

U. S. v. THE CEMENT SECURITIES COMPANY.

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

In Equity No. 7295.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

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

FINAL DECREE.

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

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

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

(A) The Cement Securities Company, which owns all of the capital stock of The United States Portland Cement Company, having a plant for the manufacture of Portland cement at Concrete, Colorado, with reasonable diligence and subject to approval by the court, shall sell and dispose of its entire interest in said plant, including all equipment, and all land now owned by said United States Company in Sections 15, 21, 22, 23, and 26, Township 19 S., Range 68 W., and one-half interest in 600 acres of land containing raw material deposits (situated in the E. $\frac{1}{2}$ of Sec. 13 and the S. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 12, Township 19 S., Range 68 W., and the W. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of Sec. 18, Township 19 S., Range 67 W.), to a person, firm, or corporation, intending to con-

tinue the business. The purchaser shall not be a defendant nor controlled by or affiliated with The Cement Securities Company or any of its subsidiary corporations, or any officer, director or agent thereof; and if such purchaser be a corporation, none of the defendants, either corporate or individual, and no officer, director or stockholder of The Cement Securities Company or any of its subsidiary corporations shall have any substantial interest in the stock or other securities of such purchaser; and neither The Cement Securities Company nor any of its subsidiary corporations shall have any officers or directors in common with such purchaser.

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

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

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

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

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

(D) In the event that The Cement Securities Company

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

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

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

- (a) To establish uniform mill base prices for their product.
- (b) To establish arbitrary freight basing points other than the points from which shipments are actually made.
- (c) To sell their product f. o. b. point of delivery exclusively.
- (d) To establish uniform charges for bags or uniform credits for bags returned in good condition.
- (e) To establish a uniform rate of discount or uniform terms for payments of bills within a specified period of time.
- (f) To limit the quantity of cement to be shipped to a dealer within a specified period of time.
- (g) To prohibit the diversion or so-called misuse cement sold on specific job contracts.
- (h) To establish and maintain a uniform differential in the price of cement sold to dealers and contractors.
- (i) To fix or suggest the amount of commission or profit dealers should be required to make in sales of cement.
- (j) To regulate or limit the amount of production of cement or the amount of stock to be kept on hand.
- (k) To limit the time within which quotations on cement must be accepted and deliveries made, and to refuse to grant extensions in time of deliveries.
- (l) To make changes in prices effective as of the date quotations are written, to avoid "price tipping."
- (m) To guarantee prices against decline.
- (n) To make uniform charges for bin tests, or to require the purchaser to pay for such tests.
- (o) To divide territory and/or allot business.
- (p) To exchange orders and supply bags for use in that connection.

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

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

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

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

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

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

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

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

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

T. BLAKE KENNEDY,
United States District Judge.

December 13, 1924.