S. v. NATIONAL ASSOCIATION OF REAL ESTATE BOARDS, ET AL.

Civil No.: 3472-47

Year Judgment Entered: 1950

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil No. 3472-47
NATIONAL ASSOCIATION OF REAL ESTATE BOARDS, ET AL., Defendants.	)	Filed: October 4, 1950

FINAL JUDGMENT

This cause having come on for hearing before this Court upon the complaint filed August 27, 1947, the several answers thereto, the record of the trial herein, and the opinion, findings of fact and conclusions of law of this Court, and final judgment having thereupon been entered by this Court on July 29, 1949, and

Appeal having been taken by the plaintiff to the Supreme Court of the United States and said Court having entered its opinion on May 8, 1950, and issued its mandate on June 13, 1950, reversing the judgment of this Court except as to the defendants National Association of Real Estate Boards and Herbert U. Nelson, and remanding this cause for proceedings in conformity with its opinion,

NOW, THEREFORE, upon the mandate of the Supreme Court, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The judgment entered herein on July 29, 1949, is vacated except as to the defendants National Association of Real Estate Boards and Herbert U. Nelson.

2. This Court has jurisdiction of the subject matter herein and of all the parties hereto under Section 3 of the Act of Congress

July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

3. By adopting, agreeing to observe and observing schedules of commissions and fees for services in the sale, exchange, lease and management of real property in the District of Columbia, the Washington Real Estate Board and each of its members have contracted, combined and conspired in restraint of trade and commerce of the District of Columbia in violation of Section 3 of the Sherman Act.

4. (A) (1) The schedule of commissions adopted by the Washington Real Estate Board is declared and adjudged illegal and is hereby cancelled.

(2) Paragraph 1 of Section 3 of the Code of Ethics of the Washington Real Estate Board is declared and adjudged illegal and is hereby cancelled.

(3) So much of paragraphs 3 and 6 of Section 3 of said Code of Ethics as refers to a schedule of commissions or Board rates of commission is declared and adjudged illegal and is hereby cancelled.

(4) So much of Subdivision Fourth, Article 2, of the Constitution and By-Laws of the Washington Real Estate Board as refers to "definite and uniform standards of contracts and charges" is declared and adjudged illegal and is hereby cancelled.

(B) The Washington Real Estate Board, and each of its members, are perpetually enjoined and restrained from publishing, adopting, agreeing to adhere, or adhering to the schedule of commissions or to any of the above provisions of the Code of Ethics or the Constitution and By-Laws of the said Board, as above set forth, and from publishing, adopting, agreeing to adhere, or adhering to any new or amended schedule of commissions or provisions of the Code of Ethics or Constitution and By-Laws having a like purpose or effect.

5. Each of the members of the Washington Real Estate Board is perpetually enjoined and restrained from entering into, carrying out, acting under or enforcing any contract, agreement or understanding with one or more other real estate agents or brokers to fix, maintain or stabilize any rate of commission or other charge for acting as agent or broker in the sale, exchange, lease or management of real property in the District of Columbia. But this shall not be construed to prohibit any such contract, agreement, or understanding when a party to such contract, agreement or understanding is acting as a principal rather than as agent or broker in a real estate transaction, or is acting jointly with the other party or parties as a broker or agent in selling, exchanging, leasing or managing real property.

6. The Washington Real Estate Board is perpetually enjoined and restrained from entering into any contract, agreement, or understanding or making any recommendation or suggestion or giving any advice by means of standard forms of contracts of sale, lease, or management, or by any other means whatsoever, regarding rates of commissions for services of brokers or agents in selling, exchanging, leasing, or managing real property in the District of Columbia. But this provision shall not be construed to prevent the Washington Real Estate Board or any officer, agent, employee or member thereof from arbitrating by means of a committee or otherwise, bona fide disputes between real estate brokers or agents as to divisions of commissions with respect to particular transactions.

7. For the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice shall, on written request by the Attorney General, or an assistant attorney general, be permitted, subject to any legally recognized privilege, (1) upon reasonable notice to defendant Washington Real Estate Board, reasonable 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 judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from them, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representatives 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 for the purpose of securing compliance with this judgment in which the United States is a party or as is otherwise required by law.

8. Jurisdiction of this cause is retained for the purpose of enabling any of the parties 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 judgment, for the modification of any of the provisions thereof or the enforcement of compliance therewith and for the punishment of violations thereof.

9. This judgment shall be binding not only upon the Washington Real Estate Board and its members, but also upon the successors and assigns of and any person acting or claiming to act under, through or for said Board or members.

10. The plaintiff shall recover from the Washington Real Estate Board taxable costs of this suit, in the amount of $100.60.

/s/ Alexander Holtzoff
United States District Judge

Dated: October 4, 1950

U.S. v. UNITED STATES GYPSUM COMPANY, ET AL.

Civil No.: 8017

Year Judgment Entered: 1951

[¶ 62,853] United States v. United States Gypsum Co., National Gypsum Co., Certain-Teed Products Corp., The Celotex Corp., Ebsary Gypsum Co., Inc., Newark Plaster Co., Samuel M. Gloyd, d.b.a. Texas Cement Plaster Co., Sewell L. Avery, Oliver M. Knode, Melvin H. Baker, Frederick G. Ebsary, and Frederick Tomkins.

In the District Court of the United States for the District of Columbia. Civil Action No. 8017. May 15, 1951.

Sherman Antitrust Act

Final Amended Decree—Price Fixing and Customer Classification in Gypsum Board ndustry—Compulsory Non-Exclusive Licensing of Patents.—An amended decree, issued in conformity with the mandate of the Supreme Court after a finding that gypsum board companies had entered license and other agreements violative of the Sherman Act and in restraint of trade, prohibits continuation of listed unlawful agreements, prohibits future agreements fixing prices or classifying customers, requires non-exclusive licensing of gypsum board patents at reasonable royalties to all proper applicants, and provides for supervision and enforcement of the decree by officials of the Justice Department. An interim license form is appended to the decree.

See the Sherman Act annotations, Vol. 1, ¶ 1270.134, 1270.379, 1610.290, 1610.301, 1610.551.

Entering decree in conformity with opinion and mandate of the Supreme Court of the United States, 71 S. Ct. 160, reported at ¶ 62,729.

[*In full text*]

Preliminary Statement

This cause came on for trial before this Court on November 15, 1943. At the conclusion of plaintiff's presentation of the case defendants moved pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure for judgment dismissing the complaint on its merits. The motion of defendants was granted August 6, 1946. The judgment so rendered by this Court was reversed by the Supreme Court of the United States and the case was remanded to this court for further proceedings in conformity with the opinion of the Supreme Court (333 U. S. 364).

Following the remand, the plaintiff pursuant to Rule 56 of the Federal Rules of Civil Procedure, moved for summary judgment in its favor upon the pleadings and all of the proceedings which theretofore had been had in the case, or, in the alternative for such further proceedings as this Court might direct, and defendants, by direction of the Court, filed proffers of proof.

Argument by counsel for the respective parties upon the motion of plaintiff was heard by the Court and after due consideration of such argument and of defendants' proffers of proof, Garrett, J. and Jackson, J., constituting a majority of the Court, announced a ruling to the effect that plaintiff's motion for summary judgment would be granted, and Stephens, Jr., who presided during the trial, announced his dissent from such ruling.

Thereafter counsel for plaintiff and counsel for certain of the defendants submitted forms of final decrees for the consideration of the Court and also suggested findings of fact, the latter to be considered in the event the Court should deem it necessary to make any findings of fact additional to those originally found by it and to those stated in the opinion of the Supreme Court.

In due course, the Court heard arguments respecting the proposed decrees and the suggested findings of fact, and full consideration was given thereto and to all prior proceedings—all being considered in the light of the decision of the Supreme Court which, as understood by the majority of this Court, held that the defendants acted in concert to restrain trade and commerce in the gypsum board industry and monopolized said trade and commerce among the several states in that section hereinafter referred to as the eastern territory of the United States, which section embraces all the states of the United States westward from the eastern coast thereof to the Rocky Mountains and including New Mexico, Colorado, Wyoming, and the eastern half of Montana.

Thereafter this Court, on November 7, 1949, entered its decree sustaining plaintiff's motion for summary judgment and granting relief which it deemed appropriate to its adjudication. Plaintiff thereupon appealed to the Supreme Court seeking to have the scope of the relief enlarged, and certain defendants appealed to the Supreme Court for a reversal of the judgment, which latter appeal was dismissed by the Supreme Court on May 29, 1950. On November 27, 1950, the Supreme Court rendered an opinion on the plaintiff's appeal, affirming this Court's adjudication of Sherman Act violation, holding there was concerted action through the fixed-price licenses and accepting as true the underlying facts in the defendants' proof by proffer. Nevertheless, the Supreme Court reversed the decree heretofore entered herein and remanded the cause to this Court with instructions to modify its decree and

for further proceedings in conformity with its opinion.

Upon remand, this Court, after ordering counsel for the plaintiff and for the defense to submit forms of decree in conformity with the Supreme Court opinion and after considering such forms has modified its decree of November 7, 1949, in accordance with the Supreme Court's opinion of November 27, 1950.

Decree

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

ARTICLE I

[Jurisdiction of Matter]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against defendants under 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, and acts amendatory thereof and supplemental thereto.

ARTICLE II

[Definitions]

As used in this decree:

1. "Defendant companies" shall mean all of the corporate defendants and Samuel M. Gloyd, doing business under the name of Texas Cement Plaster Company.

2. "Gypsum board" shall mean plaster board, lath, wallboard, special surface board, sheathing, liner board (including any such product which is perforated or metallized) made from gypsum.

3. "Gypsum products" shall mean gypsum board as defined in the preceding paragraph, and plaster, block, tile and Keene's cement made from gypsum.

4. "Patents" shall mean United States Letters Patent and applications for United States Letters Patent relating to gypsum board, its processes, methods of manufacture or use, now owned or controlled by defendant United States Gypsum Company and issued to, applied for or acquired by defendant United States Gypsum Company within a period of five (5) years from the date of this decree, including Letters Patent issued upon any of said applications, and continuations in whole or in part, renewals, reissues, divisions and extensions of any such Letters Patent or applications for Letters Patent.

5. "Patent Licenses" shall mean the patent license agreements which were in effect between defendant United States Gypsum Company and each of the other defendant companies at the time the complaint herein was filed and described in said complaint as follows:

Agreement dated October 15, 1929, between United States Gypsum Company, as licensor, and Certain-Teed Products Corporation, as licensee;

Agreement dated October 17, 1929, between United States Gypsum Company, as licensor, and National Gypsum Company, as licensee;

Agreement dated October 18, 1929, between United States Gypsum Company, as licensor, and Ebsary Gypsum Company, as licensee;

Agreement dated November 5, 1929, between United States Gypsum Company, as licensor, and Universal Gypsum and Lime Company (National Gypsum Company, as Assignee), as licensee;

Agreement dated November 25, 1929, between United States Gypsum Company, as licensor, and American Gypsum Company (The Celotex Corporation, as Assignee), as licensee;

Agreement dated April 23, 1930, between United States Gypsum Company, as licensor, and Kelley Plasterboard Company (Newark Plaster Co., as Assignee), licensee;

Agreement dated February 10, 1937, between United States Gypsum Company, as licensor, and Texas Cement Plaster Company, as licensee;

Agreement dated October 5, 1934, between United States Gypsum Company, as licensor, and National Gypsum Company, as licensee (Metallized board);

Agreement dated October 12, 1934, between United States Gypsum Company, as licensor, and Kelley Plasterboard Company (Newark Plaster Company, as Assignee), as licensee (Metallized board);

Agreement dated November 2, 1934, between United States Gypsum Company, as licensor, and Certain-Teed Products Corporation, as licensee (Metallized board);

Agreement dated December 4, 1934, between United States Gypsum Company, as licensor, and American Gypsum Company (The Celotex Corporation, as Assignee), as licensee (Metallized board);

Agreement dated August 14, 1935, between United States Gypsum Company,

as licensor, and Ebsary Gypsum Company, as licensee (Metallized Board);

Agreement dated June 8, 1938, between United States Gypsum Company, as licensor, and Certain-Teed Products Corporation, as licensee (Perforated lath);

Agreement dated September 16, 1938, between United States Gypsum Company, as licensor, and Certain-Teed Products Corporation, as Licensee (Perforated lath);

Agreement dated February 2, 1937, between United States Gypsum Company, as licensor, and Ebsary Gypsum Company, as licensee (Perforated lath);

Agreement dated September 16, 1938, between United States Gypsum Company, as licensor, and Ebsary Gypsum Company, as licensee (Perforated lath);

Agreement dated June 23, 1937, between United States Gypsum Company, as licensor, and Kelley Plasterboard Company (Newark Plaster Company, as Assignee), as licensee (Perforated lath);

Agreement dated January 3, 1939, between United States Gypsum Company, as licensor, and Newark Plaster Company, as licensee (Perforated lath);

and any supplement or amendment to any of said patent license agreements.

ARTICLE III

[*Finding of Restraint*]

The defendant companies have acted in concert in restraint of trade and commerce among the several states in the eastern territory of the United States to fix, maintain and control the prices of gypsum board and have monopolized trade and commerce in the gypsum board industry in violation of sections 1 and 2 of the Sherman Antitrust Act.

ARTICLE IV

[*Licenses Unlawful*]

Each of the license agreements listed in Article II hereof is adjudged unlawful under the antitrust laws of the United States and illegal, null and void.

ARTICLE V

[*Agreements Prohibited*]

The defendant companies, and their respective officers, directors, agents, employees, representatives, subsidiaries, and any person acting or claiming to act under, through or for them, or any of them, be and each of them hereby is enjoined from entering into or performing any agreement or understanding among the defendant companies or other manufacturers of gypsum products to fix, maintain or stabilize, by patent license agreements or other acts or course of action, the prices, or the terms or conditions of sale, of gypsum products sold or offered for sale to other persons, in or affecting interstate commerce; and from engaging in, pursuant to such an agreement or understanding, any of the following acts or practices;

(1) agreeing upon any basis for the selection or classification of purchasers of gypsum products;

(2) refraining from selling gypsum products to any purchaser or any class of purchasers;

(3) agreeing upon any plan of selling or quoting gypsum products at prices calculated or determined pursuant to a delivered price plan which results in identical prices or price quotations at given points of sales or quotation by defendants using such plan;

(4) policing, investigating, checking or inquiring into the prices, quantities, terms or conditions of any offer to sell or sale of gypsum products.

ARTICLE VI

[*Compulsory Licensing*]

1. Defendant United States Gypsum Company is hereby ordered and directed to grant to each applicant making application therefor, but only in so far as it has the right to do so, a non-exclusive license to make, use and vend under any, some or all patents as hereinbefore defined, at a reasonable, non-discriminatory royalty or royalties therefor. Defendant United States Gypsum Company is hereby enjoined from making any sale or other disposition of any of said patents which deprives it of the power or authority to grant such licenses unless it requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of Articles VI and VII of this decree, and unless the purchaser, transferee or assignee shall file with this Court, prior to or as a part of the consummation of said transaction, an undertaking to be bound by said articles of this decree.

[*Permissible Restrictions in Licenses*]

2. Defendant United States Gypsum Company is hereby enjoined from including any restriction or condition whatsoever in any

license or sublicense granted by it pursuant to the provisions of this article, except that (a) the license may be indivisible and non-transferable; (b) a reasonable, non-discriminatory royalty may be charged, which royalty may not be imposed upon or measured by patent-free products, processes or uses; (c) provision may be made requiring licensee to keep full and accurate records of the gypsum board manufactured and sold by it under any such patent and requiring licensee to make appropriate reports to licensor as to the royalty due, but such reports shall not disclose the selling price of the board or disclose a breakdown of the size or thickness of the board sold; (d) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor, or by any person acceptable to the licensor and licensee, who shall report to the licensor only the amount of royalty due and payable; (e) reasonable provision may be made for marking the gypsum board manufactured or sold under the licensed patent; and (f) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalty or to permit the inspection of its books and records or for other material breach of the terms of the license agreement by licensee or in the event licensee shall be adjudged a bankrupt. The license agreement shall be in writing signed by the parties thereto and shall to the extent that licensor has the right to do so, grant to the licensee the full right to make, use and vend the inventions and improvements described in the claims of each patent license, in the manufacture, sale or use of gypsum board, for the full term of the patent and any renewal, reissue, division, or extension thereof, and may contain the provisions hereinabove set forth and such other lawful provisions as may be agreed upon between the parties thereto and which are not in conflict with any of the provisions of this decree.

[*Agreement Upon Royalties*]

3. Upon receipt of written request for such a license defendant United States Gypsum Company shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for a license was received by United States Gypsum Company, the applicant therefor shall within ten (10) days thereafter apply to this Court for a determination of a reasonable royalty or be deemed to have abandoned his said request for such license. The applicant shall promptly give written notice of the filing of such application to the United States Gypsum Company and to the Attorney General of the United States, who shall have the right to be heard thereon. The reasonable royalty rate or rates so determined by the court shall apply to such patent or patents in the license of the applicant from the date of his last written request for such license, and to such patent or patents in all other licenses then or thereafter issued under this decree from the date of such determination. Pending the completion of any such proceeding, applicant shall have the right to make, use and vend under the patent or patents to which his application pertains upon the terms and conditions as set forth in paragraph 4 of this Article, provided he files his application for the determination of a reasonable royalty as aforesaid.

[*Interim Royalties by Court*]

4. Where an application has been made to this Court for the determination of a reasonable royalty under paragraph 3 of this Article, the applicant or the United States Gypsum Company may apply to the court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the court fixes such interim royalty rate, United States Gypsum Company shall then issue and the applicant shall accept an interim license agreement effective as of the date of the applicant's last written request for such license hereunder and in the form this day filed herein and approved by the court, providing for the periodic payment of royalties at such interim rate from the effective date of such interim license. If applicant fails to accept such interim license or fails to pay the interim royalty in accordance therewith, any such action or omission shall be grounds for the dismissal of the application for the determination of a reasonable royalty and the withdrawal or cancellation of the interim license. Where an interim license has been issued pursuant to this paragraph, reasonable royalty rates for any patent or patents as finally determined by the court shall apply to such patent or patents in the licenses of the applicant and all other applicants then before the court and shall be

retroactive with respect to each such applicant to the date of his said written request for such license.

ARTICLE VII

[*Fair-Trade and Other Exceptions*]

Nothing contained in this decree shall be deemed to have any effect upon the operations or activities of said defendants which are authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or by any present or future act of Congress or amendment thereto; provided, however, nothing contained in this Article shall in any manner affect the provisions of Article VI of this decree.

ARTICLE VIII

[*Visitation and Inspection*]

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or any Assistant Attorney General, and on reasonable notice in writing addressed to any defendant company at its principal office, shall be permitted, subject to any legally recognized privilege: (a) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control relating to any of the matters contained in this judgment; (b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant regarding any of the matters contained in this judgment; provided, however, that either said defendant or any such officer or employee may have counsel present at any such interview. No information obtained by the means permitted in this Article shall 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 of America is a party, for the purpose of securing compliance with this decree or as otherwise required by law.

ARTICLE IX

[*Costs*]

Judgment is entered against the defendant companies for 50% of the costs of $2,824.00 to be taxed in this proceeding, and the costs so to be taxed are hereby prorated against the several defendant companies as follows:

United States Gypsum Company	$776.60
National Gypsum Company	324.76
Certain-Teed Products Corporation	155.32
The Celotex Corporation	42.36
Ebsary Gypsum Company, Inc.	42.36
Newark Plaster Company	56.48
Samuel M. Gloyd, doing business under the name of Texas Cement Plaster Company	14.12

ARTICLE X

[*Jurisdiction Retained*]

Jurisdiction of this cause, and of the parties hereto, is retained by the Court for the purpose of enabling any of the parties to this decree, or any other person, firm or corporation that may hereafter become bound thereby in whole or in part, to apply to this Court at any time for such orders, modifications, vacations or directions as may be necessary or appropriate (1) for the construction or carrying out of this decree, and (2) for the enforcement of compliance therewith. Let the decree be entered.

Interim License

THIS AGREEMENT, made this ..... day of ....., A. D. ....., by and between UNITED STATES GYPSUM COMPANY, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and ..... a ..... corporation, of ....., hereinafter referred to as Licensee,

WITNESSETH, That

WHEREAS, Licensee desires to obtain a license to make, use and sell gypsum board made according to the processes or embodying the claims of one or more of the hereinafter mentioned patents, owned by Licensor, through the full term thereof;

NOW, THEREFORE, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, and of the mutual covenants and agreements hereinafter contained, the parties hereto have agreed as follows, to wit:

1. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license, and privilege to make, use and vend the inventions and improvements claimed in the following letters patent:

Patent Number Date Expiration Date

in the manufacture, use or sale of gypsum board, in the United States of America and the territories and possessions thereof, for the full term of the last to expire of said letters patent, including any reissues thereof.

2. Licensee agrees to pay to Licensor for the right and privilege granted under Paragraph 1 above a license fee or royalty at the rate of — per cent (—%) of Licensee's selling price of all gypsum board manufactured under any of the processes or embodying any of the inventions covered by said patents and sold by it during the term hereof, provided that no license fee or royalty shall be payable on gypsum board exported by Licensee to any foreign country. Nothing herein contained shall prevent Licensee from selling any of said gypsum board in any foreign country.

Licensee's selling price for the purpose of computing the royalty shall mean the net price at Licensee's shipping point after deducting transportation charges and cash discounts allowed by Licensee.

3. The license herein granted shall be personal to the Licensee and shall not be sold, assigned or transferred by it either voluntarily or by operation of law without the written consent of Licensor.

4. Licensee agrees to keep separate, full and accurate books of accounts and records showing the exact quantity of all gypsum board manufactured under any of the processes or embodying any of the inventions covered by said patents and sold by it, together with the Licensee's selling price thereof, and agrees that on or before the 20th day of each calendar month it will deliver to Licensor at its office in Chicago, Illinois, true written returns, verified under oath by an officer or other authorized agent of Licensee, setting forth, without any breakdown with respect to thickness and size of gypsum board, the quantity of all such gypsum board manufactured by it, and sold during the preceding calendar month, and the amount of royalty due and payable on account of such gypsum board so manufactured and sold. Licensee also agrees to pay to Licensor at its said office on or before the 20th day of each calendar month the hereinbefore stipulated royalties or license fees which may then be due under the terms of this agreement on account of all such gypsum board manufactured by it and sold during the preceding calendar month.

5. Licensor shall have the right, at all reasonable times and for such period or periods of time as it may from time to time determine, to verify the correctness of the royalty payments by periodic inspection of the accounts and records of Licensee referred to in the next preceding paragraph, provided, however, that such inspection shall be made by an independent auditor, or by any other person acceptable to both Licensor and Licensee, who shall report to Licensor only the amount of the royalties which were payable during the period covered by the inspection. If Licensee shall object to the independent auditor selected by Licensor, then Licensor shall name, in writing addressed to Licensee, three certified public accountants of good standing, not directly or indirectly employed by it or in any other manner connected with it, and if Licensee shall not within ten days thereafter accept in writing any one of them, then Licensor shall have the right to designate one of the three to act as the independent auditor. In any event, the expense of making any such audit shall be borne equally by the parties.

6. Licensee agrees that all gypsum board manufactured and sold by it under or embodying the claims of any of such patents shall be distinctly marked with the word "Patent" followed by the numbers of any of the aforesaid patents, the claims of which are embodied in said gypsum board, and Licensee further agrees to distinctly mark said gypsum board with the words "Licensed under the above patents and also under the process claims of patent," followed by the number of any of the aforesaid patents of which any process claimed therein is utilized in the manufacture of said product.

7. In the event either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements to be kept or performed by it under the provisions hereof, then the other party may at its election serve upon the party in default written notice of intention to terminate this license and specifying the alleged default. If the party in default shall not cure the default so specified within thirty (30) days

thereafter, then the other party may cancel and terminate this agreement by serving upon the party in default written notice of its election so to do. In the event the Licensee shall at any time be adjudicated a bankrupt, then the license hereunder shall immediately be and become cancelled and terminated. Neither party, by any such cancellation or termination, shall be relieved from any liability accrued at the time thereof.

8. Any notice required or permitted to be served by either party upon the other under the terms hereof, may be served by mailing the same to the other party, postage prepaid and registered, addressed to such other party at its last known principal office, and the deposit of such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder.

9. In case Licensor shall grant to any other person any license under the aforesaid patents for the manufacture, sale or use of gypsum board made by use of the processes or embodying the claim or inventions claimed in any of said patents, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person.

10. This Agreement shall be effective as of the ..... day of .....

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed in duplicate by their respective presidents, attested by their respective secretaries, and their corporate seal to be hereunto affixed, the day and year first above written.

UNITED STATES GYPSUM COMPANY

By .....
President

ATTEST:

.....
Secretary

.....

.....
President

ATTEST:

.....
Secretary

[¶ 67,813] United States v. United States Gypsum Co., et al.

In the United States District Court for the District of Columbia. Civil Action No. 8017. Filed July 6, 1954.

Case No. 548 in the Antitrust Division of the Department of Justice.

Petitions of the United States, National Gypsum Co., Certain-Teed Products Co., Ebsary Gypsum Co., Inc., and Newark Plaster Co. for Orders, Modifications or Directions for the Enforcement, Construction or Carrying Out of the Final Decree of May 15, 1951.

Sherman Antitrust Act

Private Enforcement and Procedure—Suit by Co-Defendants in U. S. Antitrust Suit to Restrain Other Defendant from Seeking to Recover for Use of Its Patents—Jurisdiction—Right of Private Parties to Seek Construction or Enforcement of Government Decree.—Petitioners, parties to a Government antitrust decree declaring certain patent licensing agreements void, sought an injunction against respondent, another party to the decree, to restrain four separate suits filed by the respondent against the petitioners in other courts for royalties or for the reasonable value of certain of its patents or for damages because of infringement. The contention of the respondent that the court had no jurisdiction to entertain the injunction suit because (1) only the Government could move to construe or enforce the final decree, and (2) the Government could participate in the four patent suits as an intervenor or as *amicus curiae* was overruled. Although the Attorney General represents the public interest in antitrust cases, where a decree accords rights to parties thereto, they can enforce such rights in a manner consonant with the underlying purposes of the decree. By the terms of the final decree jurisdiction was reserved for any parties to the decree to apply for construction and enforcement of the decree. Further, jurisdiction could be taken, because (1) a court of equity can compel obedience to its decree, and where it is contended that there has been a violation of the decree, the court can determine whether or not such violation has actually been committed; (2) when a status established by a final decree is allegedly endangered by the acts of the respondent, an issue within the jurisdiction of the court is created; (3) jurisdiction to modify the final decree within limits necessary to perfect its effectuation was expressly reserved by the terms of that decree; and (4) to avoid the possible misconstruction of the final decree in a multiplicity of actions, each involving the meaning and application of the decree.

See Dept. of Justice Enforcement and Procedure, Vol. 2, ¶ 8233.325, 8233.400, 8233.475; Private Enforcement and Procedure, Vol. 2, ¶ 9035.05.

Private Enforcement and Procedure—Where Right Sought to Be Enforced Is Integral Part of Scheme in Violation of Antitrust Laws—Patents—Suit for Royalties or for Infringement Damages—Licensing Agreements Void Under Final Judgment—Scope of Provision of Final Judgment.—Petitioners, parties to a Government antitrust decree declaring certain patent licensing agreements null and void, sued to restrain the respondent, another party to the decree, from bringing in other courts four separate suits, each based on alternative claims for royalties or for the reasonable value of the use of certain of its patents or for damages because of infringement. Petitioners contended that the final decree in the Government case, declaring license agreements illegal, null and void, barred the patent suits. Since two counts in each of the four patent suits were based squarely on license agreements set forth in the Government decree and declared null and void by it, further prosecution of these two counts was enjoined as violative of the final decree. Limited actions involving the direct issue of patent infringement were not enjoined, since in this situation, the final decree entered in the Government case would not be affected.

See Dept. of Justice Enforcement and Procedure, Vol. 2, ¶ 8233.325; Private Enforcement and Procedure, Vol. 2, ¶ 9041.155, 9041.350.

Private Enforcement and Procedure—Where Right Sought to Be Enforced Is Integral Part of Scheme in Violation of Antitrust Laws—Licensing Agreements Void Under Final Judgment—Modification of Judgment—Infringement, Contract, and *Quantum Meruit* Suits.—Petitioners, parties to a Government antitrust decree declaring certain patent licensing agreements null and void, sued to restrain the respondent, another party to the

decree, from bringing in other courts four separate suits, each based upon alleged patent uses. Petitioners contended that the patent suits were barred by the provisions of the final decree in the Government suit, but that if they were not so barred, that the Government decree should be modified so as to prohibit them. The purpose and permissible function of an antitrust decree modification order is to cover something within the broad purposes of the decree but which, for some proper reason, was not included in the existing decree. The determinative test is whether or not modification is reasonably necessary to effectuate the basic purposes of the decree. The purpose of the decree was to prevent the unlawful use of patent rights to violate the antitrust laws. The final decree did not cover suits for infringement, in contract, or for *quantum meruit*. Consequently, the final decree was modified to enjoin prosecutions based on patent infringements and on contracts. To allow recovery on the contracts and grant the relief sought would bring about the very recovery prohibited by the decree declaring the agreements null and void. As to the count based on *quantum meruit* covering the use of the patents, this count would be proper and prosecution thereof should not be enjoined unless the respondent would be barred by unpurged misuse of its patents. However, it was determined that patent misuse existed, that it was shown as a matter of law and on the facts, and that it was unpurged. Consequently, the counts for *quantum meruit* were enjoined also.

See Dept. of Justice Enforcement and Procedure, Vol. 2, ¶ 8233.325; Private Enforcement and Procedure, Vol. 2, ¶ 9027.30, 9043.05.

For the petitioners: Edward Knuff, Special Assistant to the Attorney General, argued orally; Vincent A. Gorman and Lawrence Gochberg, trial attorneys for the United States, appeared; Stanley N. Barnes, Assistant Attorney General, Charles H. Weston and Edward Knuff, Special Assistants to the Attorney General, William D. Kilgore and Vincent A. Gorman, trial attorneys for the United States, were on the briefs (all for the United States). Samuel I. Rosenman argued orally; Seymour Krieger, Elmer E. Finck, and Seymour D. Lewis appeared; Samuel I. Rosenman, Elmer E. Finck, Seymour D. Lewis, Stanley M. Silverberg, Howard Weinstein, and Seymour Krieger were on the briefs, with Finck & Huber, and Rosenman, Goldmark, Colin & Kaye, of counsel (all for National Gypsum Co.). Norman A. Miller argued orally; Herbert W. Hirsh, C. Roger Nelson, Henry Clausen, and Franklin M. Schultz appeared; Herbert W. Hirsh, Norman A. Miller, and Clausen, Hirsh & Miller were on the briefs, with Garson Purcell, and Purcell & Nelson, of counsel (for Certain-Teed Products Corp.). Benjamin P. DeWitt argued orally (for Newark Plaster Co.), and Joseph S. Rippey argued orally (for Ebsary Gypsum Co., Inc.); joint briefs were filed for Newark Plaster Co. and for Ebsary Gypsum Co., Inc., upon which were De Witt, Pepper & Howell (attorneys for Newark) and Joseph S. Rippey (attorney for Ebsary), as were Benjamin P. DeWitt, Sidney Pepper, and Joseph S. Rippey, of counsel.

For the respondent: Cranston Spray and Bruce Bromley argued orally; Robert C. Keck, Hugh Lynch, Jr., and John E. MacLeish appeared; Bruce Bromley, Cranston Spray, Robert C. Keck, and Hugh Lynch, Jr., were on the briefs, as were Cravath, Swaine & Moore, and MacLeish, Spray, Price & Underwood, of counsel (for United States Gypsum Co.).

For the Celotex Corporation: Albert E. Hallett.

Before KIMBROUGH STONE, Circuit Judge, and EUGENE WORLEY and WILLIAM P. COLE, JR., Judges of the U. S. Court of Customs and Patent Appeals, sitting as District Judges.

For other judgments entered in this proceeding in the U. S. District Court, District of Columbia, see 1950-1951 Trade Cases ¶ 62,578, 62,853; 1946-1947 Trade Cases ¶ 57,473. For opinions of the U. S. Supreme Court, see 1950-1951 Trade Cases ¶ 62,632, 62,729; 1948-1949 Trade Cases ¶ 62,226.

[*History of Litigation*]

STONE, Circuit Judge [*In full text except for omissions indicated by asterisks*]: The United States brought an antitrust action (Civil No. 8017) against United States Gypsum Company, *et al.*, which were engaged in the mining of gypsum rocks and in the manufacture and sale of gypsum products. The complaint charged that a controlling unlawful combination was effectu-

ated by means of substantially uniform patent license agreements between USG and the other manufacturing defendants as licensees. At the close of evidence for the United States, the statutory Court of three Judges sustained a motion to dismiss the complaint under Rule 41(b) of the Federal Rules of Civil Procedure upon the ground that on the facts and the law the Government had shown no right to relief (*U. S. v. U. S. Gypsum Co., et al.* [1946-1947 TRADE CASES ¶ 57,473], 67 F. Supp. 397).

The Government appealed and the Supreme Court reversed and remanded "for further proceedings in conformity with this opinion" [1948-1949 TRADE CASES ¶ 62,226] (333 U. S. 364, 402). This decision was on March 8, 1948 with rehearing denied on April 5, 1948 (333 U. S. 869).

After remand, the Government moved for a summary judgment, which was entered on November 7, 1949 (one Judge dissenting) [1950-1951 TRADE CASES ¶ 62,578]. As of that date, this Court entered a decree intended to cover the matters involved. Both sides appealed. The Government contended that the decree was not adequate to cure the ill effects of the illegal conduct of the defendants. The defendants contended that the summary judgment had denied their right to present direct evidence which would have established the lawfullness of their activities.

May 29, 1950, the Supreme Court dismissed the appeal of the defendants [1950-1951 TRADE CASES ¶ 62,632] (339 U. S. 959) in a memorandum (339 U. S. 960) wherein it affirmed Article III of the November 7, 1949, decree and stating:

> "* * * Article III of the decree of the District Court of November 7, 1949, reading as follows: 'The defendant companies have acted in concert in restraint of trade and commerce among the several states in the eastern territory of the United States to fix, maintain and control the prices of gypsum board and have monopolized trade and commerce in the gysum board industry in violation of sections 1 and 2 of the Sherman Antitrust Act,' is affirmed. The corporate defendants and Samuel M. Gloyd, doing business as Texas Cement Plaster Company, are enjoined, pending further order of this Court, from (1) enforcing in any manner whatsoever the provisions of their current license agreements fixing, maintaining, or stabilizing prices of gypsum board or the terms and conditions of sale thereof, and (2) from entering into or performing any agreement or understanding in restraint of trade and commerce in gypsum board among the several states in the eastern territory of the United States by license agreements to fix, maintain or stabilize prices of gypsum board or by license or other concerted action arranging the terms and conditions of sale thereof."

On November 27, 1950, the Supreme Court decided [1950-1951 TRADE CASES ¶ 62,729] (340 U. S. 76) that the decree of November 7, 1949 was inadequate. The Court pointed out wherein it found such inadequacies and closed its opinion as follows: "With these general suggestions the details and form of the injunction can be more satisfactorily determined by the District Court. Its procedure for the settlement of a decree is more flexible than ours." On the same day, the Supreme Court extended its injunction order of May 29, 1950 (339 U. S. 960) to be "continued in effect until the entry of a final decree in the District Court." [1]

On May 15, 1951, this Court modified its earlier decree in accordance with this opinion of the Supreme Court [1950-1951 TRADE CASES ¶ 62,853]. There was no appeal therefrom. This is the present Final Decree.

In January, February or March, 1953, USG filed separate similar actions against four of the other corporate defendants in the antitrust action. These suits were: against the National Gypsum Company, in the Northern District of Iowa; against Certain-Teed Products Corporation, in the same District; against Newark Plaster Company, in the District of New Jersey; and against the Ebsary Gypsum Company, in the Southern District of New York. Each of these suits was based on alternative claims for royalties or for the reasonable value of the use of certain of its patents or for damages because of infringement. The time period covered by each of these four suits was, roughly, from the first opinion by the Supreme Court (March 8, 1948), to the date of the Final Decree (May 15,

[1] This extension order appears in the mandate issued to this Court on the remand from the opinion in 340 U. S.

1951), and, as to Newark and Ebsary, up to the filing of the complaint against each of them.

[*Antitrust Decree Claimed as Bar to Patent Suits*]

The Petitioner in each of the four suits here has filed, in the antitrust case, its separate petition to enjoin the USG suit against it and for associated relief. Very broadly stated, these petitions are based on claimed protection of the Final Decree in the antitrust case, on misuse of patents, and on prevention of a multiplicity of actions. Stay orders have been entered in the two Iowa District cases to await action here. Also, the United States has filed a petition to enjoin USG from asserting any claim or suit "in whole or in part on any of the license agreements adjudged illegal, null and void by the final decree of this Court entered on May 15, 1951, or on any provision thereof." As to any claims based on such license agreements, the United States alleges that such "are barred by, and constitute an attempt to defeat, said decree." As to any "alternative claims" set forth in such four suits, the United States "takes no position" as to whether or not they are barred by the Final Decree.

Both by briefs and oral arguments, the issues have been excellently presented by very able counsel for all of the parties.

A plan as a guide to our sequence in considering the issues before us is under four general headings as follows:

I—Jurisdiction
II—Scope of Article IV of the Decree
III—Modification of the Decree
IV—Misuse and Purge

This opinion will follow that arrangement.

I—Jurisdiction

Jurisdiction of a Court to act upon matters presented to it is purely a matter of power to act. Having such power, whether a Court should exercise it may or may not become a matter of discretion depending upon whether, under all the circumstances of the situation before the Court, the Court has a duty or has a choice.

Petitioners claim jurisdiction here on four grounds: (a) to compel obedience to the Decree, (b) to implement the Decree in order to effectuate its "basic" purposes, (c) to exercise a "paramount" jurisdiction under express reservations in Article X thereof, and (d), under broad powers of a court of equity, as the most appropriate forum to prevent possible misconstruction of the Decree, in a multiplicity of actions, by Courts unfamiliar with this antitrust case litigation.

Besides countering each of these grounds, USG contends (a) that only the Government (being the sole original complainant) can move to construe or enforce the Decree, and (b) that the Government can participate in the four suits as a permitted intervener or as an *amicus curii*.

Such being the contentions as to this issue, it seems logical to consider first the contentions of USG. The main reliance of USG is *Buckeye Coal and Railway Co. v. Hocking Valley Co.*, 269 U. S. 42. Petitioners distinguish this case on the grounds that the Buckeye was not a party to that antitrust suit (while Petitioners are defendants in such action here); and that Article X of this decree expressly reserves jurisdiction to enable "any of the parties to this decree * * * to apply to this Court, at any time for such orders" etc. They cite *Missouri-Kansas Pipe Line Co. v. U. S.* [1940-1943 TRADE CASES ¶ 56,103], 312 U. S. 502; *Local Loan Co. v. Hunt*, 292 U. S. 234 and *Terminal Railroad Assn. v. U. S.*, 266 U. S. 17 to support their contention that parties to an antitrust case may act to protect their interest based on the antitrust Decree.

[*General Enforcement Powers of Equity*]

Speaking generally and without regard to any special considerations applicable to antitrust suits, it is correct to say that a court of equity has power to enforce its decrees and that such power includes implementation of the basic purposes thereof in so far as such appears from the language or from the clear intendment thereof. These rules apply to civil antitrust suits brought by the Government with the important qualification or limitation as to the parties who may take advantage of them. This difference arises from the purposes of such suits. The purposes of such an action are to destroy an economic situation which is resulting from a conspiracy or monopoly in restraint of interstate commerce to the harm of the public.

To represent and protect this public interest is made the duty of the Attorney-General (15 U. S. C. A. § 4 and related sections of the Act).[2]

USG relies upon the *Buckeye Coal & Railway Co. et al. v. Hocking Valley Railway Company et al.*, 269 U. S. 42, which dismissed certain petitions in intervention seeking relief in an antitrust suit brought by the Government and in which a decree for dissolution had been entered some seven years before the intervening petitions were filed, as establishing the doctrine that only the Attorney-General can seek to enforce, construe or modify a decree requiring dissolution under the Act. There are expressions in the *Buckeye* case which tend to support such a view.[3] However, this statement is immediately followed by another which clearly implies that the situation might have been different had interveners been parties to the antitrust suit.[4]

Parties to an original antitrust suit have a status therein which often does not apply to outsiders. This arises from the practical effects of the decree upon the legal rights of the parties. Such a decree is based upon a determination that the Act has been violated by an existing economic situation. Necessarily, the relief is such alteration of that situation as will do away with all unlawful features and potentialities. Unavoidably, such legal surgical operations involve and change the inter-relationship of the defendants, whose only reason for being made parties defendant was that they participated in the violation of the Act. Such decrees are intensely practical. Often, in this readjusting process, a decree provides not only for duties but also for rights *inter se* the parties. Where such rights are given, they carry to the recipient party the right to urge compliance, within the limits of the decree.

This is the rule applied in *Terminal Railroad Association of St. Louis et al. v. United States et al.*, 266 U. S. 17. This was an action for contempt instituted by the "west side lines" against the "east side lines" based upon the contention that the latter had violated an antitrust case decree to the damage of rights alleged accorded the "west side lines" under that decree. In that opinion (p. 27) the Court stated:

> "In these proceedings, the United States did not join in the complaint or participate in the hearing in the District Court, but has since appeared and is aligned with the appellees. The Proceedings were instituted by the west side lines, not to vindicate the authority of the court, but to enforce rights claimed by them under the original decree. The controversy is between them and the east side lines as to whether the former or the latter shall bear transfer charges on west bound through freight."

Also, the Court (p. 29) stated:

> "* * * The question whether the east side lines are bound to pay transfer charges on west bound through freight depends upon the proper construction and application of the original decree."

[*Intervention in Columbia Gas Case Cited*]

There is another case which is important. In an antitrust suit by the *United States v. Columbia Gas and Electric Co. et al.*, a consent decree was entered. The closing paragraph of the decree provided that Panhandle Eastern Pipe Line Co. (not a party in the action), "upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof." Thereafter, Panhandle sought to do this by applying for leave to intervene, which was denied by the District Court. The appeal of *Panhandle is Missouri-Kansas Pipe Line Co. v. United States et al.* [1940-1943 TRADE CASES ¶ 56,103], 312 U. S. 503.

In discussing the case, the Supreme Court stated (p. 504) that the "issues here revolve around the scope of those provisions of the decree." Among the arguments pressed was a challenge to the jurisdiction over

[2] This duty is different and broader than the right given individuals to recover separate damages under 15 U. S. C. A. § 15. Compare *United States v. The Borden Company et al.*, [1954 TRADE CASES ¶ 67,754] 348 U. S. —, May 17, 1954.

[3] At page 49 of that opinion the Court stated: "* * * The United States, which must alone speak for the public interest, does not appear with them (the interveners) on this appeal. They have therefore no *locus standi*. *United States v. Northern Securities Co.*, 128 Fed. 868" (should be 808).

[4] At page 49 appears:
"Underneath all these reasons for dismissing the appeal, is the fundamental objection that these coal companies presented no case upon their petition justifying their intervention. They were not parties to the original suit."

the appeal or, "in the alternative, insisting on the propriety of the action of the district court" (p. 505). It was argued that "the Attorney-General is the guardian of the public interest in enforcing the antitrust laws * * * (and that) injection of new issues ought not to be allowed to delay disposition of the main litigation * * *" (p. 505). The Court stated (p. 506):

> "All of these arguments misconceive the basis of the right now asserted. Its foundation is the consent decree. We are not here dealing with a conventional form of intervention, whereby an appeal is made to the court's good sense to allow persons having a common interest with the formal parties to enforce the common interest with their individual emphasis. Plainly enough, the circumstances under which interested outsiders should be allowed to become participants in a litigation is, barring very special circumstances, a matter for the *nisi prius* court. But where the enforcement of a public law also demands distinct safeguarding of private interests by giving them a formal status in the decree, the power to enforce rights thus sanctioned is not left to the public authorities nor put in the keeping of the district court's discretion.
>
> "That is the present case. Panhandle's right to economic independence was at the heart of the controversy. An important aspect of that independence was the extension of its operations to permit sales in Detroit. The assurance of this extention was deemed so vital that it was safeguarded by explicit provisions in the decree."

Further, the Court stated (p. 508):

> "We are not concerned with the subsubstantiality of this claim. The sole question before us is whether there was standing to make the claim before the district court. We hold there was such standing. To enforce the rights conferred by Section IV was the purpose of the motion." "Nor can the enforcement of this protection be deemed remotely in conflict with the public duties of the Attorney-General, nor to bring in digressive issues, nor to impeach the existing decree. It is a vindication of the decree."

In the concluding paragraph, the Court states (p. 509):

> "In a memorandum filed by the Attorney General we are advised that on January 18, 1941, the district court filed an opinion approving the plan for modifying the original decree subject to some suggestions by the Government. This, we are told 'is believed to satisfy the public interest,' and so the Government desires to sustain the action of the court below without further litigation. We recognize the duty of expeditious enforcement of the antitrust laws. But expedition cannot be had at the sacrifice of rights which the original decree itself established. We assume that the district court will adjust the right which belongs to Panhandle with full regard to that public interest which underlay the original suit."

[*Jurisdiction Sustained*]

We think that these three cases announce the following rules of law applicable to the situation here: the Attorney-General is the representative of the "public interest" in antitrust cases brought by the Government; but that where a dissolution decree by specific statement or by fair implication therein accords rights to parties thereto, they have a standing, in the main suit, to enforce such rights in a manner consonant with the underlying purposes of the decree.[5]

In this Final Decree, there was (Article X) an expressly reserved jurisdiction "for the purpose of enabling any of the parties to this decree, or any other person, firm or corporation that may hereafter become bound thereby in whole or in part, to apply to this Court at any time for such orders, modifications, vacations or directions as may be necessary or appropriate (1) for the construction or carrying out of this decree, and (2) for the enforcement of compliance therewith.

Such reservation is sufficient to sustain jurisdiction.

For the reasons that the Petitioners here are parties to the original antitrust suit presenting claims to rights under the Final Decree; and that Article X of that Decree expressly reserves jurisdiction, we hold that jurisdiction to entertain these petitions

[5] We have confined our discussion to parties to the original Antitrust suits. However, there are other cases where persons not parties but directly affected by the decree in such cases have been allowed, in connection with such suits, to intervene or to defend to test their rights. Examples are *Hughes v. United States* [1952 TRADE CASES ¶ 67,213], 342 U. S. 353; *United States v. Paramount Pictures et al.* [1948-1949 TRADE CASES ¶ 62,244], 334 U. S. 131, 176-178; *United States v. Swift & Co. et al.*, 286 U. S. 106; *United States v. California Cooperative Canneries*, 279 U. S. 553; *Continental Ins. Co. et al. v. United States et al.*, 259 U. S. 156.

exists. In so holding, we apply the language in the *Missouri-Kansas Pipe Line Co.* case, *supra* at p. 508 that "We are not concerned with the substantiality of this claim. The sole question before us is whether there was standing to make the claim before the district court. We hold there was such standing." Such "substantiality" depends upon what we will call "The Merits" of these controversies—to be considered later in this opinion.

Next, passing to the four grounds alleged by Petitioners to sustain jurisdiction—all of which are challenged by USG.

[*Petitioners' Allegations Upheld*]

The inherent power of a court of equity to compel obedience to its decrees is conceded by USG. It contends that its suits do not violate the Decree, hence this doctrine is inapplicable here. Where it is seriously contended, as here, that these suits do violate the Decree, obviously, this court has power—jurisdiction—to determine whether such violation exists; and, if it does exist, how it may be cured.

As to the existence of power—jurisdiction—we think it is not controlling that Petitioners might urge the Decree as a defense in the USG suits. That question is not one of the existence of jurisdiction in this Court but rather one of whether this Court, in its discretion, should exercise such jurisdiction instead of leaving such issues to be determined in the USG suits.

As to the ground for jurisdiction based upon "implementation" of the Decree to effectuate its basic purposes, we think the reasoning in *Local Loan* case (*supra*) at p. 239 is merely one of the methods of seeking relief in the original action. There it was by an ancillary bill and here by petitions. Here, as there, the jurisdiction "to secure or preserve the fruits and advantages of a judgment or decree rendered therein" is a basis urged here for our jurisdiction. Here, Petitioners urge that Article IV of the Decree established a "status" which is endangered by the USG suits. We think this issue is within the jurisdiction of this Court. As to the nature and limits of implementation, see *Hughes v. U. S.* [1952 TRADE CASES ¶ 67,213], 342 U. S. 353, 356-357.

As to modification of the Decree as a Jurisdictional matter, Article X expressly reserves that power. Whether or to what extent the Decree should be modified are matters within the proper exercise of that power. If this power should be exercised, we think we have power (as admonished by the Supreme Court in this case, 340 U. S. at pp. 88-89) to make any modifications which will, "so far as practicable, cure the ill effects of the illegal conduct, * * *." At the same time, we cannot enlarge the Decree beyond the limits necessary to perfect its effectuation. (*U. S. v. Swift & Co.*, 286 U. S. 106, 114). Also, *U. S. v. International Harvester Co.*, 274 U. S. 693, 702, where the Court stated that a supplemental complaint by the Government to broaden the original decree must be denied because "This is entirely inconsistent with *the purpose of the consent decree*, both as appears from its terms and as it was apparently construed by the District Court itself" (italics added). Also, see *Hughes v. U. S.*, [1952 TRADE CASES ¶ 67,213], 342 U. S. 353, 356-357.

As to jurisdiction based on possible misconstruction of the Decree in a multiplicity of Courts. It seems to us that this ground is really that of a multiplicity of actions. The matter of possible misconstruction of the Decree is rather a *reason* for taking jurisdiction where there is a claimed multiplicity of actions each involving the meaning and application of the Decree. We think there is a proper and clear multiplicity of actions, to wit, the four present suits by USG and the claims against Celotex and Kaiser. Multiplicity of actions prevention is a long established basis of equity jurisdiction. We think such jurisdiction is present here. Our conception of this character of jurisdiction is that its exercise is discretionary instead of compulsory. The extent of such exercise should depend upon our solution of the issues herein as to the merits.

In this part of our opinion we are not determining anything as to the merits but only broadly that Petitioners have the right to proceed.

Our next task is to determine the merits of the several issues which Petitioners claim entitle them to relief. In doing this, we do not leave behind us all questions of jurisdiction. The broad issues are: (a) the Scope of Article IV of the Decree, (b) the Modification of the Decree, and (c) Misuse of Patents, with the related matter of

Purge. As to each of these issues there enters a matter of jurisdiction—not as to *general* jurisdiction to entertain Petitioners' actions here but as to the legal limits within which we may act in considering and determining the particular issue. An illustration of this kind of jurisdiction is the general doctrine that a decree cannot be enlarged beyond the effectuation of the purposes thereof.

II—Scope of Article IV

Petitioners contend: (1) that Article IV of the Decree "in terms and by fair intendment" bars these suits by USG; (2) that, even if Article IV "in its present form" is not a bar, yet it should be so *implemented* as "necessary to achieve the basic purpose" of the Decree; and (3) that if such remedy is deemed not within the Decree, "as it presently stands," the Decree should be so modified, because the need for such relief has only recently become necessary in order to achieve its basic purpose. The last of these three contentions will be hereinafter treated under the next heading of this opinion—that of "III—Modification."

[*Basis for Determining Scope of Article IV of Final Decree*]

The scope of Article IV should be determined in the light of the issues in the antitrust case, of the entire Final Decree, of the proceedings in this Court in connection with the two decrees (November 7, 1949 and May 15, 1951), and the here pertinent statements in the opinions of the Supreme Court in this litigation. To discuss each of these matters adequately is an unnecessarily large undertaking for the purposes of this opinion. We shall attempt only a sufficient outline of the essential highpoints.

The Issues

The antitrust suit was to enjoin violations of Sections 1, 2 and 3 of the Act. These violations were charged as being carried out by means of patent license agreements granted by USG to the other defendants (manufacturers of gypsum board). The opinion of Chief Judge Stephens very finely and completely narrates the facts and issues on the trial which resulted in the first appeal [1948-1949 TRADE CASES ¶ 62,226] (333 U. S. 364). We refer to his opinion (*United States v. United States Gypsum Co.*, [1946-1947 TRADE CASES ¶ 57,473], 67 F. Supp. 397) for a more detailed statement of the issues.

The Final Decree

The pattern of the Final Decree of ten Articles is as follows. Article I is the jurisdictional declaration; Article II is the definition of terms used in the Decree, these include "Patents"[6] and "Patent Licenses";[7] Article III declares the defendants have acted in concert to violate Sections 1 and 2 of the Act; Article IV is that "Each of the license agreements listed in Article II hereof is adjudged unlawful under the antitrust laws of the United States and illegal, null and void"; Article V contains the injunction provisions;[8] Article VI covers nondiscriminatory compulsory license agreements from USG to applicants therefor, subject to approval of the District Court; Articles VII and IX are not material to

[6] "Patents" is defined as including all patents and applications therefor (covering gypsum board, its processes and methods of manufacture or use thereof) issued to, applied for or acquired "within a period of five (5) years from the date of this decree," as well as patents issued upon any of said applications, continuations, etc. of any such patents or applications.

[7] "Patent Licenses" mean the patent license agreements in effect between USG and each of the other defendants "at the time the complaint herein was filed and described in said complaint as follows: (here follows listing of eighteen such agreements) and any supplement or amendment" thereto.

[8] These provisions are "from entering into or performing any agreement or understanding among the defendant companies or other manufacturers of gypsum products to fix, maintain or stabilize, by patent license agreements or other acts or course of action, the prices, or the terms or conditions of sale, of gypsum products sold or offered for sale to other persons, in or affecting interstate commerce; and from engaging in, pursuant to such an agreement or understanding, any of the following acts or practices:

"(1) agreeing upon any basis for the selection or classification of purchasers of gypsum products;

"(2) refraining from selling gypsum products to any purchaser or any class of purchasers;

"(3) agreeing upon any plan of selling or quoting gypsum products at prices calculated or determined pursuant to a delivered price plan which results in identical prices or price quotations at given points of sales or quotations by defendants using such plan;

"(4) policing, investigating, checking or inquiring into the prices, quantites, terms or conditions of any offer to sell or sale of gypsum products."

us here; Article VIII provides for supervision by the Department of Justice to secure compliance with the Decree; Article X is the reservation of jurisdiction for the purposes of construction of, carrying out of, or enforcement of the Decree.

A condensation of the method or plan of the Decree to remedy the unlawful situation may be stated as follows: by annulling the existing named license agreements; by injunction against acts which would tend to defeat the Decree; by use of new compulsory court supervised license agreements; by Department of Justice supervisory inspections; and by retention of broad jurisdiction to protect and effectuate the purposes of the Decree.

Proceedings in This Court

After rehearing was denied (April 5, 1948, 333 U. S. 869), this Court held a conference of counsel which resulted ultimately in a motion by the Government for summary judgment, it being claimed that there was no genuine fact issue remaining to be determined. Defendants filed offer of proof as to fact matters they deemed yet in issue. These two occurrences were in June 1948. Beginning in June 1948 and extending to June 14, 1949, numerous briefs and memoranda were filed by the various parties in connection with the motion for summary judgment, the offer of proofs, suggested findings of fact, and form and contents of decree to be entered. June 14, 1949 this Court held an extended hearing upon all of these matters. At the hearing, a majority of this Court made clear their intention to sustain the motion for summary judgment; and counsel for all parties were given time to file suggestions and memoranda as to form of decree and other pertinent matters. Such suggestions and memoranda were filed up to August 12, 1949. Without further hearing, this Court entered its decree of November 7, 1949. It is this decree from which the Government and the defendants appealed (Defendants' appeal 339 U. S. 959 and 960, Government appeal 340 U. S. 76).

We have gone through the transcript of the hearings in this Court (June 14, 1949), the written or printed suggestions and memoranda of the parties filed before, in connection with and after that hearing. Much of these matters and the hearing had to do (*inter alia*) with the various suggestions as to the form of decree to be entered, including the scope and purposes of what later became, in substance, Articles III, IV and VI of that decree. Practically all of the matters were concerned with prevention of violation in the future, that is, after the effective date of the decree to be entered. However, USG was much concerned with avoiding any provision in the decree declaring the licenses illegal, null and void in their entirety. It was in this connection that it voiced its apprehensions as to the period involved here. Since our concern here is with what took place after the first opinion of the Supreme Court and before entry of the Final Decree (May 15, 1951), our search was primarily aimed at anything in this presentation in connection with the November 7, 1949 decree which might throw particular light upon the period of our concern. Some little discussion occurred, at the hearing, over the terms and conditions of compulsory licenses.

At this point, it is convenient for us to narrow our consideration of the causes of action alleged in the petitions filed by USG in the various other District Courts. These petitions contain five Counts each in the actions against National and against Certain-Teed, and six Counts in those against Ebsary and Newark.[2] The first two Counts of all four petitions are directly based on the license agreements set forth in Article II of the decree of November 7, 1949. Article IV of that decree nullified completely the license agreements listed in Article II. This nullification did not create a status. It simply declared a status which had existed since the granting of the license patents. This Article was made effective *pendente lite* by the Supreme Court in connection with disposition of the appeal of the defendants in the antitrust case (May 29, 1950, 339 U. S. 960) by enjoining any continued performance thereunder. Article IV passed into the Final Decree unchanged. The effect of Article IV was to nullify completely these license agreements. In this situation, we determine that these two Counts in all of these suits should be enjoined from further prosecution because

[2] In the suit against Ebsary and in that against Newark the additional Count (Count 6) is for alleged infringement of a patent not covered in any of the license agreements listed in Article II of the Decree. We will later herein determine as to these Counts 6.

they clearly violate the express provisions of Article IV. We are not impressed by the contention of USG that these two Counts are necessary or useful to meet possible factual situations which might arise in the trials of these suits. Those Counts state definitely grounds for claimed relief and must be so regarded. This determination allows us hereinafter to limit and concentrate attention upon the other Counts of each petition.

We turn now to matters in connection with the formation of the 1949 decree which throw light upon the period now involved. In this connection, it should be in mind that the four Petitioners here had ceased paying royalties (under the license agreements) shortly after the first opinion of the Supreme Court (333 U. S. 364, March 8, 1948).

During the discussion at the hearing on June 14, 1949, Mr. Miller, counsel for Certain-Teed stated:

"* * * Mr. Dallstream, who will follow me, will present to Your Honors the exact changes we desire to make in both decrees (presented by the Government and by USG) which would give us the decree we would be satisfied with and which we hope that Your Honors will adopt."

Thereafter, Mr. Dallstream stated:

"At IV, which United States Gypsum has left out altogether, and has gone back over to page 7 and shown it lined up with VII of the Government, we would like to suggest that in lieu of either, the Article VII of the Government and Article IV of U. S. Gypsum, that a new Article IV reading in exactly the language of the *Masonite* case be entered, which would read as follows:

"'That each of the license agreements listed in Article II hereof is adjudged unlawful under the anti-trust laws of the United States and is illegal, null, and void.'

"CHIEF JUDGE STEPHENS: You suggest that in place of Article VII of the Government?

"*Mr. Dallstream:* Of the Government and Article IV of United States Gypsum.

"CHIEF JUDGE STEPHENS: Yes.

"*Mr. Dallstream:* I agree with Mr. Finck that we cannot dodge the fact that whatever interpretation should be put on the Supreme Court's decision, the majority of this court have decided that the mere plurality of licenses, accompanied by the other features that existed in this case, made those agreements illegal and that, being illegal, they are unenforceable and are null and void.

"Now, we are faced with the dilemma: What are we going to do about it: We have got to have some new ones if we are going to be fair to the industry, to these licensees, the public, and to all concerned; and so, some provision must be made, and we think V and VI take care of that, and if we declare them null and void for these reasons, which have been recited in the previous paragraph of this decree, that we have taken care of the situation.

"In order that United States Gypsum will have no misunderstanding of my position, I want them to know that my suggestion is in no sense based on any hope or desire on my part to get out of any license fees during any interim period, and if we can agree upon an appropriate license agreement, as far as my client is concerned, we are willing to let the royalty rate, whatever it is, agreed upon apply back to the time when we ceased paying royalties. I just want to make it clear to all that we are not attempting by this declaration of illegality of them to find some way of avoiding the license fees which during this none of us have paid." (Transcript, pp. 8220-8221).

In a Reply Memorandum filed by USG (July 23, 1949), are the following statements:

"The defendant licensees can have no purpose in making the suggestion that each patent license be adjudged illegal except to obtain some advantage with respect to the use of the patents. They apparently believe it will relieve them from accounting for anything done either before or after the Supreme Court's decision." (P. 6.)

"They have no right of any kind to Gypsum's patents in the future any more than if their license had expired without this litigation. With the cancellation of their present licenses they should only be placed in *statu quo* to the extent that any licensee desires to continue the use of any of Gypsum's patents under which it is presently licensed." (P. 8)

"In the first place, Newark seeks a provision that each of the license agreements be adjudged unlawful under the anti-trust laws and illegal, null and void, which not only goes beyond the scope of the determination by this court upon the motion for summary judgment but has for its purpose an attempt to be

relieved from accounting, as stated before in this memorandum." (P. 9)

"National like Newark, is one of those companies which seeks to have the entire license contract declared illegal, apparently believing it will relieve them from accounting with respect to anything done before or after the decision of the Supreme Court." (P. 15)

It is clear from the foregoing quotations that the situation as to our period was brought up at the hearing and in the USG Memorandum in connection with the discussion as to the scope and possible effect of what later became Article IV, which struck down the licenses *in toto*. USG thus expressed its apprehension that the licensees had in mind some purpose of avoiding an accounting for use of its patents during our period. In so far as Certain-Teed and Celotex were concerned, any ground for this apprehension was expressly disavowed by Mr. Dallstream. National, Newark and Ebsary made no mention of the matter. No party sought to have it, specifically and separately, included in the decree of November 7, 1949.

[*Licensing Agreements Declared Totally Void*]

It is important to emphasize the matter, in connection with which, these apprehensions of USG were expressed. The main contention between USG (on one side) and the Government and the other defendants (on the other side) was whether the decree should be confined, as to declaration of illegality, to the price fixing provision in the license agreements. Strenuously, USG contended for such limitation. This appears not only in its arguments and briefs in connection with the June 14, 1949 hearing but in its original suggestions as to prospective Articles III, IV, V and VI. As a companion and resultant position, USG urged that, while the existing agreements should be *cancelled, as of the date of the decree,* only the minimum price provision should be declared illegal. The result of and purpose of these contentions would be to leave the agreements valid—therefore enforceable—until entry of the decree, except for the minimum price provision. It was in this setting and in relation to these contentions, that USG expressed its apprehensions above set out. The contest was whether the agreements were illegal only as to minimum price provisions or *in toto*. The decree of November 7, 1949 declared the agreements "illegal, null and void" in entirety.

The same reasoning as to Article IV would apply to the Final Decree unless the situation is affected by the later Supreme Court decisions herein or by what occurred in this Court on the last remand (in connection with the entry of the Final Decree here). We have examined the meager original file (in the Clerk's Office) as to what took place in this Court after the remand on the 340 U. S. appeal. We find nothing except counter suggested forms of decree filed by the Government and by USG. Neither contains anything expressly bearing upon our problems relating to this period covered by these USG suits. Apparently, this Court took these submitted forms and shaped its Final Decree of May 15, 1951 in endeavoring to follow the directions of the Supreme Court as announced in 340 U. S. 76.

Supreme Court Opinion

Concisely summarized, the three opinions of the Supreme Court made the following determinations which need consideration in connection with the point II of this opinion. In 333 U. S. 364, the Court decided (1) that the defendants had "acted in concert"—conspired—to control prices and to monopolize the gypsum industry; (2) that the instrumentalities created and employed to effectuate these purposes were license agreements covering patents owned or controlled by USG; and (3) that such agreements covered control (a) of prices of patented gypsum board (expanded in 340 U. S. 76 to cover gypsum products), (b) control or affection of prices of unpatented gypsum products, and (c) control over terms and conditions of sale and distribution thereof. In the course of this opinion, the Court announced that the motive—good faith in reliance on the belief that such agreements were lawful under *United States v. General Electric Co.*, 272 U. S. 476—did not bar such patent exploitation as here found. The case was remanded for further proceedings.

When this Court granted a summary judgment on this remand and entered its decree, both the Government and the defendants appealed. The Government objected to the decree as being too narrow. The defendants contended their proffer of proof revealed issues of fact which this Court should have determined instead of

granting the summary judgment. The Supreme Court affirmed Article III of that decree to the effect that sections 1 and 2 of the Act had been violated; entered an injunction against "enforcing in any manner whatsoever" the license agreements (339 U. S. 960); and dismissed the appeal of the defendants (p. 959).

On the appeal by the Government, that Court altered and broadened some of the provisions of our decree and remanded the case "for further proceedings in conformity with this opinion" (340 U. S. 76, 95). In that opinion there was no direct reference to a situation such as is now presented to us arising from these USG suits; Article IV was not changed.

In that opinion the Court stated (pp. 88-90): * * *

Evaluating all of the foregoing matters and those now before us, we have some doubt as to whether Article IV is firm ground and it seems wiser to resolve those doubts against the contention that this Article, by fair implication, covers our situation. We are less disturbed in so resolving this doubt by the consideration that we can reach the same ultimate result over ground that we deem firm.

Newark and Ebsary

In Footnote 9 hereinbefore, we have referred to an additional Count (VI) in the USG petitions against those companies. This seems an appropriate place to determine that matter and, also, of another feature in those two petitions. The first matter is whether the patent covered in those Counts is included in list of patents defined in Article II of the Decree. The second is whether those two companies are liable for infringement of that, as well as other patents set forth in Counts I to V inclusive.

As to the first of these two matters. Application for this patent was filed by Roos on August 15, 1929 and later assigned to USG, to which the patent was issued on June 16, 1936. This patent related to the use of dextrinized starch in gypsum board core composition and method of manufacturing same. USG contends that this patent was not included in any of the license agreements with either of these companies. This, the companies deny. This patent (No. 2,044,401) was obviously an improvement patent. As such, we think it was included as paragraph 18 of the licenses to each of these companies (See transcript in the Supreme Court, October Term, 1947, No. 13, pp. 4416 and 4488). Also, Article II of this Final Decree defines "Patents" as meaning "United States Letters Patent and applications (therefor) * * * relating to gypsum board, its processes, methods of manufacture or use, now (May 15, 1951, the date of the Decree) owned or controlled by" USG. Also, the broadening of Article II § 3 by the Supreme Court (340 U. S. at p. 90) seems directly to include "improvement" patent subject matter.

[*Use of Patents Denied*]

As to the second matter. Seasonably after entry of the Final Decree, National and Certain-Teed applied for and received licenses thereunder. Newark and Ebsary have never applied therefor. In the USG petitions against Newark and against Ebsary, it seeks recovery (Counts I-II) for license royalties on patents covered by the old licenses—that recovery included only the period ending with the Final Decree. Each of the succeeding Counts sought recovery "to the date of filing this complaint."

We have already disposed of all recovery up to May 15, 1951 (the Final Decree). Our immediate concern is with the period between this entry of the Decree and the filing of these USG actions, early in 1953. Neither Newark nor Ebsary have filed answer in these USG suits. We were informed in this presentation, that such answers would include a denial of use of these patents during this later period. Such defenses would obviously pose the direct issue of infringement *vel non* since this Decree. We think trial of that issue before the New York and New Jersey District Courts should not be interfered with here. There is no room, in this situation, for application of the multiplicity of actions rule. Each of these two cases must depend, as to this issue, upon its own set of facts. Nor do such limited issues affect the Final Decree here in any respect.

III—Modification

[*"Modification" Distinguished From "Implementation"*]

It seems to us that there is some intermixing of the positions (as argued by both sides) of the legal principles of "implemen-

tation" of what is claimed to be required by the Decree (as it presently is) with the right and duty as to modification of the present Decree. Although the same practical effect might result from either "implementation" or modification, yet the legal considerations which control and limit the use of each differ from those applicable to the other.

We think this divergence lies in the different purposes to be served based upon construction of different phases of a decree. As to implementation, the search is for the specific provisions or for the revealed broad purposes and intendments of a decree. If such search clearly shows such provisions or such intendment, implementation may—possibly must—be employed. If such does not appear, then resort may be had to expressed or implied powers to modify. The bases and the limits of the power and as to the duty to modify (if power exists) depend upon some considerations which differ from those governing implementation. We think the difference between the two remedies is exampled in *Hughes v. U. S.* [1952 TRADE CASES ¶ 67,213], 342 U. S. 353 at 356-8. The purpose and the permissible function of an order for modification of an antitrust decree is to cover something within the broad purposes of the decree but which, for some proper reason, was not included in the existing decree. Almost always, such modifications are concerned with remedies. Usually they concern situations which were either overlooked at the time the decree was entered or which have arisen or developed after the decree.

[*Power to Modify*]

Here, we have no doubt of our power to make any *proper* modifications. Such power being expressly reserved in Article X of the Decree, we do not have to rely on any general equitable doctrine concerning the powers of a court of equity to protect and enforce its decrees, although these reservations in Article X express the purposes of the general equity doctrine, namely, to construe, carry out and enforce the Decree.

However, any and all powers (expressed or implied) to modify an equity decree have other limits than "the length of the Chancellor's foot." In this respect, we face the two contentions of USG: (1) that the situation arising from the USG suits was a matter "not then (when the Decree was entered) before the (this) Court or intended to be decided by it" and, therefore not within the Final Decree; and (2) that, if it is within the power of this Court to modify the Decree so as to enjoin its suits, "there is no sound, equitable reason why" it should be thus enlarged. These two USG contentions present the successive questions of power to modify and of discretion in the use of any existing power.

Generally speaking, there is no doubt that a court of equity has power to modify its decrees so as to make them fully effective. USG argues and cites cases dealing with the limitations on such courts in construing their decree.[10] We may accept them as announcing the broad doctrine that a decree may not be enlarged, beyond its intended proper scope, by the medium of modification.

In examining this matter of power we must not lose sight of the character of a decree in an antitrust case. While the general legal rules governing modification of decrees are not exempt from application in such cases, yet the character of such litigation permits—sometimes requires—a degree of elasticity. This feature comes into existence because of the situation that such a decree is designed vitally to change an unlawful, but existing, economic arrangement into such rearrangement as will remove the unlawful features. In framing such a decree, the Court is always necessarily acting with the knowledge that the remedies

[10] Such rules apply to modifications. USG presents them under the headings and citations following:

"(1) Injunctive provisions in a decree must be precise and specific," citing *Schine Chain Theatres v. United States* [1948-1949 TRADE CASES ¶ 62,245], 334 U. S. 110, 126; *Hartford-Empire Co. v. United States*, 323 U. S. 346, 410; *Swift & Co. v. United States* [1944-1945 TRADE CASES ¶ 57,319], 196 U. S. 375, 396, 401; Federal Rules of Civil Procedure, Rule 65(d).

"(2) A Decree is limited in its application to the issues actually presented and intended to be adjudicated at the time of entry," citing *Oklahoma v. Texas*, 272 U. S. 21, 43; *United Shoe Machinery Co. v. United States*, 258 U. S. 451, 460; *Vicksburg v. Henson*, 231 U. S. 259, 268-273.

"(3) Plain and unambiguous terms of a decree may not be extended or contracted by construction," citing *Hughes v. United States* [1952 TRADE CASES ¶ 67,213], 342 U. S. 353, 357; *United States v. International Harvester Co.*, 274 U. S. 693, 702-3; *Terminal Railroad Assn. of St. Louis v. United States*, 266 U. S. 17, 27, 29; *Butler v. Denton*, 150 F. 2d 689; *Union Pacific R .Co. v. Mason City & Ft. Dodge R. Co.*, 165 F. 844, 852 (rev. on other grounds 222 U. S. 237); *St. L. K. C. & C. R. Co. v. Wabash R. Co.*, 152 F. 849, 852 (modified 217 U. S. 247).

it then deems sufficient may, from experience thereafter, prove to be incomplete or defective—either because of lack of foresight at the time the decree is formed or because of subsequent happenings or conditions. In short, such a decree can rarely *crystallize* the entire matter. There must be a measure of only *gelling* which is susceptible of modification. Such we think is the teaching of *Hughes v. United States* [1952 TRADE CASES ¶ 67,213], 342 U. S. 353, 357 and of *United States v. Swift & Co. et al.*, 286 U. S. 106, 114, as well as other cases.

Therefore, the question here, as to power, is whether the modifications urged by Petitioners would be an improper enlargement or (as contended by Petitioners) are proper to accomplish the purposes of the Decree. The determinative test is whether or not such modification is reasonably necessary to effectuate the basic purposes of the Decree.

The situation here is that Article IV of this Final Decree did not expressly or impliedly cover the character of suits now brought by USG for infringement or for *indebitatus assumpsit* or for *quantum meruit*. It neither allowed nor forbade such. It simply made no reference to them at all. Some months after the Decree became final, these suits were begun and later brought to our attention for action.

We have, hereinbefore, determined that they involved violations of the Decree as to the first two Counts of each. We now hold that we have jurisdiction to consider whether the Decree should be modified to affect prosecution of the Counts for infringement, for *indebitatus assumpsit* and for *quantum meruit*.

We think these "basic purposes" are to be sought by consideration of the purposes of this antitrust suit, of the opinions of the Supreme Court, the proceedings in this Court as to formation of a decree on the two remands, and upon the terms of the Final Decree.[11]

This was an antitrust action charging violations, by the defendants therein, of Sections 1, 2 and 3 of that Act. The Supreme Court, in its three opinions (333 U. S., 339 U. S., and 340 U. S.), determined violations of Sections 1 and 2 of the Act through conspiracy to restrain interstate commerce and to monopolize trade therein in the gypsum industry; that these results had been accomplished through concerted action under eighteen similar patent license agreements granted by USG to the other defendants; and that such license agreements were illegal, null and void. To cure this situation, that Court affirmed Article III of the November 7, 1949 decree of this Court and enjoined defendants, pending further order of the Court, "from (1) enforcing in any manner whatsoever the provisions of their current license agreements fixing, maintaining, or stabilizing prices of gypsum board or the terms and conditions of sale thereof, and (2) from entering into or performing any agreement or understanding in restraint of trade and commerce in gypsum board among the several states in the eastern territory of the United States by license agreements to fix, maintain, or stabilize prices of gypsum board or by license or other concerted action arranging the terms and conditions of sale thereof" (333 U. S. 960). On November 27, 1950, this injunction order was "continued in effect until the entry of a final decree in the District Court." [12]

In discussing the duty of the trial court in formulating its decree in an antitrust case where conspiracy in restraint of trade and monopoly have been determined, the Court (in 340 U. S. 76 at pp. 88-90) stated: * * *

When the case came back here on this last remand, this Court directed (order of January 26, 1951) filing of suggestions, as to form of decree, by plaintiff (Government) and by the defendants.

The violations of the Act are declared in Article III, which is the heart of the Final Decree. The other Articles of the Decree concern the remedies and methods which the Supreme Court and this Court then thought sufficient to cure the unlawful conspiracy and monopoly. Article X performed the function of expressly reserving jurisdiction to take further action if experience thereafter should make such necessary or advisable fully to effectuate these purposes of destroying the monopoly and the conspiracy and denying the fruits thereof.

[11] Under the preceding point (II—Scope of Article IV) of this opinion, we have examined such features of these items applicable to that discussion. We will try to avoid repetition here except as clarity may require.

[12] This extension order is contained in the original mandate of the Supreme Court to this Court on the remand under its opinion in 340 U. S.

[*Background for Modification*]

The practical situation present in this matter of Modification consists mainly of the following:

(1) For some years extending into the trial of this antitrust case, the gypsum industry had been effectively organized so that prices and methods of distribution were controlled through the medium of patent license agreements covering patents and applications therefor owned or controlled by USG. These agreements were between USG and each of the various other defendants. The agreements included both process and machinery covered by the patents.

(2) On the first trial on the merits, June 15, 1946 (67 F. Supp. 397), this Court determined that, under its construction of *United States v. General Electric Co.*, (272 U. S. 476), the separate license agreements were legal (pp. 421-441); and that these agreements were made *bona fides* with no ulterior purpose to violate the Act (pp. 458-484).

(3) On appeal (333 U. S. 364), the Supreme Court reversed and remanded (March 8, 1948) deciding that the industry-wide license agreements, entered with mutual knowledge of the licensor and of all of the different licensees, under which prices and distribution methods would be controlled, established an unlawful conspiracy and monopoly; and that "* * * regardless of motive, the Sherman Act barred patent exploitation of the kind that was here attempted" (p. 393).

(4) The Supreme Court asserted "Of course, this appeal must be considered on a record that assumes the validity of all the patents involved" (333 U. S. at 388). No change was made in that "record" in any subsequent proceedings in this Court.

(5) Almost immediately following this opinion of the Supreme Court, each of these four defendants stopped paying accrued or future royalties or paying otherwise for use of the patents covered by the license agreements. No payments of any kind were made until new compulsory licenses were granted, under the Final Decree, to National and Certain-Teed—Ebsary and Newark did not take out new licenses.

(6) The manufacturing plants of the licensees had been and were organized for use of these patent-covered methods.

(7) In the proceedings in this Court in regard to the formation of the November 7, 1949 decree, issues were presented as to whether the then license agreements should be nullified entirely or in a limited or qualified degree. It was in this connection, that USG argued for a limited or qualified prohibition; and made known its apprehension that an entire nullification might affect its expectation of receiving compensation for the use of its patents by the licensees during our period. This Court framed Article IV nullifying the license agreements entitrely, as being illegal.

(8) On the defendants' appeal from that decree, the Supreme Court affirmed Article III and entered its injunction order (339 U. S. 960). In this injunction the Court expressly forbade defendants from "enforcing in any manner whatsoever" the existing license agreements and this status was thereafter continued up to the Final Decree.

(9) On the Government's appeal, the Supreme Court announced (340 U. S. at 87) that "good intentions" in the situation of this case was no defense; and that here (p. 88) this Court had the duty of compelling action to "cure the ill effects of the illegal conduct"—such action not being "limited to prohibition of the *proven means* (italics added) by which the evil was accomplished, but may range broadly through practices *connected with* (italics added) acts actually found to be illegal. * * * The conspirators should, so far as practicable, be denied future benefits from their forbidden conduct." The Court stated (340 U. S. at 89) that "in resolving doubts as to the desirability of including provisions designed to restore future freedom of trade, courts should give weight to the fact of conviction as well as the circumstances under which the illegal acts occur."

Considering this situation, we think the Final Decree should be modified to include a denial of recovery upon the infringement Counts of the USG petitions. Our reasons for this determination are as follows.

The basic thing which made this conspiracy and monopoly possible was the existence of the patent (owned, controlled or applied for) situation. It was the unlawful use by defendants of the monopoly rights, normally inhering in patent grants, which violated the superior rights protected

by the antitrust Act. One result of this unlawful use was to create an economic situation where the conspirators—other than USG—had conditioned their business operations upon the continued use of these patent rights which had been given them by the license agreements. When the Supreme Court (333 U. S. 364) determined these license agreements to be violative of the Act, these licensees were placed in an uncertain and perilous position. They were operating based on the licenses which were declared violations of the Act. They elected to disregard the license agreements and to continue use of the patented devices and methods.

We think a close parallel—if not indeed a here controlling guide—is to be found in the two *Hartford-Empire* cases [1944-1945 TRADE CASES ¶ 57,319], (323 U. S. 386 and 324 U. S. 570). In 323 U. S., one of the two broad issues was whether "the provisions of the decree are right" (p. 393). The District Court had appointed a receiver of Hartford *pendente lite,* whose duties included receipt of royalties from patent licensees under existing licenses from Hartford. A provision of the decree was that these royalties should be repaid to the licensees when the decree became final. In disposing of this provision, the Court (p. 411) directed that the receivership should be wound up; and "The royalties paid to the receiver by Hartford's lessees may, unless the District Court finds that Hartford has, since the entry of the receivership decree, violated the antitrust laws, or acted contrary to the terms of the final decree as modified by this opinion, be paid over to Hartford. In any event Hartford should receive out of these royalties compensation on a *quantum meruit* basis, for services rendered to lessees."

The second appeal [1944-1945 TRADE CASES ¶ 57,319] (324 U. S. 570) was upon petition of the Government "for clarification or reconsideration" of the opinion on the prior appeal. The Court (p. 571) quoted from its prior opinion what we have just above quoted. The Court (p. 572) disposed of the matter as follows:

* * *

The here particularly applicable part of this quotation is "In view of the modifications required by the opinion of this court, such licensees must pay reasonable rental and service charges on a *quantum meruit* basis (*leaving out of consideration any amount otherwise payable for the privilege of practicing the patented inventions involved*) in respect of the machines used in the interim" (italics added).

We think it a fair deduction from the sentence just quoted, that the Court had in mind the differences in the bases of recovery in *quantum meruit* and for infringement; and also the differences in measurement of damages or recovery for infringement[13] and on *quantum meruit.* The prayer on these infringement Courts is for "not less than a reasonable royalty."

Both because of the practical and legal situation here, and, also, the teaching in *Hartford-Empire* case, we think the Final Decree should be modified to cover prohibition from prosecuting the USG suits in so far as they are based on patent infringement during the period covered by those suits.

[*Action on Contracts Enjoined*]

Count III of USG petitions is a common law action of *indebitatus assumpsit* based on a pleaded express contract. That contract and the relief sought are so stated and designed to bring about the identical recovery that would be realized had the actions been for recovery upon the royalties provided in the illegal agreements. This is but a lefthanded, indirect method for recovering such royalties.[14] "Forms of action are a means of administering justice rather than an end in themselves * * *" (1 Am. Jur. p. 439). The Decree should be modified to enjoin prosecution of these Courts (Count III).

[13] This infringement Count V in the USG is brought under 35 U. S. C. A. § 67 which authorizes up to treble damages recovery. These Counts allege willful, deliberate and persistent infringement.

[14] This situation reminds of the expression in *International Salt Co. v. U. S.,* 332 U. S. 392, 400 where the Court stated:

"* * * The District Court is not obliged to assume, contrary to common experience, that a violator of the antitrust laws will relinquish the fruits of his violation more completely than the court requires him to do. And advantages already in hand may be held by methods more subtle and informed, and more difficult to prove, than those which, in the first place, win a market. When the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed."

[*Quantum Meruit Recovery for Patent Use*]

Count IV of USG petitions is for *quantum meruit* covering the use of the patents. Under the *Hartford-Empire* opinion (324 U. S. 570, 572), we think this Count is proper and prosecution thereof should not be enjoined unless USG is barred by unpurged misuse of its patents.

IV—Misuse and Purge

In all that we have heretofore stated in this opinion, we have laid aside consideration of the related issues of misuse of patents by USG and of purge of misuse. These issues are now to be examined. We shall first state the pertinent legal rules and then the factual situation to which the rules are to be applied.

The Law

It is an age-old doctrine of Equity Jurisprudence that equity will deny use of its powers to a wrongdoer. This is the doctrine of "unclean hands". This rule is applicable where the owner of patent rights seeks to extend those rights beyond the limits of his patent monopoly. This is the doctrine of "misuse" of patents. This does not nullify the patent but prevents enforcement of it. Because of the nature of patent grants and because of the nature of this equity doctrine, such owner may, as to *future* protection of his rights and after the baleful effects of the misuse have been fully dissipated, relieve himself of this impediment by ceasing the unlawful use. This is the doctrine of "purge". These rules apply to whatever the form of the suit by the patent owner may be (*Edward Katzinger Co. v. Chicago Metallic Mfg. Co.* [1946-1947 TRADE CASES ¶ 37,524], 329 U. S. 394, 399-400).[35]

The Facts

The issues as to facts are: (1) whether there was misuse; (2) whether, if there was misuse, it is shown as matter of law; and (3) whether, if misuse existed, it is shown, as matter of law, to have been purged before this period or is yet an undetermined issue of fact.

We think there was misuse by USG, as matter of law on the facts here, which has not been purged. The reasons for these conclusions follow. The Supreme Court (333 U. S. 364) determined that USG had misused its patents to create various unlawful restraints effecting monopolization of the entire gypsum industry. This misuse extended to price regulation, to suppression of related or similar unpatented products, and to regulation of methods and agencies of distribution. The effective instrumentalities used by USG were patent license agreements containing various restrictive provisions.

One such provision (covering prices) had not been used for some years (since 1941) but the right to use had not been abandoned but expressly retained.

In connection with formation of the first decree (November 7, 1949), USG opposed strenuously a suggested provision declaring the license agreements "illegal, null and void". It contended the provision should go no further than to declare the "minimum price provisions" of the licenses to be "illegal" and that the licenses be "*hereby cancelled and terminated*," suggesting that the broader provision had the purpose to relieve the licensees "from accounting with respect to anything done before or *after* the decision of the Supreme Court" (italics added).

On the appeal of the defendants (339 U. S. 960), that Court enjoined defendants

[35] Some of the cases applying or illustrating the limits of the matters in this paragraph are *United States v. National Lead Co.* [1946-1947 TRADE CASES ¶ 57,575], 332 U. S. 319, 335; *Bruce's Juices v. American Can Co.* [1946-1947 TRADE CASES ¶ 57,553], 330 U. S. 743, 755; *Edward Katzinger Co. v. Chicago Metallic Mfg. Co.* [1946-1947 TRADE CASES ¶ 57,524], 329 U. S. 394, 399-402; *Transparent-Wrap Machine Co. v. Stokes & Smith Co.* [1946-1947 TRADE CASES ¶ 57,532], 329 U. S. 637, 645; *Hartford-Empire Co. v. United States* [1944-1945 TRADE CASES ¶ 57,319], 324 U. S. 570, 571-572; *Same v. Same* [1944-1945 TRADE CASES ¶ 57,319], 323 U. S. 386, 414-419; *Mercoid Corporation v. Mid-Continent Invest. Co.* [1944-1945 TRADE CASES ¶ 57,201], 320 U. S. 661, 665-672; *Sola Electric Co. v. Jefferson Electric Co.* [1940-1943 TRADE CASES ¶ 56,245], 317 U. S. 173, 175; *Morton Salt Co. v. G. S. Suppiger Co.* [1940-1943 TRADE CASES ¶ 56,176], 314 U. S. 488, 491-494; *B. B. Chemical Co. v. Ellis et al.* [1940-1943 TRADE CASES ¶ 56,177], 314 U. S. 495; *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458, 461-463; *Altoona Publix Theatres v. American Tri-Ergon Corporation*, 294 U. S. 477, 493; *Carbice Corp. of America v. American Patents Development Corporation*, 283 U. S. 27, 31-35; *Continental Wall Paper Co. v. Louis Voight & Sons Co.*, 212 U. S. 227, 256 *et seq.*

"from enforcing in any manner whatsoever the provisions of their current license agreements * * *." This order was made May 29, 1950 and continued in force until the Final Decree (May 15, 1951).

In each of the present USG suits, Counts I and II are expressly based on the old license agreements and seek to recover the royalties provided therein in the amounts provided for and measured by those agreements. Counts III and IV are, respectively, actions of *indebitatus assumpsit* and *quantum meriut* posed on the same underlying factual situation created by the license agreements. The amounts sought in each of those two Counts is precisely the same as stated in Counts I and II—in Count III, the amount is measured as in the agreements. Count V (also Count VI in Newark and Ebsary suits) is for infringement based on deliberate infringement and praying recovery for an amount ("not less than a reasonable royalty") which exactly equals the amount measured by the unlawful agreements.

We think this course of conduct, as clearly shown by the proceedings of record in the antitrust case and in these suits by USG, must be construed as meaning that USG has continued to misuse its patents by seeking recovery, directly and indirectly, on the illegal license agreements up to this time. We think we should exercise our discretion and entertain these petitions on the ground of preventing a multiplicity of actions which affect the complete effectiveness of the Final Decree; and that USG should be enjoined from further prosecution of these actions.

[*Alleged Purging Acts*]

USG urges that "this Court on the record before it knows of a number of facts any one of which constitutes evidence of purge at a time prior to May 15, 1951." USG then discusses five of such facts, with the reservation that they are "only illustrative and not the only or exclusive facts showing purge." In spite of this cautionary reservation, we must conclude that USG is presenting here those matters which it regards as most potent in showing purge.

The first of these five is that USG did not fix prices, under its licenses, after July 8, 1941. This is true. However, its effect is dissipated by two considerations: first, the notices that minimum prices bulletins would be suspended included the statement that such suspension would continue "until we decide again to exercise our right to do so";[16] and, second, this price fixing provision is inseparably joined with other provisions found violative of the Act (*Edward Katzinger Co. v. Chicago Metallic Mfg. Co.* [1946-1947 TRADE CASES ¶ 57,524], 329 U. S. 394; *MacGregor v. Westinghouse Elec. & Mfg. Co.* [1946-1947 TRADE CASES ¶ 57,525], 329 U. S. 402).

The second claimed purging act is based on the claimed acquiescence of USG to the repudiation of the illegal agreements by Petitioners following the first appeal (333 U. S.). The record herein does not support the claim that USG "acquiesced" in these cessations of payments by Petitioners. The position of USG at that time is more accurately described, by one of its counsel, at the argument before us.[17] Thereafter nothing appears bearing on "acquiescence" until the hearings (June 14, 1949) and the memoranda in connection therewith in respect to the summary judgment and resultant form of decree to be entered thereon. In that connection, USG not only did not claim that the licenses had been rescinded but it urged strongly that only the minimum price fixing provisions were illegal and that, in all other respects, the license agreement should be "cancelled" only as of the date of the decree to be entered. At that time and thereafter, it made clear that it expected to have and waived no rights to have "compensation" for the use

[16] The "potential power" (*Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 458) remained.

[17] Counsel stated that the first decision of the Supreme Court (333 U. S.) "came as quite a shock to the old industry. We were not expecting that. And everybody stopped in their tracks as far as these license agreements were concerned.

"The licensees stopped paying royalties. They stopped making reports. As National in its petition sets out, they stopped doing anything under the license, because the Supreme Court had held them unlawful.

"USG likewise did nothing to try to enforce the license agreements. We just sort of were in a *status quo* during that period there as far as taking any action. No action was taken by us to enforce them. And that is why, in answer to your question, I wanted to postpone it to explain that situation. And that was that no effort was made to audit the books, no royalties were paid during this three-year period that is involved in this litigation out in Iowa, and New Jersey, and New York."

of its patents; however, there was no suggestion as to what form enforcement of those rights would take if not voluntarily paid. Not until these USG suits were filed was that made clear. Such suits included Counts for recovery under the unlawful agreements. Throughout, there is no basis for this claimed "acquiescence".

The third claimed purging act is the offer by USG, early in the spring of 1949 (February or March), of new forms of licenses. These proffered forms of licenses are not effective as acts of purge, as to our period, for two reasons. First, they were not intended to become effective until the entry of the decree because it was not until that time that the unlawful license agreements were to be "cancelled and terminated" (Article IV, 2 of the form of decree submitted by USG on March 4, 1949). Second, they differed in several respects from the form approved by the Supreme Court (340 U. S. 76). That Court (p. 90) found the definition of gypsum board too restrictive; and also the time limit for applying for new licenses (pp. 93-4).

The fourth claimed act of purge is that USG had decided not to appeal from the decree of November 7, 1949, "unless the Government appealed, in which event it felt it would be required to appeal, in self defense." Why either this unacted upon decision not to appeal or why an appeal by the Government should in any way affect this matter of purge is not clear to us. The two appeals (USG and the Government) involved entirely different legal issues and situations. USG appealed from the entry of any decree "on the ground of their right to introduce material evidence" (340 U. S. at p. 82); the Government appealed solely "in an effort to have the provisions of the District Court decree enlarged" (340 U. S. at p. 82).

The fifth purging act (or situation) is that the Supreme Court (339 U. S. 960) enjoined USG, on May 29, 1950, from "enforcing in any manner whatsoever" the price provisions of the license agreements.[18] USG relies upon *Standard Oil Co. v. Clark* [1946-1947 TRADE CASES ¶ 67,615], 2 Cir., 163 F. 2d 917, 927, cer. den. 333 U. S. 873 and the two *Hartford-Empire* cases [1944-1945 TRADE CASES ¶ 57,319] (323 U. S. 386, 411 and 324 U. S. 570, 572). In none of these citations was there found any attempt to extend unduly a patent monopoly beyond the entry of the final decree in the antitrust litigations there involved. In each of these cases, the doctrine of patent misuse and purge was recognized but was found not effective in the situation then before those Courts. The USG suits now pending show conclusively that even yet it is striving to enforce the royalty provisions of the illegal patent license agreements.

We think such an attempt is clear misuse of its patents; that such misuse yet continues; and that to allow prosecution of these suits would weaken the effectiveness of the Final Decree. As to *quantum meruit* Counts of the USG petitions, we think it will be sufficient if we enjoin further prosecution on the basis of preventing recovery in a multiplicity of suits wherein the misuse of the patents which were involved in this antitrust suit is shown, as matter of law, to exist and not have been purged.

Conclusion

Our ultimate conclusions upon the issues here are as follow: (1) that we have jurisdiction to entertain and determine the issues presented by Petitioners; (2) that the Final Decree should be modified as indicated in point "III—Modification." of this opinion; (3) that further prosecution of all Counts of the USG suits should be enjoined.

Petitioners are granted thirty days from the filing of this opinion, to serve upon opposing counsel and to file with this Court, suggested form of decree and form of Conclusions and Findings.

[Dissenting Opinion]

COLE, Judge: In reaching a different conclusion from that presented in the majority opinion, I find it advisable to present this statement of my reasons therefor, which statement becomes brief because of the excellent rehearsal by my colleagues of the background and present status of this litigation.

As so aptly stated by the United States, in its brief, "of course, when a court's jurisdiction is drawn in question this is the

[18] While not material in connection with this contention of purge, it is true that this injunction went beyond price fixing and extended to "by license or other concerted action arranging the terms and conditions of sale thereof (gypsum board)."

threshold question in the case." This litigation was initiated, as the title indicates, by the United States as the sole plaintiff and was against the defendants now appearing as defendant petitioners herein except USG which appears as defendant respondent thereto; also, initially, it had as its basis the protection of the public interest in enforcing provisions of the antitrust laws. The final judgment, entered therein after many years of intensive litigation, found against all defendants in language clear, concise, and completely capable of interpretation to meet any applicable situation growing out of the relationship which was the subject matter thereof. *Inter alia,* it adjudged unlawful under the antitrust laws of the United States, and illegal, null and void each of the license agreements listed in the decree.

It is my view that the United States can be the sole spokesman for the public interest. *Buckeye Coal & Railway Company et al. v. Hocking Valley Railway Company et al.,* 269 U. S. 42. While there have been situations, such as in the case of *Missouri-Kansas Pipe Line Co. v. United States et al.* [1940-1943 TRADE CASES ¶ 56,103], 312 U. S. 502, which might be construed, to some extent, as tending to contradict the rule laid down in the *Buckeye* case, *supra* I do not so regard it.

Article X of the decree in this suit is quite broad in providing that the parties may apply to this Court "at any time for such orders, modifications, vacations or directions as may be necessary or appropriate (1) for the construction or carrying out of this decree, and (2) for the enforcement of compliance therewith," but this does not, in my opinion, contain the right for the defendants to stand in the shoes of, or even with, the United States as a protector of the public interest in litigation of this character and, in so doing, settle their own private differences. Likewise, such litigation, initiated by the United States, will not permit the main action to be encumbered with extraneous issues of a private nature. *United States v. Columbia Gas & Electric Corporation et al.,* 27 F. Supp. 116.

The opposite viewpoint looks for support to *Missouri-Kansas Pipe Line Co. v. United States, supra,* which was an antitrust proceeding wherein a consent decree was entered under which consent decree a stockholder of the defendant corporation had the right to become a party which right he sought to exercise. The Attorney General approved the plan presented by the petitioner for modification of the original decree. It is significant that the court in dealing with this phase of the litigation said:

> * * * This, we are told, "is believed to satisfy the public interest," and so the Government desires to sustain the action of the court below without further litigation. We recognize the duty of expeditious enforcement of the antitrust laws. But expedition cannot be had at the sacrifice of rights which the original decree itself established. We assume that the district court will adjust the right which belongs to Panhandle with full regard to that public interest which underlay the original suit.

Following a rehearsal of the chronological course this lengthy controversy pursued, the United States, in its brief, made this statement:

> It is, of course, probable that the courts in which suits have been brought will give effect to this Court's judgment and dismiss, because of the judgment, all claims based on the voided license agreements. * * *
>
> * * *
>
> * * * The position of the United States, as set forth in its petition, is that said final judgment bars enforcement of any claim based in whole or in part upon any license agreement thus adjudged null and void, and that suit to recover upon any such claim constitutes an attempt to defeat the Court's final judgment. The petition prays, by way of relief, that this Court enjoin USG from asserting any claim, and from maintaining, instituting, or threatening to institute any action, based in whole or in part on any license agreement which the Court had adjudged illegal, null and void.
>
> The United States stated in its petition that *it takes no position as to whether USG's* alternative *claims for recovery on a quantum meruit basis or for infringement, as made in the four foregoing actions, are barred by this Court's final decree of May 15, 1951,* or as to whether this Court should enter an order enjoining USG from prosecuting such alternative claims. (Italics supplied.)

Just why this court, under the circumstances, should feel called upon, in view of the Government's position, to restrain prosecution of the pending suits in the

several district courts and take upon itself the adjudication of the controversy between the defendants when that controversy involves issues, such as the right to recover under *quantum meruit* or infringement, as alleged, when the Government as the sole protector of the public interest in litigation of this character does not join the petitioners in such request for this court to do so, but by inference at least suggests that it is beyond the scope of the decree handed down in these proceedings, I do not appreciate. If this court restrained the prosecution of the pending suits to the extent that the Government's position finds the recovery sought herein to be within that prohibited by the final decree, the right, if any, to the petitioning defendant, USG, to recover under *quantum meruit* or infringement would have remained for adjudication in the district courts. Thus, the suits pending therein would continue as presently docketed for trial. Also, the several district courts wherein the suits are now pending are quite capable of construing and interpreting the meaning of the judgment passed in these proceedings, as applied to the pleadings and factual record subsequently to be developed in those courts, and rule thereon accordingly.

I do not find the situation before us as one requiring this court to spell out in supplementation of its original decree every conceivable type of litigation which might develop between the defendants and presumed to have grown out of the relationship stricken down. Neither do I find the existing situation to be one calling for resort to Article X of the judgment of this court in order to construe, carry out, or enforce said judgment. Inherent power rests with this court always in proceedings of this character to enforce its judgments when such appears advisable. I do not, however, find need for the application of such power in these proceedings.

In the light of the foregoing expression of my views, I find it unnecessary to discuss other points argued in the case.

U.S. v. LYMAN GUN SIGHT CORPORATION, ET AL.

Civil No.: 890-56

Year Judgment Entered: 1957

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LYMAN GUN SIGHT CORPORATION; W. R. WEAVER; M. JACKSON STITH; JOHN UNERTL; NATIONAL RIFLE ASSOCIATION OF AMERICA; POPULAR SCIENCE PUBLISHING COMPANY, INC.; and HENRY HOLT AND COMPANY, INC., Defendants.	Civil Action No. 890-56

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 29, 1956; the defendants having appeared and filed their answers to the complaint denying the material allegations thereof; and the plaintiff and the defendants, by their attorneys, having severally 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 evidence or an admission by any party hereto in respect of 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 the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states a claim upon which relief against the defendants 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) "Manufacturing defendants" means defendants Lyman Gun Sight Corporation, W. R. Weaver and John Unertl;

(B) "Publishing defendants" means defendants National Rifle Association of America, Popular Science Publishing Company, Inc., and Henry Holt and Company, Inc.;

(C) "Scopes" means all telescopic sights, utilizing optical glasses, to be secured or mounted on rifles for the purpose of aiming more accurately than would be possible with metallic sights. Scopes usually contain a reticule in the form of cross hairs, a dot or a post;

(D) "Manufacturer's suggested prices" means any prices determined by a manufacturing defendant and suggested to any jobber or dealer as prices to be charged by a person or persons other than such defendant on sales of scopes manufactured by such defendant;

(E) "Consumer advertisements" means any advertisements by a manufacturing defendant in any outdoors magazine or in any sales literature sent directly to consumers which suggest prices to be charged by a person or persons other than defendant on sales of scopes manufactured by such defendant;

(F) "Person" means an individual, partnership, firm, corporation, or any other legal entity [for the purpose of this definition a manufacturing defendant, its subsidiaries, officers, directors, agents and employees shall be deemed to be one person];

(G) "Fair trade agreement" means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of scopes is fixed, established or maintained under state fair trade laws in accordance with either Section 1 of the Sherman Act or Section 5(a) of the Federal Trade Commission Act, as amended;

(H) "Jobber" means any person who purchases scopes from manufacturers thereof and resells them to other distributors or retailers;

(I) "Dealer" means any person who buys scopes from manufacturers or jobbers and retails them to the ultimate consumer;

(J) "Off-list dealer" means any person who, in making sales to ultimate consumers, fails to adhere to manufacturer's suggested prices or prices in manufacturer's consumer advertisements;

(K) "Outdoors magazine" means any periodical having interstate circulation and devoted, principally, to outdoors activities such as marksmanship, hunting and fishing.

III

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

IV

The manufacturing defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding or concerted plan of action with or among themselves, with any publisher of any outdoors magazine, with any jobber or dealer in scopes or with any other person:

(A) to maintain or stabilize resale prices on scopes;

(B) to coerce or compel dealers to observe, or adhere to manufacturer's suggested prices or prices in consumer advertisements;

(C) to coerce or compel jobbers to observe, or adhere to manufacturer's suggested prices or prices in consumer advertisements;

(D) to refuse to sell scopes to off-list dealers;

(E) to coerce or induce jobbers to refuse to sell scopes to off-list dealers;

(F) to coerce or induce publishers of outdoors magazines to reject advertisements offering scopes for sale by off-list dealers or by any other person;

(G) to establish cooperative means and methods to accomplish the exclusion from outdoors magazines of advertisements offering scopes for sale by off-list dealers or by any other person;

(H) to cause, initiate or enforce boycotts against advertisements for the sale of scopes by off-list dealers or by any other person.

V

The manufacturing defendants are jointly and severally enjoined and restrained from:

(A) coercing or compelling dealers to observe, or adhere to, manufacturer's suggested prices or prices in consumer advertisements;

(B) coercing or compelling jobbers to observe, or adhere to, manufacturer's suggested prices or prices in consumer advertisements for scopes;

(C) coercing or compelling jobbers to refuse to sell scopes to off-list dealers;

(D) coercing or compelling publishers of outdoors magazines to reject advertisements offering scopes for sale by off-list dealers;

(E) establishing cooperative means and methods to accomplish the exclusion from outdoors magazines of advertisements offering scopes for sale by off-list dealers;

(F) causing, initiating or enforcing boycotts against advertisements for the sale of scopes by off-list dealers.

VI

The manufacturing defendants are jointly and severally ordered and directed to cancel forthwith all fair trade agreements to which such defendants are now a party, and any such defendant who is a party thereto shall give notice to plaintiff, within ninety days from the date of entry of this Final Judgment, that such fair trade agreements have been cancelled.

VII

The manufacturing defendants are jointly and severally enjoined and restrained, for a period of seven years from the date of entry of this Final Judgment, from entering into, adhering to, or enforcing any fair trade agreement. After this seven year period of time, nothing contained in this Final Judgment shall prevent any manufacturing defendant from entering into, adhering to, or enforcing any fair trade agreement, valid and enforceable in the state where to be enforced, or from taking any lawful action permitted or required by any such fair trade law.

VIII

The manufacturing defendants are jointly and severally enjoined and restrained for a period of two years commencing ninety days from the date of entry of this Final Judgment from:

(A) publishing any manufacturer's suggested prices, or

(B) engaging in any consumer advertisements unless any reference therein to prices is limited to suggesting that scopes manufactured by such defendant may be purchased from persons other than defendant for approximately a stated number of dollars and advising that local dealers should be consulted to determine the actual prices for such scopes.

IX

In the event that any manufacturing defendant during the period of seven years from the date of entry of this Final Judgment shall elect (subject to Section VIII herein) to engage in consumer advertisements, such defendant during the time of the publication of such consumer advertisements is ordered and directed either to sell scopes or cause jobbers to sell scopes to any off-list dealer with satisfactory credit standing, who makes application in writing to such defendant, without discrimination as to availability, price, terms and conditions of sale, or credit requirements; provided, however, that nothing contained in this Section IX shall be interpreted to prevent such defendant or a jobber of such defendant from giving to any person, purchasing scopes for resale, functional or quantity discounts otherwise lawful.

X

Each of the manufacturing defendants is ordered and directed within ninety days after the date of entry of this Final Judgment to mail a true and complete copy of this Final Judgment to each jobber and dealer on such defendant's current distribution list for sales or advertising materials relating to scopes, or with whom such defendant has in effect on the date of entry of this Final Judgment a fair trade agreement relating to scopes.

XI

Defendant M. Jackson Stith shall become subject to all provisions in Sections I - X, and XV and XVI of this Final Judgment if and when he either engages in the manufacture of scopes, or sells scopes manufactured exclusively for him which he sells under his own name.

XII

The publishing defendants are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement, understanding or common course of

conduct with any manufacturer, jobber or dealer of scopes or any publisher of outdoors magazines whereby any publishing defendant refuses to accept, publish, carry or run advertisements for scopes offered by any dealer, jobber, off-list dealer or other person at prices less than the manufacturer's list prices therefor, if the advertisements otherwise meet the reasonable standards uniformly applied by the defendants.

XIII

Each publishing defendant is enjoined and restrained, for a period of ten years commencing ninety days from the date of entry of this Final Judgment, from refusing to publish or threatening to refuse to publish advertisements for scopes from any dealer, jobber, off-list dealer or other person advertising such scopes for sale, where the advertiser and the advertisements meet the reasonable standards uniformly applied by the defendant without regard to the fact that the advertiser offers scopes for sale at prices less than the manufacturer's list prices therefor.

XIV

Each of the publishing defendants is ordered and directed within ninety days after the date of entry of this Final Judgment to mail a true and complete copy of this Final Judgment to each off-list dealer who has been refused, since March 1, 1949, advertising of scopes by such defendant.

XV

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) reasonable access, during the office hours of said defendants, to

all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of said defendants relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview the officers and employees of defendants, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section XV shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XVI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of

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

Dated: Washington, D. C.

November 8, 1957

/s/ F. Dickinson Letts
United States District Judge

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

For the Plaintiff:

/s/ Victor R. Hansen
Assistant Attorney General

/s/ W. D. Kilgore, Jr.

/s/ Baddia J. Rashid

/s/ Max Freeman

/s/ James L. Minicus

/s/ William H. Crabtree

/s/ Forrest A. Ford

For the Defendants:

Lyman Gun Sight Corporation

By /s/ Rodney J. McMahon
General Counsel for Lyman Gun Sight Corporation

M. Jackson Stith

By /s/ Alan Y. Cole

National Rifle Association of America

By /s/ J. J. Wilson

Henry Holt and Company, Inc.

By Saterlee, Warfield & Stephens

By /s/ William E. Stockhausen

/s/ Webb C. Hayes, III

W. R. Weaver

By Cahill, Gordon, Reindel & Ohl
By /s/ Jerrold G. Van Cise

John Unertl

By /s/ Gerald L. Phelps

Popular Science Publishing Company, Inc.

By Parker, Duryee, Benjamin, Zuning & Malone, Attys.

By /s/ Vincent J. Malone

By /s/ Arthur B. Carton, Atty.

U.S. v. MARYLAND AND VIRGINIA MILK PRODUCERS ASSOCIATION, INC.

Civil No.: 4482-56

Year Judgment Entered: 1960

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. MARYLAND AND VIRGINIA MILK PRODUCERS ASSOCIATION, INC., Defendant.	Civil Action No. 4482-56 11-22-60 1961

FINAL JUDGMENT

Plaintiff, United States of America, having filed its amended complaint on February 7, 1957, and this Court having entered a Final Judgment on January 22, 1959, with respect to plaintiff's causes of action stated in paragraphs 24 to 29 of such amended complaint, and the plaintiff and defendant having severally consented to the entry of this Final Judgment with respect to the charges of violations of Section 2 of the Sherman Act contained in paragraphs 21, 22 and 23 of the said amended complaint, and without any admission by plaintiff or defendant with respect to any issue therein,

NOW, THEREFORE, upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of paragraphs 21, 22 and 23 of the amended complaint and of the parties hereto pursuant to Section 4 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and paragraphs 21, 22 and 23 of the amended complaint state claims upon which relief may be granted.

II

As used in this Final Judgment:

(A) "Milk" means the raw milk of cows prior to pasteurization;

(B) "Fluid milk" means pasteurized milk as sold by dealers for consumption in fluid form;

(C) "Dealer" means any person engaged in the business of purchasing milk and processing, bottling and distributing it in the form of fluid milk;

(D) "Washington metropolitan area" means the area comprising Montgomery and Prince Georges Counties, Maryland, the District of Columbia, Arlington and Fairfax Counties and the cities of Alexandria and Falls Church, Virginia;

(E) "Person" means any individual, partnership, corporation, association, firm or other legal entity;

(F) "Pro rata classification" means the apportionment for classified pricing purposes of all milk received by a dealer in a calendar month in which the dealer has received and routinely commingled milk supplied by both the defendant and another person or persons so that milk supplied by defendant is considered to have been used during such month in each classification in which the dealer may have used milk in the same ratio as the dealer's receipts of milk from defendant bore to the dealer's receipts from all sources;

(G) "Calendar month" means one calendar month's time or such other length of time as may be customarily utilized as an accounting or billing period.

III

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

IV

The defendant is enjoined and restrained from:

(A) Coercing or attempting to coerce any person to purchase all or any part of his requirements of milk from defendant or to refrain from purchasing milk from any other producer or supplier not a member of defendant;

(B) Interfering or attempting to interfere with the sources of supply of milk or fluid milk of any person engaged or seeking to engage in the sale or distribution of milk or fluid milk in the Washington metropolitan area; provided, however, that nothing in this subsection shall be construed to prohibit defendant from using fair and reasonable means to obtain suppliers of milk, members or customers;

(C) Coercing or attempting to coerce any producer or supplier of milk to refrain from selling or offering to sell milk in the Washington metropolitan area, or from selling or offering to sell milk to any dealer selling or proposing to sell fluid milk in said area;

(D) Coercing or attempting to coerce any dealer to refrain from selling or offering to sell fluid milk in the Washington metropolitan area;

(E) Boycotting or threatening to boycott any person in order to induce or compel any person to purchase milk from defendant or to induce or compel any person to refrain from purchasing milk from any other producer or supplier not a member of defendant;

(F) Entering into or carrying out any agreement with any other supplier of milk to fix prices or allocate territories or customers; provided, however, that nothing in this subsection shall be construed to prohibit defendant from exercising any right or privilege created by the Clayton Act or the Capper-Volstead Act and not inconsistent with any other subsection of this Final Judgment;

(G) Engaging or employing any person to present as his own or as any person's other than defendant's, the views of defendant concerning the enactment, amendment, repeal or recision of any legislation or regulation affecting defendant, or from remunerating any person who, without disclosing either that he is presenting the views of defendant or that he is being remunerated by defendant, makes representations to a legislative or regulatory body or who, at the express or implied direction or request of defendant, makes representations to any organization or association without making either such disclosure;

(H) Fixing or attempting to fix the price at which any dealer sells or offers to sell fluid milk;

(I) Discriminating in the application of any sales policy between or among its regular dealer-customers who are located in the Washington metropolitan area or who are in competition with one another in any area;

(J) Preventing or attempting to prevent any carrier of milk other than defendant from transporting to the Washington metropolitan area milk of producers or suppliers not members of defendant; provided, however, that nothing in this subsection shall be construed to require defendant to permit milk of its members to be carried (i) in the same vehicle with milk of producers or suppliers not members of defendant if the effect is to cause the milk of defendant's members to lose its character as inspected milk under the laws of any of the several states or the District of Columbia, or (ii) in the same tank or compartment with milk of producers or suppliers not members of defendant;

(K) Retaliating or threatening to retaliate against any dealer because such dealer is attempting to obtain or has succeeded in obtaining business of defendant or any dealer-customer of defendant; provided, however, that nothing in this subsection shall be construed to prohibit defendant from using fair and reasonable means to retain, obtain or reobtain business;

(L) Attempting to obtain from the books and records of any dealer-customer any information not reasonably necessary to verify the total

quantity of milk received by the dealer-customer and the utilization thereof;

(M) Classifying milk (for purposes of calculating payments due defendant for milk received by a dealer for fluid utilization in the Washington metropolitan area in a calendar month in which the dealer has received and commingled milk supplied both by defendant and by another person or persons) in a manner which results in a larger proportion of the milk supplied by such other person or persons being consigned to a lower value utilization category than the percentage that the milk delivered by such other person or persons is to the total quantity of milk received and so commingled by the dealer in such calendar month; provided, however, that nothing in this subsection shall apply when defendant makes spot sales of milk to other than its regular customers.

V

For a period of ten (10) years from the date of entry of this Final Judgment, defendant is enjoined and restrained from:

(A) Entering into or carrying out any agreement with any purchaser of milk in the Washington metropolitan area whereby such purchaser is required to purchase its entire requirements of milk from defendant;

(B) Charging different prices for the same fluid utilization for milk sold to a dealer for resale within any part of the Washington metropolitan area from those charged at the same time for milk sold to a dealer for resale elsewhere within the Washington metropolitan area, unless such different prices are required by any federal or state regulation or order; provided, however, that nothing in this subsection shall be construed to prohibit the defendant from charging a lower price in good faith to meet the lower price of any competitor or in any situation where competitive bidding is invited by a public agency or institution. In the event milk is being offered by defendant to dealers for Class I use at a price below defendant's then highest price for

Class I utilization, the volume of milk to be sold to any dealer at such lower price may be made proportionate to the percentage that the dealer's purchases of milk from defendant for use in all Class I utilizations bears to the dealer's total purchases for all Class I utilizations during the calendar month in which such lower price milk is delivered;

(C) Conditioning or attempting to condition the sale of milk to any purchaser on his refraining from purchasing milk from any producer or supplier not a member of defendant;

(D) Adopting or using any sales plan or policy with respect to the sale of milk in the Washington metropolitan area by which the price per hundredweight or other unit of measurement or the terms of sale are related to, established by, or contingent upon the proportion of a dealer's purchases from defendant to the dealer's total requirements, or which includes the assignment or use of purchase quotas, minimum purchase requirements or the like; provided, however, that nothing in this subsection shall be construed to prohibit defendant from use of pro-rata classification whenever milk is sold to a dealer on a classification-utilization pricing basis or from requiring purchasers to receive upon each delivery a reasonable minimum quantity of milk;

Provided, however, that at the end of five (5) years from the date of entry of this Final Judgment, defendant may move for modification or termination of any of the subsections of this Section V, which may be granted upon a showing by defendant to the satisfaction of this Court that the pertinent subsection or subsections sought to be modified or terminated have worked or will work an undue hardship upon defendant.

VI

For a period of five (5) years from the date of entry of this Final Judgment, defendant is enjoined and restrained from:

(A) Refusing, except for good cause (which shall include reasonable terms and conditions), to sell available milk to any dealer for fluid utilization within the Washington metropolitan area. Milk shall be deemed available if it is available at the time specified for delivery unless delivery would interfere with defendant's normal operations or pre-existing contractual obligations;

(B) Offering to make or making any loan to any dealer in the Washington metropolitan area; provided, however, that nothing in this subsection shall be construed to prohibit defendant from granting reasonable extensions of credit in the ordinary course of business.

VII

Within one (1) year from the date of entry of this Final Judgment, defendant shall dispose of all assets of Richfield Dairy Corporation and Simpson Bros., Inc., trading as Wakefield Model Farms Dairy, tangible and intangible, acquired by defendant on or about December 6, 1957, pursuant to a contract for the purchase of the capital stock of the said corporations, and replacements therefor. The divestiture herein ordered shall be in good faith and shall require the prior approval of this Court on notice to counsel for the plaintiff. Within sixty (60) days from the date of entry of this Final Judgment defendant shall report to the Court, with a copy served on plaintiff, its efforts to carry into effect the divestiture herein ordered. Further reports shall be made to this Court and the plaintiff every ninety (90) days thereafter and on such other dates as this Court may order. Pending divestiture, defendant shall administer the said assets and replacements therefor in good faith with a view to preserving them in as good condition as possible, ordinary wear and tear excepted.

VIII

For a period of five (5) years from the date of divestiture ordered by this Final Judgment and the Final Judgment entered on January 22, 1959,

defendant is enjoined and restrained from engaging in any phase of distribution or sale of fluid milk within the Washington metropolitan area; provided, however, that nothing in this section shall apply to the distribution or sale of fluid milk to installations maintained by the Armed Services of the United States.

IX

(A) Defendant is enjoined and restrained from acquiring, directly or indirectly, any shares of stock or any assets of, or any interest in, Richfield Dairy Corporation and Simpson Bros., Inc., trading as Wakefield Model Farms Dairy, or Embassy Dairy, Inc., after divestiture as ordered by this Final Judgment and the Final Judgment entered on January 22, 1959. In the event that after divestiture the above-described stock or assets shall be offered for sale at a forced sale or a liquidation proceeding, defendant may acquire such stock or assets if necessary to protect its position as a general creditor; provided, however, that defendant shall again divest itself of such assets thus regained within one year from the date of such acquisition subject to the same terms and conditions under which they were required to be divested under the aforesaid Final Judgments.

(B) Subject to subsection (A) above, defendant is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, and except upon notice to plaintiff and approval by this Court, from acquiring directly or indirectly any shares of stock of any corporation or any assets of, or any interest in, the business of any person engaged in the Washington metropolitan area in the sale of milk for resale as fluid milk or in the sale of fluid milk. In the event plaintiff shall object to any such proposed acquisition, the Court may grant permission to make such acquisition upon a showing to the satisfaction of this Court that the acquisition

will not substantially lessen competition or tend to create a monopoly in the sale or distribution of milk for resale as fluid milk in the Washington metropolitan area or in the sale and distribution of fluid milk in the Washington metropolitan area.

X

For a period of five (5) years from the date of entry of this Final Judgment, defendant shall promptly give written notice of each establishment of or change in the price of milk for any fluid utilization in the Washington metropolitan area to each dealer who has purchased milk for fluid utilization therein from defendant at any time in the preceding twelve-month period.

XI

(A) Defendant is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from entering into or renewing any agreement for the marketing of milk of any person for a term of more than one year unless any such agreement shall on its face be terminable by such person on the annual anniversary thereof by written notice delivered not less than thirty (30) days prior to such date. Each agreement for the marketing of milk now in effect between defendant and any person shall be terminable by such person on the annual anniversary thereof by written notice delivered not less than thirty (30) days prior to such date.

(B) From the date of entry of this Final Judgment until one hundred and twenty (120) days after the disposition by defendant of the assets of Embassy Dairy, Inc., or until April 1, 1961, whichever shall occur later, the membership contract of each producer of milk who supplied milk to Embassy Dairy, Inc., in May 1954, and who is a member of defendant shall be terminable at the option of such producer at any time upon thirty (30) days written notice to defendant.

Defendant shall give written notice of this provision of this Final Judgment to each such producer within ten (10) days from the entry of this Final Judgment.

XII

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

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

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

No information obtained by the means permitted in this Section XII 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate

for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: November 22, 1960
Washington, D. C.

/s/ Alexander Holtzoff
United States District Judge

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

FOR THE PLAINTIFF:

/s/ Robert A. Bicks
Robert A. Bicks
Assistant Attorney General

/s/ Joseph J. Saunders
Joseph J. Saunders

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

/s/ Paul A. Owens
Paul A. Owens
Attorneys, Department of Justice

FOR THE DEFENDANT:

/s/ William J. Hughes, Jr.
William J. Hughes, Jr.

/s/ Herbert A. Bergson
Herbert A. Bergson

/s/ Herbert Borkland
Herbert Borkland

U.S. v. CENTRAL CHARGE SERVICE, INC.

Civil No.: 2259-60

Year Judgment Entered: 1962

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action No. 2259-60
CENTRAL CHARGE SERVICE, INC., Defendant.	)	Filed: March 19, 1962

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on July 18, 1960, the defendant, Central Charge Service, Inc., having appeared and filed its answer to such complaint denying the substantive allegations thereof; and the parties hereto, 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 admission by any of the parties hereto 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 parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted under Section 3 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce from unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Defendant" means Central Charge Service, Inc., a corporation organized and existing under the laws of the State of Delaware;

(B) "Member merchant" means a person who has contracted with a credit company for participation in a central credit service plan;

(C) "Customer" means a person who uses charge account facilities made available at retail stores affiliated with a credit company offering a central credit service plan;

(D) "Central credit service plan" means a service offered by credit companies to member merchants and customers pursuant to which a member merchant agrees to sell and the credit company agrees to purchase, at stipulated discounts from face value, accounts receivable arising from the purchase of merchandise or services from the member merchant by customers whose credit has been approved by the credit company; such customers are entitled to purchase merchandise or services at any of the member merchants; after purchasing such accounts receivable from the member merchants the credit company assumes the risk and responsibility for billing and collecting such accounts directly from the customers;

(E) "Accounts receivable" means those assets of a member merchant consisting of the obligations (usually evidenced by a sales slip signed by the customer) of a customer to pay for merchandise or services purchased on credit;

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

III

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

IV

(A) The defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, furthering or claiming any rights under, reviving, adopting or enforcing any provisions of any agreement relating to a central credit service plan which are inconsistent with any of the provisions of this Final Judgment;

(B) The defendant is ordered and directed to delete from all central credit service plan agreements, and is prohibited from inserting in any such agreement hereafter entered into, any provision that its central credit service plan shall be exclusive in character or that the terms and conditions of the agreement will be affected in the event the member merchant contracts with or has contracted with a competing central credit service plan.

V

The defendant is enjoined and restrained from, directly or indirectly:

(A) Adopting, following, maintaining, furthering or enforcing any policy, plan or course of conduct of accepting or retaining as member merchants only merchants who do not do business with or have not done business with any other central credit service plan company;

(B) Conditioning the making or continuing of, or the terms or conditions of, any central credit service plan agreement upon a member merchant's refraining from entering into, or limiting or agreeing to limit the extent of doing business under, any central credit service plan agreement with any other person;

(C) Conditioning the making or continuing of any central credit service plan agreement upon a member merchant selling to the defendant any specified dollar amount or any specified fractional share or percentage of such member merchant's accounts receivable arising from the sale of goods or service on credit;

(D) Canceling or terminating the affiliation or membership of any member merchant with the defendant's central credit service plan or refusing to do business with any person because of the fact that or the extent to which he does business with any competitor of defendant;

(E) Entering into, adhering to, or claiming any rights under any agreement for the purpose or with the effect of hindering, limiting or interfering with the entrance into, participation in, or advertising affiliation with any central credit service plan by any person, either as a member merchant or otherwise.

VI

The defendant is ordered and directed within thirty (30) days from the date of entry of this Final Judgment, to mail a copy of this Final Judgment, or the substance thereof approved as to form and content by plaintiff herein, to each member merchant with whom it has entered into a central credit service plan agreement.

VII

The defendant is ordered and directed, within sixty (60) days from the date of entry of this Final Judgment, to file with the Clerk of this Court, with a copy to the plaintiff herein, an affidavit setting forth the fact and manner of compliance with subsection (B) of Section IV hereof and with Section VI hereof.

VIII

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

(A) Reasonable access, during the office hours of the defendant, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, relating to any of the matters contained in this Final Judgment; and

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

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

Dated: March 19, 1962

JOHN J. SIRICA
United States District Judge

U.S. v. GREATER WASHINGTON SERVICE STATION ASSOCIATION, INC.

Civil No.: 2053-62

Year Judgment Entered: 1962

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice Washington, D. C. Plaintiff,	
v.	Civil Action
GREATER WASHINGTON SERVICE STATION ASSOCIATION, INC.,	No. 2053-62
Defendant.	Filed: July 30, 1962

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 27, 1962, and the plaintiff and the defendant, by their respective attorneys, 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 with respect to any such issue, and the Court having considered the matter and being duly advised,

NOW, THEREFORE, upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II

As used in this Final Judgment:

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

(B) "Metropolitan Washington Area" shall mean the geographic area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties and the cities of Alexandria and Falls Church in Virginia;

(C) "Service Station" shall mean a person engaged primarily in the retail selling or furnishing of gasoline and related petroleum products, tires, batteries, automotive accessories and automotive services to owners and operators of motor vehicles, principally automobiles;

(D) "Automotive Services" shall include the following services: automobile washing, cleaning, polishing and waxing; battery charging (at station or road service); brake and clutch adjustments; checking of pressure systems and radiator flushing; installation of anti-freeze, thermostats, fan belts, battery cables, sealed beam lights, filter cartridges, shock absorbers, spare tires, tubes and tags; general lubrication of automobiles, including greasing ball joints, draining and refilling automatic transmissions, servicing speedometer cables and universal joints, repacking front wheel bearings and cleaning and refilling oil bath filters; cleaning and adjusting spark plugs; mounting and dismounting tire chains; mounting, rotating and repairing tires (at station or road service); and wheel balancing.

III

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

IV

The defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining or furthering any contract,

combination, agreement, undertaking, by-law, rule, regulation, plan or program to fix, maintain, establish, stabilize or make uniform prices at which automotive services are offered to the public in the Metropolitan Washington Area.

V

The defendant is enjoined and restrained from publishing or distributing any schedules, lists, bulletins or charts containing or showing prices for the sale or furnishing of automotive services in the Metropolitan Washington Area.

VI

The defendant is ordered and directed:

(A) Within thirty (30) days after the entry of this Final Judgment to serve upon each of its present members notice of said entry with a verbatim copy of Sections III, IV and V of this Final Judgment and to file with this Court and to serve upon the attorneys for the plaintiff herein, proof by affidavit of such service:

(B) Within three (3) months after the entry of this Final Judgment to amend its charter or by-laws to incorporate therein the provisions of Sections III, IV and V of this Final Judgment and to require as a condition of membership or tenure of office that all present and future members and officers abide by and be bound thereby;

(C) To furnish to all its present and future members a copy of its charter or by-laws as amended in accordance with subsection (B) of this Section VI.

VII

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 the defendant, made at 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; (B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters; and (C) upon such request, the defendant shall submit reports in writing in respect to any such matters as may from time to time be reasonably 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 provided by law.

VIII

Jurisdiction of this cause 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, for the modification or termination of any provision thereof, for the enforcement of compliance therewith, and for punishment of violations thereof.

Dated: July 30, 1962

Edward A. Tamm
United States District Judge

U.S. v. AMERICAN INSTITUTE OF ARCHITECTS

Civil No.: 992-72

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. THE AMERICAN INSTITUTE OF ARCHITECTS, Defendant.	Civil Action No. 992-72 Filed: May 17, 1972 Entered: June 19, 1972

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its complaint herein on May 17, 1972 and plaintiff and defendant, by their respective attorneys, having each 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 evidence or admission by any party with respect to any issue of fact or law herein:

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

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, as

amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

The provisions of this Final Judgment shall apply to the defendant and to the defendant's state organizations and chapters in the United States and territories thereof, to the defendant's officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

III

The defendant is enjoined and restrained from adopting any plan, program or course of action which prohibits members of the defendant from at any time submitting price quotations for architectural services.

IV

The defendant is ordered and directed, within 60 days from the date of entry of this Final Judgment, to amend its Standards of Ethical Practice, rules, bylaws, resolutions, and any other policy statements to eliminate therefrom any provision which prohibits or limits the submission of price quotations for architectural services by members of the defendant or which states or implies that the submission of price quotations for architectural services by members of the defendant is unethical, unprofessional, or contrary to any policy of the defendant.

V

The defendant is enjoined and restrained from adopting or disseminating, in any of its publications or otherwise, any Standard of Ethical Practice, rule, bylaw, resolution or policy statement which prohibits or limits the submission of price quotations for architectural services by members of the defendant or which states or implies that the submission of price quotations for architectural services by members of the defendant is unethical, unprofessional, or contrary to any policy of the defendant.

VI

The defendant is ordered and directed, within 60 days from the entry of this Final Judgment, to send a copy of this Final Judgment to each member, state organization and chapter in the United States and territories thereof, and to cause the publication of this Final Judgment in the AIA Journal. The defendant is further ordered and directed, for a period of five years following the date of entry of this decree, to send a copy of this Final Judgment to each new member and to cause the publication in its Standards of Ethical Practice of a statement that the submission of price quotations for architectural services is not considered an unethical practice. The text of such statement shall be first approved by plaintiff, or, failing such approval, by the Court.

VII

Defendant is ordered to file with the Plaintiff, on the anniversary date of the entry of this Final Judgment for a

period of five years, a report setting forth the steps it has taken during the prior year to comply with the provisions of this Final Judgment.

VIII

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to defendant made to its principal office be permitted, subject to any legally recognized privilege:

(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 control of defendant relating to any of the matters contained in this Final Judgment; and

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

For the purpose of securing compliance with this Final Judgment, defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating 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 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.

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

Dated: June 19, 1972

/s/ CHARLES RICHEY
United States District Judge

U.S. v. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Civil No.: 1091-72

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, INC., Defendant.	Civil No. 1091-72 Filed: June 1, 1972 Entered: July 6, 1972

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its complaint herein on June 1, 1972, the defendant having filed its answer and plaintiff and defendant, by their respective attorneys, having each 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 evidence or admission by any party with respect to any issue of fact or law herein:

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

ORDERED, ADJUDGED AND DECREED as follows:

I

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

II

The provisions of this Final Judgment shall apply to the defendant, to the defendant's officers, directors,

agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

III

The defendant is enjoined and restrained from adopting any plan, program or course of action which prohibits members of the defendant from submitting price quotations for accounting services to any person seeking accounting services.

IV

Rule 3.03 of the Code of Professional Ethics of the defendant which provides: "A member or associate shall not make a competitive bid for a professional engagement. Competitive bidding for public accounting services is not in the public interest, is a form of solicitation, and is unprofessional." is hereby declared null and void, and the defendant is ordered and directed, within 60 days from the entry of this Final Judgment, to delete the foregoing provision from its Code of Professional Ethics, and also to delete from its Code of Professional Ethics, rules, bylaws, resolutions, and any other policy statements any other provision which prohibits or limits the submission of price quotations for accounting services by members of the defendant to any person seeking accounting services or which states or implies that such submission of price quotations for accounting services is unethical, unprofessional, or contrary to any policy of the defendant.

V

The defendant is enjoined and restrained from adopting or disseminating, in any of its publications or otherwise, any Code of Ethics, rule, bylaw, resolution or policy statement which prohibits or limits the submission of price

quotations for accounting services by members of the defendant to persons seeking accounting services or which states or implies that such submission of price quotations for accounting services is unethical, unprofessional, or contrary to any policy of the defendant.

VI

The defendant is ordered and directed, within 60 days from the entry of this Final Judgment, to send a copy of this Final Judgment to each state society and each State Board of Accountancy in the United States and territories thereof, and to cause the publication of this Final Judgment in The CPA and send a copy thereof to each member of the defendant. The defendant is further ordered and directed, for a period of five years following the date of entry of this decree, to send a copy of this Final Judgment to each new member and to state in any publication of its Code of Ethics that the submission of price quotations for accounting services to persons seeking such services is not considered an unethical practice. The text of such statement shall be first approved by plaintiff, or, failing such approval, by the Court.

VII

Defendant is ordered to file with the Plaintiff on the anniversary date of the entry of this Final Judgment for a period of five years, a report setting forth the steps it has taken during the prior year to comply with the provisions of this Final Judgment.

VIII

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written

request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to defendant made to its principal office be permitted, subject to any legally recognized privilege:

(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 control of defendant relating to any of the matters contained in this Final Judgment; and

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

For the purpose of securing compliance with this Final Judgment, defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating 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 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.

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

/s/ John Lewis Smith, Jr.
United States District Judge

Date: July 6, 1972

U.S. v. PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

Civil No.: 77-197

Year Judgment Entered: 1978

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. PAN AMERICAN WORLD AIRWAYS, INC.; TRANS WORLD AIRLINES, INC.; and LUFTHANSA GERMAN AIRLINES (Deutsche Lufthansa Aktiengesellschaft), Defendants.	Civil Action No. 77-197 FINAL JUDGMENT Filed: December 9, 1977 Entered: March 9, 1978 Re: DEFENDANT LUFTHANSA GERMAN AIRLINES

Plaintiff, United States of America, having filed its complaint herein on February 3, 1977, and the Plaintiff and the Defendant Lufthansa German Airlines (Deutsche Lufthansa Aktiengesellschaft) by their respective attorneys, having consented to the entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by either party with respect to any issue of fact or law herein:

NOW, THEREFORE, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of both parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED, as follows:

I.

This Court has jurisdiction of the subject matter herein and the parties consenting hereto. The complaint states a claim upon which relief may be granted against

the Defendant under Section 1 of the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

(a) "CAB" means the Civil Aeronautics Board.

(b) "Domestic air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of the United States or of any state, territory, or possession thereof.

(c) "Foreign air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of any country other than the United States or any state, territory, or possession thereof.

(d) "International air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(e) "Person" means any natural person, firm, partnership, association, corporation, or any other business or legal entity.

III.

The provisions of this Final Judgment are applicable to the Defendant herein and shall also apply to each of

Defendant's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

The Defendant is enjoined and restrained from directly or indirectly engaging or participating in, entering into, adhering to, implementing, maintaining, enforcing, or claiming any right under any contract or agreement with any domestic or foreign air carrier to raise, fix, determine, maintain, stabilize, or adhere to any fare level or tariff condition for international air transportation:

Provided, however, that this Section IV shall not apply to any person affected by any order made by the CAB pursuant to Sections 408, 409 or 412 of the Federal Aviation Act (49 U.S.C. §§ 1378, 1379, 1382) insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

V.

The Defendant is ordered and directed:

(a) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each corporate officer, director, employee an agent having responsibilities in connection with or authority over the establishment of international air transportation fare levels or tariff conditions, advising them of its and their obligations under this Final Judgment. This program

shall include, but is not necessarily limited to, the inclusion, in an appropriate company manual or internal memorandum, of this Final Judgment in whole or in part or an explanation thereof, and a statement of corporate compliance policy thereunder;

(b) To undertake a good faith effort to cause to be established a reasonable program for dissemination of and education as to this Final Judgment, involving each corporate officer, director, employee and agent of its subsidiary Condor Flugdienst G.m.b.H. having responsibilities in connection with or authority over the establishment of international air transportation fare levels or tariff conditions; and

(c) To furnish to Plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by Plaintiff, on or about the anniversary date of this Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps Defendant has taken during the preceding year to discharge its obligations under subparagraphs (a) and (b) of this Section V and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VI.

The Defendant is ordered and directed within sixty (60) days after the entry of this Final Judgment to send by certified mail a copy of this Final Judgment to the Condor Flugdienst G.m.b.H. agent designated by appointment or law

to receive service of process, and within ten (10) days thereafter to furnish Plaintiff with the certified mail receipt which represents compliance with this provision.

VII.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(a)e Duly authorized representatives of the Departmente of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to its principal ffice, be permitted:

(1)e Access during office hours of Defendant, which may ha e counsel present, to inspect and copy all books, ledgers, accou ts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendant, and without restraint or interference from it, to interview its officers, directors, employees and agents, each of whom may have counsel present, regarding any such matters:

Provided, however, that subparagraph (a) of this Section VII shall not apply when:

(1)e The sources of information describede in this subparagraph (a) are located within the Federal Republic of Germany;

(2) Compliance with this subparagraph (a) is prohibited by the laws of the Federal Republic of Germany; and

(3) Defendant has exercised good faith efforts to obtain permission of the appropriate authorities but such permission has not been secured.

(b) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal United States office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding

(other than a grand jury proceeding) to which Defendant is not a party.

VIII.

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

IX.

Entry of this Final Judgment is in the public interest.

March 9, 1978
Date

/s/ Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. PAN AMERICAN WORLD AIRWAYS, INC.; TRANS WORLD AIRLINES, INC.; and LUFTHANSA GERMAN AIRLINES (Deutsche Lufthansa Aktiengesellschaft), Defendants.	Civil Action No. 77-197 FINAL JUDGMENT Filed: December 9, 1977 Entered: March 9, 1978 Re: Defendants Pan American World Airways, Inc. and Trans World Airlines, Inc.

Plaintiff, United States of America, having filed its complaint herein on February 3, 1977, and the Plaintiff and the Defendants Pan American World Airways, Inc., and Trans World Airlines, Inc., by their respective attorneys, having consented to the entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

NOW, THEREFORE, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED, as follows:

I.

This Court has jurisdiction of the subject matter herein and the parties consenting hereto. The complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

(a) "CAB" means the Civil Aeronautics Board.

(b) "Domestic air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of the United States or of any state, territory, or possession thereof.

(c) "Foreign air carrier" means any person directly engaged in international air transportation who is a citizen of or is created or organized under the laws of any country other than the United States or any state, territory, or possession thereof.

(d) "International air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(e) "Person" means any natural person, firm, partnership, association, corporation, or any other business or legal entity.

III.

The provisions of this Final Judgment are applicable to both Defendants herein and shall also apply to each of said Defendant's officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with them who

shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

Each Defendant is enjoined and restrained from directly or indirectly engaging or participating in, entering into, adhering to, implementing, maintaining, enforcing, or claiming any right under any contract or agreement with any domestic or foreign air carrier to raise, fix, determine, maintain, stabilize, or adhere to any fare level or tariff condition for international air transportation:

Provided, however, that this Section IV shall not apply to any person affected by any order made by the CAB pursuant to Sections 408, 409 or 412 of the Federal Aviation Act (49 U.S.C. §§ 1378, 1379, 1382) insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

V.

Each Defendant is ordered and directed:

(a) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each corporate officer, director, employee and agent having responsibilities in connection with or authority over the establishment of international air transportation fare levels or tariff conditions, advising them of its and their obligations under this Final Judgment. This program shall include, but is not necessarily limited to, the inclusion, in an appropriate company manual or internal memorandum, of this Final Judgment in whole or in part or an explanation thereof, and a statement of corporate compliance policy thereunder; and

(b) To furnish to Plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by Plaintiff, on or about the anniversary date of this Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps the Defendant has taken during the preceding year to discharge its obligations under subparagraph (a) of this Section V and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VI.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to either Defendant made to its principal office, be permitted:

(1) Access during office hours of such Defendant, which may have counsel present, to inspect and copy 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, directors,

employees and agents of such Defendant, each of whom may have counsel present, regarding any such matters.

(b) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to either Defendant's principal office, such Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VI 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 course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by either Defendant to Plaintiff, such Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that Defendant is not a party.

VII.

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

VIII.

Entry of this Final Judgment is in the public interest.

March 9, 1978
Date

/s/ Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

U.S. v. NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Civil No.: 2412-72

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Society of Professional Engineers., U.S. District Court, D. District of Columbia, 1978-2 Trade Cases ¶62,226, (Aug. 3, 1978)

United States v. National Society of Professional Engineers.

1978-2 Trade Cases ¶62,226. U.S. District Court, D. District of Columbia, Civil Action No. 2412-72, Filed August 3, 1978.

Case No. 2287, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Professional Services: Engineers: Ban on Fee Bidding: Litigated Final Judgment.– An association of professional engineers was barred by a final judgment from participating, adopting or disseminating any plan against competitive fee bidding. The association was ordered to amend its rules containing any references as to fee bidding prohibitions and fee schedules or guides. Affiliation to the association must be refused, under the provisions of the judgment, to any engineering society that prohibits in any way competitive fee bidding and a certification to that effect will be considered a prerequisite to affiliation.

For plaintiff: Richard J. Favretto, Washington, D. C. **For defendant:** Lee Loevinger, Washington, D. C.

Final Judgment

Smith, D. J.: Upon consideration of the previous proceedings and record herein, the Opinions of the Court of Appeals [1977-1 Trade Cases ¶61,317] and the Supreme Court [1978-1 Trade Cases ¶61,990] in this matter, the instructions of the Court of Appeals to modify in part the Judgment entered herein on November 26, 1975 [1975-2 Trade Cases ¶60,604], and the arguments of the parties concerning the withdrawal of the Court's previous Judgment and the entry of a modified Final Judgment, it is by the Court this 3rd day of August, 1978

Ordered, Adjudged, and Decreed that the Judgment entered herein on November 26, 1975, is withdrawn; and it is further

Ordered, Adjudged, and Decreed as the Final Judgment of the court that:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and the parties hereto.

II

[*Sherman Act Sec. 1 Violation*]

The defendant is found to have violated Section 1 of the Sherman Act (15 U. S. C. §1) by combining and conspiring with its members and state societies to unreasonably restrain interstate trade and commerce in the sale of engineering services.

III

[*Applicability*]

The provisions of this Final Judgment which apply to the defendant shall also apply to the defendant's officers, directors, agents, employees, succesors and assigns, and to all other persons in active concert or participation with the defendant who receive notice of this Final Judgment by personal service or otherwise.

IV

[*Ban on Fee Bidding by Engineers*]

The defendant is enjoined and restrained from participating in or adopting any plan, program or course of action which in any manner prohibits, discourages or limits members of the defendant from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise has the purpose or effect of suppressing or eliminating competition based upon engineering fees among members of the defendant.

V

[*Amendment of Association's Rules*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, constitution, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom any provisions, including Sections 9(a) [formerly Section 9(b)] and 11(c) of its Code of Ethics and any references thereto, which in any manner prohibit, discourage or limit the submission of price quotations for engineering services by members of the defendant or which state or imply that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VI

[*Fee Schedules*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to amend its Code of Ethics, policy statements, opinions of its Board of Ethical Review, manuals, handbooks, rules, by-laws, resolutions and any other of its statements, guidelines or publications to eliminate therefrom all references to engineering fee schedules or guides published by any engineering society. The defendant is further enjoined and restrained from adopting, endorsing or promoting any engineering fee schedule or guide.

VII

[*Dissemination of Prohibited Activities*]

The defendant is enjoined and restrained from adopting or disseminating in any of its publications or otherwise, any Code of Ethics, opinion of its Board of Ethical Review, policy statement, rule, by-law, resolution or guideline which in any manner prohibits, discourages or limits the submission of price quotations for engineering services by members of the defendant or which states or implies that the submission of price quotations for engineering services or that competition by members of the defendant based upon engineering fees is unethical, unprofessional, contrary to the public interest or contrary to any policy of the defendant.

VIII

[*Notice*]

The defendant is ordered and directed, within 60 days of the effective date of this Final Judgment, to send a copy of this Final Judgment to each of its affiliated state engineering societies and local chapters and to each State Board of Engineering Registration in the United States and territories thereof, and to cause the publication of this Final Judgment in the magazine *Professional Engineer,* in such a fashion and as prominently as feature articles

are regularly published in said magazine, and to send a copy of such magazine to each member of NSPE. The defendant is further ordered and directed to send a copy of this Final Judgment to each new members of NSPE and to state prominently in any publication of its Code of Ethics the following: that, by order of the Court, Section 11(c) of the NSPE Code of Ethics prohibiting competitive bidding, and all policy statements, opinions, rulings or other guidelines interpreting its scope, have been rescinded as unlawfully interfering with the legal right of engineers, protected under the antitrust laws, to provide price information to prospective clients; and that nothing contained in the NSPE Code of Ethics, policy statements, opinions, rulings or other guidelines prohibits the submission of price quotations or competitive bids for engineering services at any time or in any amount. The text of such statement shall first be approved by the plaintiff.

IX

[*Affiliation*]

The defendant is ordered and directed to revoke the NSPE charter of and to refuse NSPE affiliation to:

(A) any state engineering society which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees; and,

(B) any state engineering society which has within its organization any local chapter which in any manner prohibits, discourages or limits its members from submitting price quotations for engineering services at such times and in such amounts as they may choose or which otherwise participates in or adopts any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among its members based upon engineering fees.

For the purpose of carrying out the provisions of this section, the defendant is ordered and directed to require, as a prerequisite for an NSPE charter or continued NSPE affiliation of any state engineering society, that such state engineering society submit to the defendant within 60 days of the effective date of this Final Judgment a written certification by an official of such state engineering society that neither it nor any of its local chapters in any manner prohibit, discourage or limit their members from submitting price quotations for engineering services at such times and in such amounts as they may choose and neither it nor any of its local chapters participate in or have any plan, program or course of action which has the purpose or effect of suppressing or eliminating competition among their members based upon engineering fees. The defendant is further enjoined and restrained from granting or continuing an NSPE charter or NSPE affiliation to any state engineering society which does not comply with the defendant's request for the certification required herein. The defendant shall retain each such certification during the period of the NSPE charter or NSPE affiliation of the state engineering societies submitting it.

X

[*Reports*]

The defendant is ordered and directed to file with the plaintiff 90 days from the effective date of this Final Judgment and on each anniversary date of the effective date of this Final Judgment for a period of five years, a report setting forth the steps it has taken to comply with the provisions of this Final Judgment.

XI

[*Compliance*]

For the purpose of securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, 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 the defendant relating to any of the 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 the officers and employees of said defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating 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 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 wtih this Final Judgment, or as otherwise required by law.

XII

[*Costs*]

The plaintiff shall recover the costs of this action from the defendant.

XIII

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of ordering other specific and further relief herein as the Court upon application of the plaintiff may determine to be necessary or appropriate and consistent with the Opinion of the Court and its Findings of Fact and Conclusions of Law. Jurisdiction is also retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time for any further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained therein or subsequently ordered upon the application of the plaintiff.

U.S. v. WHEELABRATOR-FRYE INC., ET AL.

Civil No.: 80-2346

Year Judgment Entered: 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WHEELABRATOR-FRYE INC., and PULLMAN INCORPORATED, Defendants.	CIVIL ACTION NO.: 80-2346 FILED: September 15, 1980 ENTERED: April 29, 1981

FINAL JUDGMENT

Plaintiff United States of America, having filed its complaint herein on September 15, 1980, and defendants Wheelabrator-Frye Inc. ("WFI") and Pullman Incorporated ("Pullman") having appeared, and plaintiff and 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 against, or any admission by, any party with respect to any issue of fact or law herein;

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 parties hereto, it is hereby Ordered, Adjudged and Decreed:

I

This Court has jurisdiction over the subject matter herein and the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II

Definitions

As used in this Final Judgment:

A. "Rust Chimney" means the Rust Chimney Division of the Rust Engineering Company, a subsidiary of WFI, and all assets of the Division including leaseholds, executory contracts, accounts receivable, engineering drawings, customer lists, goodwill and physical assets; and shall include the exclusive right to use the name "Rust Chimney" for a period of three years from the date of sale of Rust Chimney, provided that such name is used in conjunction with the name of the purchaser, and provided further that WFI shall not use the name "Rust Chimney," for a period of five years from the date of sale of Rust Chimney.

B. "Metallurgical" means the Metallurgical Division of Whiting Corporation, a subsidiary of WFI, and all assets of the Division including executory contracts, accounts receivable, inventory, work-in-process, engineering drawings, customer lists, goodwill, patents, trademarks and physical assets; and shall include the exclusive right to use the name "Whiting Furnace" for a period of three years from the date of sale of Metallurgical in connection with the sale of industrial furnaces, provided that such name is used in conjunction with the name of the purchaser, and provided further that WFI shall not use the name "Whiting Furnace," for a period of five years from the date of sale of Metallurgical.

C. "Industrial Furnace" means the Industrial Furnace Group of Pullman-Swindell Division, a division of Pullman, and

all assets of the Group including executory contracts, accounts receivable, engineering drawings, customer lists, licenses, goodwill and physical assets; and shall include the exclusive right to use the names "Swindell Furnace" and "Swindell-Dressler Furnace" for a period of three years from the date of sale of Industrial Furnace, in connection with the sale of industrial furnaces, provided that such names are used in conjunction with the name of the purchaser, and provided further that WFI shall not use the names "Swindell Furnace" or "Swindell-Dressler Furnace," for a period of five years from the date of sale of Industrial Furnace.

III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, successors and assigns, and to each of their officers, directors, agents, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

A. Within 12 months of the date of WFI's acquisition of the engineering and construction business of Pullman or the date of the merger of Pullman into WFI, whichever shall first occur (collectively the "Date of Acquisition"), WFI shall divest itself of:

(1) Rust Chimney, and

(2) Either Metallurgical or Industrial Furnace, at WFI's option.

B. Divestiture shall be made only to a person or persons who represent to the Court that it or they intend to continue in the divested business and have the capacity to do so.

C. WFI shall promptly report the details of any proposed divestiture, including relevant underlying documentation, to the plaintiff. Plaintiff shall have the right to make reasonable requests for additional information relating thereto. Following the receipt of any plan of divestiture and such additional information, plaintiff shall have 30 days in which to object to the proposed divestiture by submitting written notice to WFI. If plaintiff objects to the proposed plan of divestiture, the proposed divestiture shall not be consummated unless plaintiff withdraws its objection or the Court gives its approval to the plan. If plaintiff does not object, the plan shall be submitted to the Court for approval. If WFI shall have submitted a pending plan of divestiture of a business prior to the close of the 12-month period under subsection A, the time period for divestiture of such business shall be extended until the Court acts upon such plan and any approved sale is consummated.

D. If WFI shall not have divested Rust Chimney within 10 months after the Date of Acquisition, plaintiff and WFI shall promptly initiate the selection of a trustee (the "Rust Chimney Trustee") for appointment by the Court. If WFI shall not have divested Metallurgical or Industrial Furnace within 10 months after the Date of Acquisition, plaintiff and WFI shall promptly initiate the selection of a trustee (the "Furnace Trustee") for appointment by the Court. The Rust Chimney Trustee and the Furnace Trustee shall not be the same

person. The Court shall appoint such trustees from a list of not more than 6 persons nominated one-half by plaintiff and one-half by WFI for each trustee position.

E. If WFI shall not have divested Rust Chimney within the time period for divestiture, the Rust Chimney Trustee shall have the power and authority to sell Rust Chimney. If, within such time period, WFI shall not have divested either Metallurgical or Industrial Furnace, the Furnace Trustee shall have the power and authority to sell either Metallurgical or Industrial Furnace, but not both, at the Furnace Trustee's option. Any sale by either trustee shall be in accordance with the provisions of this Final Judgment. Each trustee shall have full and complete access to the books, records and facilities of the business for which he has the duty to sell, and WFI shall develop such financial information relevant to the assets to be divested as each trustee may reasonably request.

F. The power and authority of the trustee or trustees to sell shall be at whatever price and terms obtainable. The trustee or trustees shall serve at the cost and expense of WFI on such terms and conditions as this Court may set, and shall account for all monies derived from the sale and all expenses incurred. After approval by this Court of the account of each trustee, including fees for his or her services, all remaining monies shall be paid to WFI and that trust shall be terminated.

G. Divestiture hereunder shall be complete and final, provided that WFI may retain a security interest to secure payment of any unpaid portion of the purchase price or

to secure performance of the contract of sale. If WFI reacquires any previously divested business more than 12 months after the Date of Acquisition, it shall immediately provide written notice to plaintiff and the Court. The Court shall thereupon appoint a trustee, in accordance with subsection D, to sell any such reacquired business in accordance with subsections D, E and F.

H. Until the Date of Acquisition, Pullman shall continue the normal business operations of Industrial Furnace and maintain its personnel, assets and working capital at a level commensurate with its business activity, but in no event shall Pullman permit such assets or working capital (adjusted for inflation) to fall below the levels on December 31, 1979, or the level of such personnel to fall below the average during the 12 months preceding September 1, 1980.

I. WFI shall continue the normal business operations of Rust Chimney separately from the Pullman chimney business until Rust Chimney is divested and of Metallurgical and Industrial Furnace (upon its acquisition by WFI) separately from each other until one or the other is divested, and shall during such time period maintain the personnel, assets and working capital of each business at a level commensurate with its level of business activity, but in no event shall WFI permit such assets or working capital (adjusted for inflation) to fall below the level on December 31, 1979, or the number of such personnel to fall below the average level during the 12 months preceding September 1, 1980.

J. WFI shall not employ without the consent of plaintiff any person who is an employee of the divested

business at the time of the divestiture for a period of three years from the date of divestiture. Such consent shall not be unreasonably withheld.

V

A. WFI shall maintain records of its efforts to sell Rust Chimney, Metallurgical and Industrial Furnace, including identification of any persons to whom each business has been offered, the terms and conditions of each offer to sell, the identification of any persons expressing interest in purchasing each business, and the terms and conditions of each offer to purchase.

B. Every three months from entry of this Final Judgment until the divestiture has been completed, WFI shall file with this Court and serve on plaintiff an affidavit together with relevant documentation (including the names of parties who have been contacted) as to the fact and manner of compliance with Section IV of this Final Judgment.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege:

A. Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to WFI or Pullman made to its principal office, be permitted

(1) Access during the office hours of the defendants, which may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants relating to any matters contained in this Final Judgment; and

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

B. No information or documents obtained by the means provided in Sections V and VI hereof 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 course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by defendants to plaintiff, WFI or Pullman represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to said defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VII

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

VIII

Entry of this Final Judgment is in the public interest.

Barrington Parker
District Judge

Entered: 4/29/81