

Syllabus

IN THE MATTER OF

FLORIDA BUILDING MATERIAL INSTITUTE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2857. Complaint, June 30, 1936—Decision, Sept. 10, 1938

Where a building material "Institute" (1) active membership of which consisted of some 280 Florida retailers engaged in purchase, sale, and distribution of lumber, lumber products, building materials, builders' supplies and millwork, and represented about 70 percent of the purchasing power of such materials in said State, and a group so large and influential in the trade as to be able substantially to influence and affect the flow of trade and commerce therein in aforesaid products and supplies, (2) associated membership of which consisted of some 47 manufacturers, producers, and wholesalers in the building-supply industry, with places of business, in the case of a large majority thereof, in other States, and (3) with which there were associated a number of cooperating dealers and about 288 cooperating manufacturers, producers, and wholesalers, who conformed to its policies, and (4) active membership in which was contingent upon meeting definition of dealer adopted, published and distributed by said Institute, as initially decided upon by its appropriate divisional directors and committees, and as usually confirmed by its executive committee; and the officers, directors, and members of said Institute—

Combined and conspired, with intent and effect of enhancing and promoting the volume of business and trade of such members and cooperators, by common and concerted action, together and with others, to (1) establish such active members and cooperating dealers as a class of recognized dealers in lumber, lumber products, building materials, and builders' supplies in aforesaid State, and to control and confine sale and distribution of such products by manufacturers and producers thereof to or through the medium of such members and cooperating dealers exclusively, (2) require such associate members and other manufacturers, producers, and wholesalers of aforesaid materials, products, and supplies to refrain from selling or distributing same to dealers or other purchasers who were in competition in retail sale and distribution of said products with such active members and cooperating dealers, but who were not recognized by such Institute as cooperating with its policies, (3) prevent nonrecognized and noncooperating dealers from purchasing or securing lumber, lumber products, building materials, and builders' supplies direct from manufacturers, producers, and wholesalers, (4) interfere with business and trade of such nonrecognized and noncooperating dealers in order to enable or assist dealer members of such Institute and cooperating dealers to appropriate and acquire such business and trade and obstruct competition of such nonrecognized and noncooperating dealers, and (5) monopolize business and trade in aforesaid products, materials, and supplies in said State in members of such Institute and those cooperating with it in maintaining its policies; and in pursuance of such combination and conspiracy, and in order to accomplish its aforesaid objectives—

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- (a) Exacted written statements from active and associate members agreeing to comply fully with all the bylaws, rules, and regulations governing said Institute and required such statements from cooperating manufacturers, producers, and wholesalers setting forth intention to cooperate, and provided, in the case of one of said Institute's districts, for assessment and payment of fines by members for violations of Institute's rules and regulations;
- (b) Prepared and published bulletins, summaries of information, rosters, and other data, in the form of official communications entitled "confidential information," printed bulletins, or summaries and rosters in loose-leaf binders, distributed to and through district secretaries among the members and to the active and associate membership, containing names of (1) members, and of (2) manufacturers, producers, wholesalers, and dealers, recognized as cooperating with it, and of (3) those manufacturers, etc., not recognized as thus cooperating, and of (4) persons or concerns not recognized by it as qualified dealers;

With intent or effect of indicating that manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies should confine and limit sale and distribution of their said products to dealer members of such Institute and to dealers recognized by it as cooperating, and not sell such products direct to those dealers not recognized as thus cooperating and to persons or concerns not recognized by it as qualified members, and of indicating to its dealer members and recognized dealers that they should confine and limit purchase of their requirements to associate members and manufacturers, producers, and wholesalers recognized by it as cooperating;

- (c) Engaged in espionage, through its divisional committees and district secretaries, upon shipments of lumber, lumber products, building materials, and builders' supplies coming into said State from other States, and communicated with and solicited in writing expression of cooperation in its "distribution policy," as enclosed, from manufacturers, producers, and wholesalers found to be shipping into said State, and issued follow-up letters implying boycotts and threats of boycotts unless written cooperating intentions were forthcoming, and caused friendly and cooperating manufacturers to contact those hesitating or refusing to state in writing their willingness to cooperate with it, and notified members of those who refused to reply to such solicitations or to cooperate;
- (d) Kept close surveillance of shipments into State of products of manufacturers, producers, and wholesalers who had signified intentions to cooperate, in order to make effective promised cooperation, and complained to manufacturer, producer, or wholesaler found to be selling nonmember or noncooperating dealer by letter, telegram, or telephone, and in written complaints impliedly threatened that if manufacturer, producer, or wholesaler concerned did not discontinue such sales, boycott of its products by other members and cooperating dealers would follow;
- (e) Checked sources of supply of nonmembers and noncooperating dealers and addressed communications to such sources in various States in order to prevent such nonmembers and noncooperating dealers from obtaining further requirements for their business, and, upon being satisfied as to future cooperation by noncooperating manufacturer, producer, wholesaler, or dealer, released charges against noncooperator and, by letters and telegrams, gave notices to trade to such effect; and

- (f) Issued "credential cards of cooperation" to associate members and cooperating manufacturers, producers, and wholesalers, to obviate, as set forth in form letters sent by Institute to several manufacturers, producers, and wholesalers in various States, "the awkwardness experienced in the past of establishing your status," and so that it might, when presented to the dealer, "eliminate all question in his mind as to where you stand with the Institute," and advised, "for your own protection, that your representatives keep constantly in touch with the secretaries designated on the back of the card, for the purpose of securing up-to-date information from time to time," and, in form letter sent to active members of the Institute, set forth the issuance of such credential cards to those manufacturers, wholesalers, and jobbers who had gone on record with it as intending to cooperate fully in its policy, and asked membership "to concentrate on insisting that all concerns obtain" such cards and place their own "certifications of membership in a conspicuous place" in their offices; and
- (g) Solicited and received, in enforcement of its policies, cooperation of building material institutes in the two Carolinas, and in Virginia, Tennessee, Alabama, and Georgia;

With results that—

- (a) Interstate commerce in sale and distribution of lumber, lumber products, building materials, and builders' supplies was substantially restrained by elimination, or attempted elimination, therefrom of noncooperating dealers and other purchasers or prospective purchasers not recognized by said Institute and noncooperating manufacturers, producers, and wholesalers who sold to such noncooperating dealers or such other purchasers, and by the restricting, or attempted restricting, of such commerce to associate members and cooperating manufacturers, producers, and wholesalers and active members and cooperating dealers who adhered to and supported objective and policies of said Institute, and there was tendency to otherwise restrain and obstruct natural flow of commerce in channels of trade;
- (b) Manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies located in various States, and who sold and distributed their products in aforesaid State of Florida, received from said Institute and its officials letters, summaries of information, rosters, telegrams, telephone messages, and other official communications containing threats or implied threats of boycott against their products unless their sale and distribution were confined to the active members of, and dealers cooperating with, such Institute, and manufacturers, producers, and wholesalers of such products in the various States, because of intimidation and coercion by it, confined such sale and distribution to active members and cooperating dealers;
- (c) Manufacturers, producers, and wholesalers in various States refused to sell, or discontinued selling, to dealers or other purchasers found and reported by said Institute as not cooperating with its policies, and shipments to noncooperating dealers and other purchasers which manufacturers wished to make were refused and canceled because of intimidation and coercion by it and its officials;
- (d) Manufacturers, producers, and wholesalers in the two Carolinas, Alabama, Georgia, and other States were substantially restrained in their interstate shipments because of the interference of said Institute and its officials, active members of which Institute and cooperating dealers therewith refused to buy, or ceased buying, from manufacturer, producer, or whole-

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saler found to have violated Institute's policies by selling noncooperating dealer, and manufacturers, producers, or wholesalers refused, in some instances, further to sell to old customers because of insistence of Institute or its officials that such sales be not made, and, in numerous instances, before making sales, determined whether prospective customer was member of Institute or cooperating dealer, and, in many instances, refused sales to prospective customer held by Institute as not cooperating with its policies; and

- (e) Competitors of active members were prevented from obtaining interstate shipments of their requirements because of interference by the Institute and its officials, and competition in and between the several States was thereby substantially lessened, hindered, and suppressed; and

With effect of unduly and unlawfully restraining and restricting trade and commerce in lumber, lumber products, building materials, builders' supplies, and millwork between and among the several States, and of eliminating competition in sale of said products with tendency and capacity to create monopoly in such sale and in said commerce in the members of said Institute:

Held, That such acts, policies, and practices as above set forth were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. John C. Sullivan, of Miami, Fla., for Florida Building Material Institute, Inc., and its officers and directors.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Florida Building Material Institute, Inc., and its officers and board of directors, as hereinabove designated, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Florida Building Material Institute, Inc., hereinafter for convenience referred to as the Institute, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida under articles of organization in the year 1934. The membership of said Institute is composed—

(a) of active members consisting of retail lumber, building material, and builders' supply dealers and woodworking plants; also

retail hardware and general retail stores; about 315 in number; and the

(b) associate members consisting of manufacturers and/or producers, wholesalers, distributors, and jobbers, about 63 in number.

The active and associate members of said Institute are persons, partnerships, and corporations, who, as dealers and manufacturers, are engaged in the business of producing, buying, selling, and distributing to contractors, builders, dealers, consumers, and other purchasers, lumber, lumber products, building materials, building specialties, builders' supplies, and millwork. The affairs of said Institute are and have been managed and controlled by the following elective officers and administrative bodies: president, vice president, treasurer, secretary, a board of directors consisting of a director from each of the 15 divisions into which the State of Florida is divided for the more effective operation of the Institute, and an executive committee consisting of 5 directors, the president, and vice president. The principal or head offices of said Institute are and have been maintained in the city of Orlando in the State of Florida.

The certain persons who are members of said executive committee and of said board of directors and as such have served as members of the executive committee and directors of said Institute and the respective companies or organizations by or with which such persons are employed or connected, which companies or organizations are members of said Institute, are as follows:

Name of concern with which respective members of the executive committee and respective directors are connected as officers or employees, such concerns being members of said Institute.

Executive committee:

Robert S. Bechtelheimer, president_____	Dade City Lumber Co., Dade City.
Alston Shoaf, vice president_____	Roberson Lumber Co., Miami.
Rush H. Todd, committeeman_____	R. H. Todd Lumber Co., Ocala.
Asher Culp, committeeman_____	Culp Lumber Co., Tampa.
S. T. Lainhart, committeeman_____	Lainhart & Potter, West Palm Beach.
George J. Philp, committeeman_____	Philp & Moorman Lumber Co., Panama City.
T. J. Maxey, committeeman_____	Jeffrey Lumber Yards Inc., Miami.

Board of directors:

Roland E. Lee_____	Ferriss-Lee Lumber Co., Pensacola.
George J. Philp_____	Philp & Moorman Lumber Co., Panama City.
E. H. Pichard_____	Pichard Bros., Tallahassee.
E. S. Spencer_____	Marshall & Spencer, Jacksonville.
Cecil Willis_____	Meachen-Willis Lumber Co., Daytona Beach.
Paul Osteen_____	East Coast Lumber & Supply Co., Eau Gallie.

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Board of directors—Continued.

S. T. Lainhart	Lainhart & Potter, West Palm Beach.
T. J. Maxey	Jeffrey Lumber Yards, Miami.
Vernon G. Widerquist	Seminole Lumber & Manufacturing Co., Ft. Myers.
W. G. Shepard	Shepard Lumber Co., Sarasota.
H. H. Brenner	Davenport Lumber & Supply Co., Davenport.
Asher Culp	Culp Lumber Co., Tampa.
Walter Gregory	Pinellas Lumber Co., St. Petersburg.
Rush H. Todd	R. H. Todd Lumber Co., Ocala.
R. C. Spaulding	Conrad Lumber Co., DeLand.

The above-named members of said Institute do not constitute the entire membership of said Institute but are representative members thereof. All members of the said Institute are also made party respondents herein as a class to which those specifically named are representative of the whole.

PAR. 2. The said members of said Institute in the course and conduct of their business purchase their materials and supplies from manufacturers, producers, and distributors in various States and cause such materials and supplies to be shipped and transported to warehouses and places of business and to customers of such purchasing members from points in States other than the States in which such respective points of destination are located. In the course of the sale and distribution of their merchandise the said members of said Institute cause materials and supplies when sold to be shipped and transported pursuant to purchase orders from their warehouses, places of business or direct from their suppliers to their customers at points in States other than the State in which such respective shipments originate. In the course and conduct of the business of the said members of said Institute, as hereinabove described, respondents are and have been engaged in commerce among the several States and in trade, business, and commerce having a direct effect upon interstate commerce in lumber, lumber products, building materials and builders' supplies. The said members of said Institute are and have been engaged in the course of such business in actual and potential competition with each other and with nonmembers and other dealers and manufacturers who market or desire to market lumber products, building materials, and builders' supplies.

PAR. 3. The said members of said Institute constitute a large and important part of the dealers in lumber, lumber products, building materials, and builders' supplies in the State of Florida; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in

lumber, lumber products, building materials, and builders' supplies within, to and from the State of Florida. Said members as allied and banded together in said Institute are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 4. The said members of said Institute are banded and allied together to carry into effect the program and practices hereinbelow described and to enhance and promote the volume of trade, business, and profits of said members of said Institute. And the said Institute and its respondent members have agreed, conspired, combined, and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking among themselves and with others to adopt, follow, carry out, enforce and maintain a program, to wit:

1. To establish the respondent active members of said Institute as a class of recognized and cooperating dealers in lumber, lumber products, building materials, and builders' supplies in the State of Florida, and to confine and require the sale and distribution of such materials and supplies by manufacturers and producers thereof to or through the medium of such respondent members exclusively.

2. To induce, require, or compel manufacturers and producers of lumber, lumber products, building materials, and builders' supplies to refrain and to cease or desist from selling such materials or supplies to nonrecognized or noncooperating competitors of respondent members who are not members of said Institute; and to prevent such nonrecognized or noncooperative competitors from purchasing or securing such materials and supplies direct from manufacturers or producers and to compel them to purchase their requirements of such materials or supplies from or through the medium of said members of said Institute exclusively and upon terms or conditions of sale which afford a commission, profit or allowance to such members of said Institute.

3. To require the associate members of said Institute to refrain and desist from selling or distributing materials and supplies to noncooperative or nonrecognized dealers, who are not members of said Institute and to limit such sales and distribution of materials and supplies exclusively to cooperative or members of said Institute.

4. To interfere with the business and trade in lumber, lumber products, building materials, and builders' supplies of dealers who are noncooperating or nonmembers of said Institute for the purpose of enabling or assisting the said cooperating or members of said Institute

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to appropriate and acquire the patronage or trade and obstruct the competition of such noncooperating or nonmember dealers.

5. To prevent dealers of lumber, lumber products, building materials, and builders' supplies who are not cooperating or members of said Institute from selling any materials or supplies for a new construction or new work to builders, consumers, or other purchasers; to monopolize such trade and business in cooperative or members of said Institute.

PAR. 5. The said Institute and its members have agreed, combined, confederated, and conspired together for the purpose and with the intent of carrying out the aforesaid program; and they have been and are now engaged in carrying into effect and maintaining said program and the said agreement, combination, confederation, conspiracy, and undertaking as set forth in paragraph 4. For the purpose of effecting and carrying out the said program and said agreement, combination, confederation, conspiracy, and undertaking, the Institute and its respondent members have, among other things, done the following:

(a) Exacted and procured promises and agreements from each member, active and associate, of said Institute to the effect that such members will support, adhere to, and enforce the foregoing program of respondents as set forth in paragraph 4 hereof.

(b) Used and continue to use, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of said Institute.

(c) Held meetings of members, officers, and directors of said Institute to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, distributors, and others engaged in said lumber, lumber products, building materials, and builders' supplies trade and industry to abide by and adhere to said program.

(d) For the purpose and with the effect of inducing or compelling manufacturers, producers, and dealers to conform to said program, informed and advised such manufacturers, producers, and dealers of the names of the members of said Institute and of the Institute's purpose and determination to insist upon and require the distribution of supplies and materials through the medium of said members exclusively; and also issued and distributed a "summary of information" which contained "a noncooperative list" of dealers and manu-

facturers who are not in cooperation with the program and policies of said Institute.

(e) Used and engaged in other acts, cooperative and concerted action and coercive methods and practices in promoting, establishing, and carrying out the aforesaid program and agreement, combinations, conspiracy, confederation, and undertaking set forth in paragraph 4 hereof.

PAR. 6. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation and undertaking, and the said acts and practices of said Institute and its members, set forth in paragraphs 4 and 5, are and have been

(a) To monopolize, in said members of said Institute in the State of Florida, the business of dealing in and distributing lumber, lumber products, building materials, and builders' supplies.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said lumber, lumber products, building materials, and builders' supplies trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

(c) To substantially increase the cost to purchasers of such lumber, lumber products, building materials, and builders' supplies and consequently to increase the cost of construction, repair, maintenance, and remodeling of homes, dwellings, buildings, highways, and all kinds of construction and building works.

(d) To oppress, eliminate, and discriminate against business enterprises which are not cooperative or members of said Institute and which are or have been engaged in selling, distributing, manufacturing, or using lumber, lumber products, building materials, or builders' supplies.

(e) To restrain or restrict employment in the construction and building industry and trade and to reduce the purchasing power or capacity of purchasers and users of such lumber, lumber products, building materials, and builders' supplies.

(f) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in lumber, lumber products, building materials, builders' supplies in, to, and from the State of Florida; and to injure competitors of the members of said Institute in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business.

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(g) To prejudice and injure the public and manufacturers, producers, dealers, distributors, and others who do not conform to the program of said Institute and its members, but who are compelled to conform to said program.

PAR. 7. The above alleged acts and things done by respondent Institute and members, as set forth in paragraphs 4, 5, and 6 hereof, are methods of competition which are unfair, and which constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 30, 1936, issued and served its complaint in this proceeding upon respondents Florida Building Material Institute, Inc., Robert S. Bechtelheimer, president, Alston Shoaf, vice president, J. Ben Wand, treasurer, Claude E. Flambeau, secretary, and the following directors: Roland E. Lee, George Philp, Eugene H. Pichard, E. S. Spencer, Cecil Willis, Paul Osteen, Spencer T. Lainhart, T. J. Maxey, Vernon G. Widerquist, W. Guy Shepard, H. H. Brenner, Asher Culp, Walter Gregory, Rush H. Todd, and Ray Spaulding, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it; respondents did not introduce any testimony or other evidence in opposition to the allegations of the complaint; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Florida Building Material Institute, Inc., hereinafter for convenience referred to as the "Institute," is a

corporation, organized in October 1934, and existing under and by virtue of the laws of the State of Florida. The principal office and headquarters of said Institute are maintained at Orlando, Fla. W. F. Williams became the first executive secretary of the Institute and continued to serve in that capacity until July 1935, at which time he was succeeded by Claude E. Flambeau, who continued to serve as executive secretary up to the year 1937.

The Institute, for the more effective administration of its affairs and for the purpose of carrying out the practices herein described, divided the State of Florida into 15 divisions. Each division had a director and 5 committeemen. In August 1935 a "home-rule plan" was adopted, and according to said plan the said 15 divisions were divided into 5 districts with home rule, which allowed each district the privilege of self-government, but not to exceed the authority granted to each of said districts by the State organization at Orlando. Each district has a secretary who is elected by the directors of the divisions within each particular district jurisdiction. The districts and divisions held frequent meetings of their members for the conduct of Institute business. The meetings were presided over by a director or secretary, and the minutes of said meetings were supposed to be forwarded to the State office at Orlando. The districts may make bylaws for their own government, which bylaws must be approved and ratified by the Institute's State office. Fees, dues, and payments to be made by the members are determined by each district for its members, a part of which must be remitted to the Institute's headquarters at Orlando. In most districts the membership dues are $4\frac{1}{2}$ mills on a dollar gross sale, $1\frac{1}{2}$ mills of which must be forwarded to State headquarters. The Institute is governed by a president, a vice president and board of directors consisting of a director from each division and an executive committee consisting of the president, vice president, executive secretary and five directors elected from the directors representing the several divisions. The president and vice president are elected by the members at large.

The membership of the Institute is composed partly of active members, consisting of approximately 280 retail dealers having their places of business in the State of Florida who are engaged in the purchase, sale, and distribution of lumber, lumber products, building materials, builders' supplies, and millwork. These active member dealers represent approximately 70 percent of the purchasing power of said materials in the State of Florida. In excess of 50 percent of the said materials sold and distributed by said active member dealers are manufactured in various States of the United States other than the State of Florida. The Institute is composed in part also of associate mem-

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bers, consisting of about 47 manufacturers, producers, and wholesalers in the building-supply industry, a large majority of whom have their places of business in States of the United States other than the State of Florida. In addition to the members, active and associate, there are a number of cooperating dealers and approximately 288 cooperating manufacturers, producers, and wholesalers who conform to the policies of the Institute.

The officers, directors, and executive committee of the Institute for the year 1936, together with the names of the companies or concerns (respondent dealer-members of said Institute) with which the respective officers, directors, and members of the executive committee are affiliated as officers or employees, are as follows:

EXECUTIVE COMMITTEE

President: Robert S. Bechtelheimer, Dade City Lumber Co., Dade City.

Vice president: J. F. Townsend, Townsend Sash, Door & Lumber Co., Lake Wales.

Executive secretary: Claude E. Flambeau, Orlando, Fla.

Committeemen: George J. Philp, Philp & Moorman Lumber Co., Panama City; Spencer T. Lainhart, Lainhart & Potter, West Palm Beach; T. J. Maxey, Jeffrey Lumber Yards, Miami; Asher Culp, Culp Lumber Co., Tampa; Rush H. Todd, R. H. Todd Lumber Co., Ocala.

DIRECTORS

Western district: Division No. 1-A, director: George J. Philp, Philp & Moorman Lumber Co., Panama City.

Central district: Division No. 4, director: Cecil Willis, Meachen-Willis Lumber Co., Daytona Beach; division No. 14, director: Rush H. Todd, R. H. Todd Lumber Co., Ocala; division No. 15, director: Ray Spaulding Conrad Lumber Co., De Land.

Southeastern district: Division No. 5, director: Paul Osteen, East Coast Lumber & Supply Co., Ft. Pierce; division No. 6, director: Spencer T. Lainhart, Lainhart & Potter, West Palm Beach; division No. 7, director: T. J. Maxey, Jeffrey Lumber Yards, Miami.

Southwestern district: Division No. 8, director: Vernon G. Widerquist, Seminole Lumber & Manufacturing Co., Ft. Myers; division No. 9, director: W. Guy Shepard, Shepard Lumber Co., Sarasota; division No. 10, director: H. H. Brenner, Davenport Lumber & Supply Co., Davenport; division No. 11, director: Asher Culp, Culp Lumber Co., Tampa; division No. 12, director: Walter Gregory, Pinellas Lumber Co., St. Petersburg.

The evidence does not support the following allegations in the complaint: (1) that Roland E. Lee, Eugene H. Pichard and E. S. Spencer are directors of said Institute; (2) that Alston Shoaf is vice president of said Institute; and (3) that J. Ben Wand is treasurer of said Institute.

PAR. 2. The respondent officers, directors, and members of the Institute herein specifically named do not constitute the entire list or

number of such officers, directors, or members, but are representative thereof. The dealer members of the Institute constitute a class, having a common or general interest, so numerous as to make it impracticable to name them all specifically herein, but those specifically named herein are representative of the whole.

PAR. 3. The active members of the Institute, in the course and conduct of their business, purchase their materials and supplies from manufacturers, producers, and distributors located in various States of the United States, particularly in the States of Georgia, North Carolina, South Carolina, Alabama, Pennsylvania, Tennessee, Missouri, New York, Illinois, and Ohio, and cause such materials and supplies to be shipped and transported, by boat and by rail, from the various States in which they are manufactured and produced, to the respondent dealers' places of business and to respondent dealers' customers in the State of Florida. The activities of the Institute, its officers, directors, and members thereof, have affected interstate commerce to the extent and in the manner hereinafter set forth. The dealer members of the Institute in their respective businesses, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other, and are in actual and potential competition with other individuals, partnerships, and corporations who are also engaged or desire to engage in the sale and distribution of lumber, lumber products, building materials, and builders' supplies.

PAR. 4. The respondent members of the Institute constitute a large and important part of the dealers in lumber, lumber products, building materials, and builders' supplies in the State of Florida. Said members constitute a group so large and influential in the trade as to be able to, and they do, substantially influence and affect the flow of trade and commerce in lumber, lumber products, building materials, and builders' supplies to and within the State of Florida.

PAR. 5. The Institute adopted a definition of a dealer which was published and distributed by the Institute in a circular entitled "distribution policy." Any person or concern seeking active membership in said institute had to qualify in accordance with the said dealer definition. The divisional director and committee in each respective division determined the qualifications of a prospective dealer member doing business in the division or desiring to do so and recommended whether the prospective dealer member should be recognized as qualified for membership. These findings were forwarded to the executive committee at Orlando for final determination. In most cases the executive committee at Orlando acted in accordance with the recommendation of the divisional director and committee.

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The names of persons and firms engaged in business who were not considered by the Institute officials as qualified under its definition of a dealer were, in at least one instance, officially published and distributed by the Institute.

PAR. 6. The Institute, its officers, directors, and members, from the time of the organization of said Institute up to the time of the hearings herein, have combined and conspired, by common and concerted action, together and with others, to adopt and enforce, among others, the following-described objectives and practices, with the purpose and effect of enhancing and promoting the volume of business and trade of said respondent members and cooperators:

(a) To establish the active members of the said Institute and the cooperating dealers as a class of recognized dealers in lumber, lumber products, building materials, and builders' supplies in the State of Florida, and to control and confine the sale and distribution of said products by manufacturers and producers thereof to or through the medium of such respondent members and cooperating dealers exclusively.

(b) To require the associate members of said Institute and other manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies, to refrain from selling or distributing said products to dealers or other purchasers who were not recognized by the Institute as cooperating with its policies, but who were in competition in the retail sale and distribution of said products with the active members of said Institute and the cooperating dealers.

(c) To prevent the nonrecognized and noncooperating dealers from purchasing or securing lumber, lumber products, building materials, and builders' supplies direct from manufacturers, producers, and wholesalers.

(d) To interfere with the business and trade of nonrecognized and noncooperating dealers for the purpose of enabling or assisting the dealer members of said Institute and the cooperating dealers to appropriate and acquire said business and trade and to obstruct the competition of such nonrecognized and noncooperating dealers.

(e) To monopolize the business and trade in lumber, lumber products, building materials, and builders' supplies in the State of Florida in the members of said Institute and those who were cooperating with the Institute in maintaining its policies.

PAR. 7. Pursuant to said combination and conspiracy and for the accomplishment of the aforesaid objectives the respondent Institute, its officers, directors, and members have engaged in the following practices:

(a) The Institute exacted written statements from its members, both active and associate, "covenanting and agreeing that if elected to membership, full compliance would be made with all of the bylaws, rules, and regulations governing said Institute." Written statements were also required from the cooperating manufacturers, producers, and wholesalers, setting forth their intention to cooperate. The rules and regulations for the southeastern district, approved by the Institute, provided for the assessment and payment of fines by the members for violations of the Institute's rules and regulations.

(b) Information was disseminated by the Institute, its officers and members, to manufacturers, producers, wholesalers, and dealers relative to those manufacturers, producers, wholesalers, and dealers who were not cooperating with the policies of the Institute. The obvious purpose of this practice was to induce and require manufacturers, producers, and wholesalers not to sell and distribute their products to those dealers who were in violation of the Institute's policies and also to compel dealers not to purchase their requirements from those manufacturers, producers, and wholesalers who were in violation of the said Institute's policies. This information was conveyed in several ways. Official communications entitled "confidential information" were forwarded by the executive secretary of the Institute to all of the district secretaries and the information contained therein relative to violators of the Institute's policies was disseminated by the district secretaries among the members of each respective district. From March 1935 to March 1936 printed bulletins or summaries of information were issued from the executive secretary's office at Orlando, which listed the names of the manufacturers, producers, wholesalers, and dealers who were found to be violating the Institute's policies. These summaries contained the names of several manufacturers, producers, and wholesalers who were located outside the State of Florida and who were engaged in interstate commerce in shipping their products from various States into the said State of Florida. The said summaries of information were distributed to all the active and associate members of the Institute. About March 14, 1936, the summaries of information were discontinued and in their place the Institute distributed a roster in loose-leaf binders, which contained the names of active and associate members and also the names of the cooperating manufacturers, producers, wholesalers, and dealers. From time to time the Institute published and distributed new pages containing changes and corrections of the roster; eliminating the names of those manufacturers, producers, wholesalers, and dealers who violated the policies of the Institute and adding the names of new members and new cooperators.

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(c) The Institute through its divisional committees and its district secretaries engaged in espionage upon shipments of lumber, lumber products, building materials, and building supplies coming into the State of Florida from various other States. Officials of the Institute, in some instances, even knew of shipments before they had reached their destinations.

(d) Manufacturers, producers, and wholesalers who were found to be shipping materials into the State of Florida were solicited by the Institute to state in writing as to whether they intended to cooperate with the policies of the Institute. The following communication was forwarded by the Institute to a large number of manufacturers, producers, and wholesalers located in various States of the United States:

Gentlemen:

We have received inquiry relative to your sales policy, particularly as to whether you are confining your sales through orderly channels of distribution.

For your information, the Florida Building Material Institute is an organization of approximately ninety percent of the recognized retail lumber, building material and builders supply dealers of Florida, who are endeavoring to bring about better business conditions in their industry.

We are enclosing copy of the Distribution Policy adopted by the Institute, and we would appreciate a reply from you stating your willingness to cooperate with Florida Dealers as to matters of distribution.

If you are willing to so cooperate, we kindly request that you expedite your answer that we may advise inquiring members that you are a cooperating manufacturer.

Very truly yours,

CLAUDE E. FLAMBEAU,

Secretary.

Pressure was exerted by the Institute in various ways to obtain the cooperation of these manufacturers, producers and wholesalers; follow-up letters were issued implying boycotts and threats of boycotts unless the written cooperating intentions were forthcoming; friendly and cooperating manufacturers, at the request of the Institute, contacted those who were hesitating or refusing to state in writing their willingness to cooperate with the Institute; finally the Institute notified its members of the names of those manufacturers, producers and wholesalers who refused to reply to the solicitations of cooperation or who refused to cooperate.

(e) The Institute, its officers and members kept a close surveillance of the shipments, into the State of Florida, of the products of all manufacturers, producers, and wholesalers who had signified their intentions to cooperate with the Institute, in order to make effective their promised cooperation. When an associate member or cooperating manufacturer, producer, or wholesaler was found to be selling a non-

member or a noncooperative dealer, complaints were made directly by the Institute to the said manufacturer, producer, or wholesaler, either by letter, telegram, or telephone. Written complaints contained implied threats that if the said manufacturer, producers, or wholesalers did not discontinue such sales there would be a boycott of his products by the other members and cooperating dealers.

(f) The Institute and its officers checked the sources of supply of nonmembers and noncooperating dealers; communications were addressed by the Institute to the said sources of supply, located in various States, in order to prevent the said nonmembers and noncooperating dealers from obtaining further requirements for their business.

(g) When a noncooperating manufacturer, producer, wholesaler, or dealer satisfied the Institute as to its future cooperation, the charges against the noncooperator were released and notices to this effect, by letters and telegrams, were given to the trade.

(h) The Institute issued "credential cards of cooperation" to associate members and cooperating manufacturers, producers, and wholesalers. The said card, signed by the executive secretary of the Institute, certified that the manufacturer, producer or wholesaler, whose name appeared thereon, was cooperating with the Institute. The following form letter was sent by the Institute to several manufacturers, producers and wholesalers, located in various states of the United States:

Gentlemen :

We are enclosing credential cards of cooperation, as per your request, and trust that you will find these cards of practical value. They will obviate the awkwardness experienced in the past of establishing your status and, when presented to your dealer, will eliminate all question in his mind as to where you stand with the Institute.

We would advise, for your own protection, that your representatives keep constantly in touch with the Secretaries designated on the back of the card, for the purpose of securing up-to-date information from time to time. We have provided these offices in order that such information can be obtained, and there is no excuse for any representative not having the information that he should have.

Very truly yours,

FLORIDA BUILDING MATERIAL INST.
CLAUDE E. FLAMBEAU, *Secretary.*

The following form letter was addressed by the Institute :

TO ACTIVE MEMBERS OF THE INSTITUTE

Gentlemen :

By order of the Executive Committee, this office has issued credential cards of cooperation to those manufacturers, wholesalers, and jobbers who have gone on record with this office that they intend to cooperate fully with the Florida Building Material Institute's policy.

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These cards are now in the hands of the majority of the cooperating concerns and, as a dealer, you can now strengthen the support of our policy by inquiring from each representative who purposes to sell you, whether he has a credential card or not. This procedure should be followed by every dealer and will give us better control on not only carload purchases, but particularly on less than carloads.

There are two forms of cards issued, one to those who declare cooperation, and the other, designating associate membership, to those who have taken out associate memberships.

May we ask you to concentrate on insisting that all concerns obtain these cards.

For the benefit of those who are carrying credential cards of cooperation and have gone to the trouble to secure same, we ask that you do your part and place your Certificates of Membership in a conspicuous place in your office.

Very truly yours,

FLORIDA BUILDING MATERIAL INST.

CLAUDE E. FLAMBEAU, *Secretary*.

(i) The Institute, in enforcing its policies, solicited and received the cooperation of building material institutes in other States, to wit: South Carolina, North Carolina, Virginia, Tennessee, Alabama, and Georgia.

PAR 8. The aforesaid policies and practices of the Institute, its officers, directors and members, have tended to produce and have produced the following results:

(a) Interstate commerce in the sale and distribution of lumber, lumber products, building materials, and builders' supplies has been substantially restrained by eliminating, or attempting to eliminate therefrom, noncooperating dealers and other purchasers or prospective purchasers not recognized by the Institute, and noncooperating manufacturers, producers and wholesalers who sell to such noncooperating dealers, or such other purchasers, and by restricting, or attempting to restrict, said commerce to the associate members and cooperating manufacturers, producers and wholesalers and to such active members and cooperating dealers who adhere to and support the objectives and policies of the respondent Institute; and to otherwise restrain and obstruct the natural flow of commerce in channels of interstate trade.

(b) Manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies, located in various States of the United States, who sell and distribute their products in the State of Florida, have received from the Institute and its officials, letters, summaries of information, rosters, telegrams, telephone messages, and other official communications containing threats or implied threats of boycott against the products of said manufacturers, producers, and wholesalers, unless their sale and distri-

bution were confined to the active members of, and the dealers cooperating with, said Institute. Manufacturers, producers, and wholesalers of said products, in the various States, because of intimidation and coercion by the Institute, have confined such sale and distribution to the active members of, and the dealers cooperating with, the Institute.

(c) Manufacturers, producers, and wholesalers, located in various States of the United States, have refused to sell, or have discontinued selling, to dealers or other purchasers who were found and reported by the Institute to be noncooperating with the Institute's policies. Shipments to noncooperating dealers or other purchasers which manufacturers wanted to make were refused and canceled because of intimidation and coercion by the Institute and its officials.

(d) Manufacturers, producers, and wholesalers located in various States of the United States, to wit: North Carolina, South Carolina, Alabama, Georgia, and other States, were substantially restrained in their interstate shipments because of the interference of the Institute and its officials. When a manufacturer, producer or wholesaler was found by the Institute to have violated the Institute's policies by selling to a noncooperating dealer, the active members of the Institute and the cooperating dealers have refused to buy or ceased buying from said manufacturer, producer, or wholesaler, until the manufacturer, producer, or wholesaler was again recognized by the Institute. Manufacturers, producers, or wholesalers refused further to sell to old customers, in some instances, because of the insistence of the Institute or its officials that such sales be not made. Manufacturers, producers, and wholesalers before making sales, in numerous instances, first determined whether the prospective customer was a member of the Institute or a cooperating dealer, and in many instances sales were refused because the prospective customer was held by the Institute to be noncooperating with its policies.

(e) Competitors of the active members of the Institute have been prevented from obtaining interstate shipments of their requirements because of the interference by the Institute and its officials; and competition in and between the several States of the United States has been thereby substantially lessened, hindered, and suppressed.

PAR. 9. The combination and conspiracy, and the acts and things done thereunder, pursuant thereto, and in furtherance thereof, as hereinbefore set forth, have had, and do have, the effect of unduly and unlawfully restraining and restricting trade and commerce in lumber, lumber products, building materials, builders' supplies, and millwork, between and among the several States of the United States;

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of eliminating competition in the sale of said products with the tendency and capacity of creating a monopoly in the sale of said products in said commerce in the members of the Institute.

CONCLUSION

The acts, policies, and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and a combination and conspiracy to engage in, and to further, unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Florida Building Material Institute, Inc., its officers, directors, and members, and the agents, representatives, and employees of said members, in connection with the purchase and the offering for sale, sale, and distribution of lumber, lumber products, building materials, and builders' supplies, in interstate commerce or in the District of Columbia, do forthwith cease and desist from entering into and carrying out any understanding, agreement, combination, and conspiracy between and among any two or more of said respondents for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the sale in interstate commerce of any of said products, and as a part of such understanding, agreement, combination, and conspiracy, from doing any of the following acts and things:

1. Preparing and publishing bulletins, summaries of information, rosters, or other data containing the names of—

(a) Members of the respondent Institute;

(b) Manufacturers, producers, wholesalers, and dealers who are recognized by the respondent Institute as cooperating with the said Institute;

(c) Manufacturers, producers, wholesalers, and dealers who are not recognized by the respondent Institute as cooperating with the said Institute;

(d) Persons or concerns who are not recognized by the respondent Institute as qualified dealers—

for the purpose or with the effect of indicating that manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies should confine and limit the sale and distribution of said products to the dealer members of said Institute and to the dealers who are recognized by said Institute as cooperating with said Institute; and that said manufacturers, producers, and wholesalers should not sell said products direct to those dealers who are not recognized by the said Institute as cooperating with said Institute, and to those persons or concerns who are not recognized by the Institute as qualified members; and for the further purpose, or with the further effect, of indicating to the dealer members of said Institute and to the dealers recognized by said Institute as cooperating with said Institute, that said dealer members and said recognized dealers should confine and limit the purchase of their requirements to the associate members of said Institute and to the manufacturers, producers, and wholesalers who are recognized by said Institute as cooperating with said Institute.

2. Seeking or obtaining information as to sales, proposed sales, or contracts of sale, by manufacturers, producers, and wholesalers of lumber, lumber products, building materials, and builders' supplies, to purchasers, or prospective purchasers, who are not dealer members of the respondent institute, or who are not recognized by said Institute as cooperating with said Institute, or who are not recognized by said Institute as qualified dealers, for the purpose of preventing further dealing between such buyers or prospective buyers and the said manufacturers, producers, and wholesalers until said buyers or prospective buyers are recognized by said Institute as entitled to buy direct from said manufacturers, producers, and wholesalers.

3. Using boycott, threats of boycott, either with or without coercive methods, to persuade, induce, or compel manufacturers, producers, and wholesalers to refrain from selling lumber, lumber products, building materials, and builders' supplies to dealers who are not recognized by said Institute as cooperating with said Institute or other purchasers.

4. Directly or indirectly representing to manufacturers, producers, and wholesalers that the members of the respondent Institute and the dealers recognized by said Institute as cooperating with said Institute would withhold or withdraw their patronage if said manufacturers,

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producers, and wholesalers sold to competing dealers in lumber, lumber products, building materials, and building supplies, or to others whose names were not listed on the respondents' rosters.

5. Cooperating with other dealer organizations and with manufacturers, producers, and wholesalers, for the purpose of confining the sale and distribution of lumber, lumber products, building materials, and builders' supplies to the active members of the respondent Institute and to the dealers recognized by said Institute as cooperating with said Institute, and preventing their sale and distribution otherwise.

6. Intimidating the representatives or agents of manufacturers, producers, and wholesalers from having, or continuing, business relations with buyers or prospective buyers who are not recognized by the respondent Institute as entitled to buy direct from manufacturers, producers and wholesalers.

7. Holding meetings to devise means for making effective the aforesaid programs and policies, or similar programs and policies.

8. Employing other cooperative or coercive acts and methods in promoting and carrying out the aforesaid programs and policies, or similar programs and policies.

It is further ordered, That this proceeding be, and the same hereby is, dismissed (1) as to respondent directors Roland E. Lee, Eugene H. Pichard, and E. S. Spencer; (2) as to respondent Vice President Alston Shoaf; and (3) as to respondent Treasurer J. Ben Wand.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

LINCOLN DENTAL SUPPLY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3351. Complaint, Mar. 9, 1938—Decision, Sept. 14, 1938

Where a corporation engaged in sale of dental supply products to purchasers in other States, in competition with others engaged in sale and distribution of such products and who truthfully represent their status and quality and nature of their said products, and with three manufacturers, products of which had come to be well and favorably known because of established quality thereof to members of dental profession and which, through many years, had come to acquire good will of dental supply trade—

- (a) Represented through advertisement which set forth and offered by name the cement of said three manufacturers, and which advertisement it caused to be inserted on frontispiece of a mail-order catalog distributed to prospective purchasers in the various States, that it was the legitimate and authorized representative of aforesaid three corporate manufacturers, facts being it was not such representative of any of aforesaid corporations and products therein referred to had not been purchased from any of them;
- (b) Represented through aforesaid advertisement thus offering such cement, that products referred to therein and there further described as "Government Sealed Stock, Guaranteed Quality although Liquid is Slightly Discolored," were among those being currently made and offered by said three corporate manufacturers and were of equal quality for the uses intended as those being currently made by such manufacturers, other than for slight discoloration, facts being products in question were sold by corporations in question to the Government prior to 1919 for use during the war, and had lost their full usefulness for purpose for which made and sold, and were far inferior in quality as result of deterioration over period of time to those being currently made and sold by them for similar purposes; and
- (c) Represented through aforesaid advertisement that United States Government had approved quality of said products, facts being it had not in any manner approved quality thereof, which, as aforesaid, was not equal to that of products being currently made and sold by corporate manufacturers aforesaid;

With effect of confusing, misleading, and deceiving purchasers into erroneous belief that it was the authorized representative of said three corporate manufacturers, that quality of products referred to in advertisement in question had been approved by the Government and was guaranteed equal to that of products being currently made and sold for similar purposes by corporations in question, except as above noted, and of causing purchasers to buy said products by reason of aforesaid erroneous beliefs thus engendered, and of thereby unfairly diverting trade to it from such corporate manufacturers and other competitors who do not similarly or in any manner misrepresent their business status or quality and nature of their respective products:

Held. That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.