

UNITED STATES OF AMERICA, PLAINTIFF

VS.

SOUTHERN PINE ASSOCIATION; SOUTHERN PINE LUMBER EXCHANGE, A TRADE NAME OF W. S. CLOUD; ANGELINA COUNTY LUMBER CO.; ADAMS-EDGAR LUMBER CO.; ALGER-SULLIVAN LUMBER CO., INC.; BROOKS-SCANLON CORPORATION; CADDO RIVER LUMBER COMPANY; W. T. CARTER & BROTHER, A PARTNERSHIP; CENTRAL LUMBER CO.; CROSBY LUMBER & MFG. CO.; GOODYEAR YELLOW PINE CO.; CROWELL & SPENCER LUMBER CO.; LTD.; MERIDIAN LUMBER CO.; DIERKS LUMBER & COAL CO.; EXCHANGE SAWMILLS SALES CO.; LOUISIANA CENTRAL LUMBER CO.; LOUISIANA LONG LEAF LUMBER CO.; FORDYCE-CROSSETT SALES CO.; FORDYCE LUMBER CO.; CROSSETT LUMBER CO.; JACKSON LUMBER CO.; FROST LUMBER INDUSTRIES, INC.; JASPER COUNTY LUMBER CO.; UNION SAW MILL CO.; GREEN LUMBER CO.; INC.; KIRBY LUMBER CORPORATION; T. R. MILLER MILL CO.; NEAL LUMBER & MFG. CO.; NATALBANY LUMBER CO.; LTD.; DENKMANN LUMBER CO.; OZAN LUMBER CO.; PEAVY-MOORE LUMBER CO., INC.; PEAVY-WILSON LUMBER CO.; PUTNAM LUMBER CO.; SABINE LUMBER CO.; TEXAS LONG LEAF LUMBER CO.; W. T. SMITH LUMBER CO.; SOUTHERN PINE LUMBER CO.; SUMTER LUMBER CO., INC.; TREMONT LUMBER CO.; URANIA LUMBER CO., LTD.; WIER LONG LEAF LUMBER CO.; AND TEMPLE LUMBER CO., DEFENDANTS.

JUDGMENT.

This cause having come on to be heard the 21st day of February 1940, and the defendants having waived process and service and having appeared herein;

And counsel for the plaintiff and for the defendants having consented to the making and entering of this judgment,

Now, therefore, without taking any testimony or evidence and in accordance with said consent of counsel, it is hereby ordered, adjudged, and decreed as follows:

UNITED STATES OF AMERICA v. SOUTHERN PINE ASSOCIATION, ET AL., DEFENDANTS.
IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

I

1. That the Court has jurisdiction of the subject matter hereof and of all the parties hereto; that the complaint herein states separate causes of action under Sections 1 and 2, respectively, of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts amendatory thereof and supplemental thereto.

II

2. That the defendant, Southern Pine Association, hereinafter designated as SPA, shall accomplish a separation of all grading rules, standardization, inspection, and grade-marking activities, on the one hand, from any and all other activities carried on by SPA, on the other hand. Said grading, standardization, inspection, and grade-marking activities shall thereafter be carried on only by and through a separate and autonomous bureau of said SPA to be newly created and to be known and designated as Southern Pine Inspection Bureau. The services and activities of said Bureau will be at all times available on equal terms to all manufacturers of southern pine lumber without favor or discrimination and without any requirement for joining or otherwise subscribing to said SPA or to any other trade association, or supporting any service or activity other than those of grading, standardization, grade-marking, and inspection to be carried on by the Bureau aforesaid.

3. The affairs of the Bureau shall be controlled by a Board of Governors or other such governing body, in any event to be composed of one representative from each State producing a substantial quantity of southern pine lumber, viz: Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Oklahoma, elected by the subscribers to said Bureau on a basis of the volume of actual shipments by such subscribers, together with one representative from each bona fide trade association in

the southern pine industry organized and functioning at least two years prior to the time of petitioning said Bureau for such representation and undertaking specific programs of trade promotion, research, or other activities on behalf of its members and two-thirds of whose members are subscribers to said Southern Pine Inspection Bureau. Standing committees of the Bureau may be appointed by or with the authority of said Board of Governors from time to time as the Board may deem proper, provided, however, that any trade association having representation on the Board shall have at least one member on each such standing committee.

4. The said Board of Governors or other such governing body shall fix from time to time such charges and fees as are found to be necessary to cover the actual cost, including necessary reserves and provisions for contingencies, of carrying out the functions of said Bureau; provided, however, that said Bureau shall not voluntarily contribute to the financial support of nor pay membership dues in any trade association, and provided, further, that contributions in support of specific activities by any national organization engaged in research, promotion or coordination of lumber grading, standardization, grade-marking or inspection rules and practices on a national basis are not hereby prohibited. Such charges and fees shall be uniformly assessed against subscribers to the services of said Bureau without regard to their membership or nonmembership in any trade association. It shall be the privilege, however, of the members of any trade association within said southern pine manufacturing industry who are also subscribers to the services of said Bureau to arrange to report their shipments and to arrange for the payment of their respective charges and fees due said Bureau through the agency of such trade association, subject, however, to the right of said Bureau to check and verify the accuracy of such reports and payments. The financial records and books of account, recording receipts and disbursements by and the financial status of said Bureau shall be kept separate

and distinct from any and all other financial records and books which may be kept by said Southern Pine Association.

5. The said Board of Governors or other such governing body may also make and adopt such other rules, regulations, and bylaws as they may deem proper from time to time for the regulation and conduct of the affairs of the Bureau and the accomplishment of its objectives and functions as herein set out, provided that all such other rules, regulations, and bylaws so adopted by the said Board of Governors may be changed or amended from time to time, consistent with the provisions of this decree, by a vote of two-thirds of the subscribers to the Bureau, each subscriber voting on the basis hereinabove provided for the election of representatives to the Board of Governors.

6. The matter of making and enforcing rules and regulations for the use of its grade mark, the authorizing or withholding of such use, the revocation of authority for such use, and all other governing powers relating to the formulation and administration of its grading rules, standardization practices, and grade-marking and inspection services shall be solely by and through said Southern Pine Inspection Bureau and not by or through any other agency of said SPA, and all of such matters shall be so handled that fair and nondiscriminatory treatment shall be accorded to all manufacturers of southern pine lumber without any requirement for joining any trade association.

7. There may be made available by said Bureau to all manufacturers of southern pine lumber who may subscribe to the services of said Bureau, whose mills are able to prove their efficiency in grading and manufacturing according to the rules and regulations of the Bureau, and who agree to maintain and thereafter do actually maintain its established standards of size and grade and submit their products to Bureau inspection, both at the mill and upon complaint at destination, an easily applied distinctive Bureau designation signifying Bureau grading

supervision and conformance to its established grading rules and standards, for use by such mills in conjunction with a mill identification number and the grade name.

8. In formulating and administering its grading and grade-marking practice for southern pine lumber, said Bureau shall grade and grade mark lumber not conforming to established size standards for thickness and width with an indication of the actual size in inches for the dimension or dimensions not conforming to the established size standards, and the term "sub-standard" shall not be included in the grade mark applied to such lumber.

9. The management and inspection staff employed by said Bureau, including all inspectors performing grading, grade-marking and inspection services, and all other employees having contracts with the public shall devote their time and attention solely to the activities and duties of their respective positions. While they may promote in proper and legal ways the correct specification of southern pine lumber and the use and interests of the southern pine specie as distinguished from any and all substitutes for lumber and any and all other species of lumber, they shall not promote or advance the use of lumber manufactured by members of or subscribers to any trade association, nor shall their services be utilized in connection with any activity to promote the sale and use of the products of any individual manufacturer or any group or association thereof, nor shall they improperly discredit or attempt to destroy any other reputable and competent lumber-grading and inspection agency.

10. The grading, grade-marking, and inspection services of said Bureau shall be available to all persons and concerns upon payment of the proper charges and fees, as determined in the manner set forth hereinabove; provided, however, that grading, grade-marking, and inspection services shall be made only in accordance with the rules, practices, requirements, and regulations of said Bureau applicable thereto, and provided that no

southern pine lumber shall be graded or inspected gratuitously or in an informal manner for trade promotional or educational purposes.

11. The separation mentioned and set forth in Paragraph II hereof, and the terms of which are set forth above, shall be commenced immediately upon the filing of this decree, and shall proceed with due diligence to completion as early as practicable and so that it will be fully accomplished and completed not later than four (4) months from the date of this decree.

III

12. That the term "said defendant," as hereinafter used, shall mean each and all of the corporations and firms made defendants herein.

13. That the term "representatives," as hereinafter used, shall mean all the directors, officers, employees, servants, and agents of said defendants, or any of them, and all persons acting under, through, by, or in behalf of said defendants, or any of them, or claiming so to act.

14. That the term "program," as hereinafter used, shall mean any agreement, combination, understanding, or concerted action, including, but without limiting the generality of the foregoing, any plan, scheme, device, rules, resolution, policy, or statement thereof, concertedly adopted, indorsed, or maintained.

IV

15. That the said defendants herein, and each of them and their respective representatives, or any of them, be, and they are hereby, perpetually enjoined and restrained—

(a) From, directly or indirectly, or by any means whatsoever, entering into or carrying out any program or aiding or abetting any program of other members of the southern pine industry, including both wholesale and retail distribution elements thereof, to fix, establish, or maintain the prices to be charged for any of the products of said industry;

(b) From sponsoring, calling, or holding any meeting or conference, or participating in any meeting or conference, held for the purpose of fixing, establishing, or maintaining such prices or considering advances or decreases therein;

(c) From in any manner disseminating information concerning or relating to current or future prices charged or to be charged for such products, provided, however, that the reporting, collection, compilation, and dissemination of information and statistics for the individual use of said defendants concerning bona fide prices actually charged in consummated sales, the extent of such sales, volume of production, production capacity, delivery, and consumption of products and the distribution thereof, unfilled orders, stocks on hand or in transit, including totals, averages, and other computations thereof, is not hereby prohibited wherever and to the extent that such information and statistics are made, or are readily, fully, and fairly available to the purchasing and distributing trade at the time of their initial dissemination, and provided, further, that the defendant SPA and defendant Southern Pine Lumber Exchange shall not in any manner criticize any price reported by any manufacturer as having been charged in an actually consummated sale, nor seek any explanation therefor from any such reporting manufacturer or disseminate in any manner any explanation thereof offered by such manufacturer in justification of any such price so reported. In reporting and disseminating the aforesaid information and statistics, said Associations and each of them shall not disseminate or publish any forecast of future market trends or any recommendation as to current or future sales, price, or production policy applicable to said industry.

V

16. That the said defendants herein and each of them and their respective representatives be and they are hereby perpetually enjoined and restrained from, directly or indirectly or by any means whatsoever, enter-

ing into or carrying out any program or aiding and abetting any program to limit, curtail, restrict, or otherwise control the amount of southern pine lumber to be produced or manufactured in any given time by members of the industry; provided, however, that nothing contained in this paragraph shall be understood to prohibit the reporting, collection, compilation, and dissemination of information and statistics in the manner and form and to the extent provided in Paragraph IV (c) of this decree; and provided further, that nothing contained herein shall be understood to prohibit the reporting, collection, compilation, and dissemination, in a lawful manner, of information and statistics covering the cost of production of southern pine lumber or other lawful and proper information and statistics.

VI

17. That if any association, organization or group of wholesale dealers, wholesale commission men, retail dealers or other distributors and merchandisers of southern pine lumber attempt or undertake to inaugurate or effectuate any program by which honest and real competition in the sale, by wholesale or retail, of lumber moving in the trade and commerce among the several States, including any system, plan or statement of policy, designed to designate or control or which does designate or control the means of transportation or the channels and agencies of wholesale and/or retail distribution through or by means of which southern pine lumber moves from the manufacturer to the ultimate consumer, said defendants herein and each of them and their respective representatives shall not subscribe to, participate in, aid or abet, approve or indorse, circulate or publicize in any manner or form or to any degree the inauguration or prosecution of any such program, system, plan or statement of policy; neither shall they or any of them agree upon or combine to inaugurate or prosecute any such program, system, plan or statement of policy as aforesaid; nor shall the defendant SPA or the Southern Pine Lumber Exchange furnish, transmit or relay, by

correspondence or otherwise, any information or inquiry concerning the sales or distribution policies of its subscribers or any of them to anyone whomsoever.

18. And the said defendants and each of them and their respective representatives are further enjoined, restrained, and prohibited—

(a) From entering into or carrying out in any manner any program, or aiding or abetting in any manner or indorsing any program by other elements of said southern pine industry to refuse to quote on or sell their products to purchasers on an f. o. b. mill basis or to otherwise deny purchasers the right to specify the means and method of transportation to be used in moving said products from manufacturing mill to ultimate destination;

(b) From agreeing or otherwise combining to restrict or attempt to restrict the sale or distribution of their respective southern pine lumber products to any particular classes or types of trade to the exclusion of any other classes or types of trade.

VII

19. Nothing in this decree shall be construed as a limitation upon the right of the defendants, other than the aforesaid Associations, independently of each other to make prices, distribute price lists to the purchasing and distributing trade, select individually their own trade and dispose of their products to such persons, types, or classes of trade as they may individually and independently choose.

VIII

20. That the terms of this judgment shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, associations, firms, and individuals who may acquire the ownership and control, directly or indirectly, of the property, affairs, and assets of the defendants, or any

of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

IX

21. That for the purpose of securing compliance with this 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 the defendants, or any of them, 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 matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

X

22. 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 further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

23. The costs hereof are hereby taxed against the defendants.

Dated February 21, 1940.

(Signed) WAYNE G. BORAH,
United States District Judge.

Entry consented to:

(Sgd.) RENE A. VIOSCA,
United States Attorney.

(Sgd.) J. SKELLEY WRIGHT,
Assistant United States Attorney.

(Sgd.) THURMAN ARNOLD,
Assistant Attorney General.

(Sgd.) TOM C. CLARK,
(Sgd.) WALLACE HOWLAND,
(Sgd.) THOMAS J. MURPHY,
(Sgd.) MARCUS HOLLABAUGH,
(Sgd.) FRED S. GILBERT, JR.,

Special Assistants to the Attorney General.

Entry consented to by defendant SOUTHERN PINE ASSOCIATION by its counsel:

(Sgd.) JOHN H. CROOKER,
(Sgd.) CHARLES E. DUNBAR, SR.,

Entry consented to by defendant lumber corporations by their counsel:

(Sgd.) JOHN H. CROOKER,
(Sgd.) CHARLES E. DUNBAR, JR.

Entry consented to by defendant W. S. CLOUD, trading as SOUTHERN PINE LUMBER EXCHANGE, by his counsel:

(Sgd.) W. S. CLOUD,
(Sgd.) JOHN P. BULLINGTON, *by E. J. F.*
(Sgd.) E. J. FOUNTRID,

Attorneys for Kirby Lumber Corp.,

(Sgd.) ANDREWS, KELLEY, KURTH &
CAMPBELL, AND M. E. KURTH,
Attorneys for Angelina County Lumber Co., and Wier Long Leaf Lumber Co.