

Syllabus

IN THE MATTER OF
PINE HILL LIME & STONE COMPANY, ET AL., AND
HAL S. COVERT

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

Docket 3591, Complaint, July 29, 1939¹—Decision, June 30, 1941

Where some 19 corporations and an individual, which produced a majority of the lime of all kinds and grades produced in the southeastern part of the United States, and somewhat less than a majority of the lime there sold, and, to the extent that they acted collusively, dominated the market for lime in the section in question; acting in concert with one another and through their paid secretary, who had represented them and others as district secretary under the National Recovery Administration, and, following the invalidation of the National Industrial Recovery Act, sought to carry on for them the system of non-competitive prices embodied in the Code for the industry;

Engaged in an unlawful combination and conspiracy among themselves with intent and effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among the various States in which they did business, and in furtherance of said end—

- (1) Continued in effect among themselves aforesaid system of non-competitive delivered prices which was designed to, and in many instances did, prevent differences in the cost of freight delivery between various producers' plants and the respective places of delivery from creating any advantage to purchasers in delivered cost, irrespective of the producer involved, and which system was predicated upon the use of a number of basing points whereby all delivered prices were calculated as though shipments were made by rail from a single basing point, or points having the same freight rate, to respective destinations;
- (2) Employed and operated a cooperative system of filing and exchanging, through said secretary, the base prices applicable to the respective basing points, it being understood and agreed among them that quotations and sales would be made only on a delivered price basis by adding to such common mill base price the rail freight on lime so shipped from the applicable basing point to destination, and thereby in effect carried over and continued in operation practices which had been carried on under the said N. R. A. Code, said secretary undertaking to carry out, so far as he was able, the services which he had rendered as district secretary under the N. R. A., and said various producers agreeing to send to his office their published quotations f. o. b. their respective plants, which he distributed along with other information to the other subscribers to such service or association;
- (3) Employed and operated a cooperative system of calculating and circulating among themselves through said individual a compilation of freight rates from the respective basing points to various destinations in order to insure that differences in actual freight and in interpretation and application thereof

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would not create differences in the delivered price at any given destination as quoted and charged by said producers;

- (4) Fixed, established, and maintained uniform prices, terms, and conditions of sale at which they would sell lime to the purchasing public, and increased and fixed the price for delivery in carload lots of less than 15 tons, as compared with the price for larger carloads, by adding thereto a uniform premium;
- (5) Agreed in many instances, among themselves or with said individual, that the prices, terms and conditions of sale, calculated as above and filed with him and distributed by him among the producers should be adhered to without deviation until other prices, terms and conditions were likewise filed and thus distributed, said individual endeavoring to induce, and inducing, producers seeking his advice as to whether they should meet lower prices quoted by non-member producers, not to meet said lower prices, or such prices filed with him by other producers herein involved;
- (6) Collaborated and exchanged price information with trade associations of producers in other sections, said individual furnishing information relative to published base prices of competitors, freight rates, lime market conditions, and other similar matters, not only to his own subscribers, but also, through the secretaries of lime associations in "outside territory," to competitors located north of the Ohio River and west of the Mississippi, and keeping his subscribers and others advised of changes in freight rates and in the published prices for lime within and without the southeastern area herein concerned;
- (7) Agreed among themselves and with said individual, and with certain other producers located in other sections, that when selling in "outside" territory, they would sell according to the delivered prices there prevailing, said secretary exchanging, in behalf of producers here concerned, information as to basing point prices, freight rates, etc., with those providing similar services for producers in other sections of the United States, with intent and effect of inducing reciprocal adherence to the delivered prices prevailing in all the respective districts;
- (8) Made and carried out an agreement or understanding among themselves and with said individual that they would quote identical delivered prices, terms, and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments, and failed or refused to quote other than delivered prices or their equivalent in making such bids, and agreed with their respective dealer customers that the latter quote such prices when bidding on lime to be purchased by such Governments;
- (9) Compiled and circulated lists of recognized jobbers and dealers who should be entitled to purchase lime at jobbers' and dealers' prices, terms and conditions of sale and agreed among themselves as to the amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipalities, State and Federal Governments, and other large consumers, and agreed upon a uniform differential between the prices to dealers and those to contractors, amounting usually to 50 cents a ton to be deducted from the price quoted by such producers; and
- (10) Made use of special meetings of their own and of said secretary as occasions for discussing, making, mending, and renewing agreements or understandings with respect to price and other matters, and delegated, as a practice, to said individual, function of forestalling and correcting any deviations from such agreements, and caused investigations of complaints to be made by said

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individual, to whom they reported same, and who was very active in suggesting to producers the necessity of maintaining the published prices and other matters in regard to which they had passed resolutions at their various meetings, from time to time issuing numerous notices and bulletins to them with respect to such matters;

With the result that producers whose plants were not located at any basing point frequently assessed and collected as freight charges from their customers sums of money which were greater than the actual freight expense thereon, and on sales made for local use assessed and collected such sums for "phantom" or non-existent freight; identical delivered prices were quoted and charged to any given destination within the area in question, and varying net prices were received by producers at their plants, depending upon the freight rate to the various points of destination which had to be absorbed; prices exacted from customers at or near a plant were the same as would have prevailed had purchaser taken delivery from plants more distant or in other States; municipalities, in response to requests for bids, as a result of the practice known as the "lowest combination," received identical bids; and in many instances, purchasers within the territory involved, had to pay higher, and much higher, prices for lime than purchasers at outside points, and, conversely, outside producers were enabled to ship to purchasers in said southeastern territory and obtain net mill prices which, after deduction of freight, were higher than the net prices obtained by them within a few miles of their respective plants; certain outside producers made a practice of adopting the same system of arriving at prices as that used by producers in southeastern territory; and while prices for lime were decreasing at certain points outside of said southeastern area, such prices in said area had increased since decision invalidating National Industrial Recovery Act:

Held, That said acts and practices, as above set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually hinder and prevent price competition between and among the producers herein involved in the sale of lime in commerce; placed in them the power to control and enhance prices; increased the prices of lime paid by the purchasers and consequently those paid by the public; created in them a monopoly in the sale of lime and unreasonably restrained commerce therein; and constituted unfair methods of competition and unfair acts and practices in commerce.

Before *Mr. Charles F. Diggs* and *Mr. Randolph Preston*, trial examiners.

Mr. Curtis C. Shears and *Mr. Merle P. Lyon* for the Commission.

Mr. Abram F. Myers, of Washington, D. C., and *Mr. Edgar Watkins* and *Mr. Allan Watkins, Jr.*, of Atlanta, Ga., for respondents.

SECOND AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Pine Hill Lime & Stone Co., Southern States Lime Corp., Gager Lime Manufacturing Co., Knoxville Lime Manufacturing Co., Longview-Saginaw Lime Works, Inc., Cheney Lime & Cement Co., Ladd Lime & Stone Co., Virginia

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Lime Products Co., Inc., Kimbalton Lime Co., Inc., Eagle Rock Lime Co., Williams Lime Manufacturing Co., Florida Lime Co., Dixie Lime Products Co., Keystone Lime Works, Inc., Green Bag Cement Co., of West Virginia, M. J. Grove Lime Co., Ripplemead Lime Co., Inc., Riverton Lime & Stone Co., Jesse Allen Lime Co., corporations; George L. Scott, Sr., an individual, trading as Alabaster Lime Co., and Hal S. Covert, hereinafter referred to as respondents, have violated the provisions of the 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 second amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Commission names and includes each of the foregoing parties as respondents in this proceeding both separately and as representatives of each other.

PAR. 2. Respondent Pine Hill Lime & Stone Co. is a corporation, with its principal office and place of business at Room 1814, Munsey Building, in the city of Baltimore, Md. Said respondent owns and operates a lime manufacturing plant located at Pine Hill, Ky.

Respondent Southern States Lime Corporation is a corporation organized and existing under the laws of the State of South Carolina, with its principal office and place of business located in the city of Charleston, S. C. Said respondent owns and operates a lime manufacturing plant located at Crab Orchard, Tenn.

Respondent Gager Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at Room 605, Provident Building, in the city of Chattanooga, Tenn. Said respondent owns and operates a lime manufacturing plant located at Sherwood, Tenn.

Respondent Knoxville Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 22 Marietta Building, in the city of Atlanta, Ga. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn.

Respondent Longview-Saginaw Lime Works, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 721 Chamber of Commerce Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Long View and Saginaw, Ala.

Respondent Cheney Lime & Cement Co. is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in the Martin Building, in

the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Landmark and Greystone, Ala.

Respondent Ladd Lime & Stone Co. is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at Cartersville, Ga. Said respondent owns and operates a lime manufacturing plant located at Cartersville, Ga.

Respondent Virginia Lime Products Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Kimbalton Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Shawsville, Va. Said respondent owns and operates a lime manufacturing plant located at Shawsville, Va.

Respondent Eagle Rock Lime Co. is a corporation organized and existing under the laws of the State of Maine, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Williams Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the Hamilton National Bank Building, Knoxville, Tenn. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn.

Respondent Florida Lime Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Dixie Lime Products Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 19 North Main Street, in the city of Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Keystone Lime Works, Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in Keystone, Ala. Said respondent owns and operates a lime manufacturing plant located at Keystone, Ala.

Respondent Green Bag Cement Co. of West Virginia is a corporation organized and existing under the laws of the State of West

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Virginia, with its principal office and place of business located at Kenova, W. Va. Said respondent owns and operates lime manufacturing plants located at Lawton, Ky., and Kenova, W. Va.

Respondent M. J. Grove Lime Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Lime Kiln, Md. Said respondent owns and operates lime manufacturing plants located at Bonsville and Frederick, Md., and Stevensville, Va.

Respondent Ripplemead Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Ripplemead, Va. Said respondent owns and operates a lime manufacturing plant located at Ripplemead, Va.

Respondent Riverton Lime and Stone Co. is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Riverton, Va. Said respondent owns and operates a lime manufacturing plant located at Riverton, Va.

Respondent Jesse Allen Lime Co. is a corporation with principal office and place of business at Burns, Tenn. Said respondent owns and operates a lime manufacturing plant located at Burns, Tenn.

Respondent George L. Scott, Sr., is an individual trading as Alabaster Lime Co., and maintains his office and place of business at Siluria, Ala. Said respondent owns and operates a lime manufacturing plant located at Siluria, Ala.

All of the respondents described in this paragraph are engaged in the manufacture, sale, and distribution of lime used for agricultural, chemical and building purposes and are hereinafter referred to for convenience as "respondent lime producers."

PAR. 3. Respondent Hal S. Covert is an individual who maintains his office and place of business at the Arnold Hotel, in the city of Knoxville, within the State of Tennessee, and has since on or about June 30, 1935, acted as the paid representative and agent of respondent lime producers and of the lime producers and manufacturers located in the southeastern portion of the United States south of the Ohio River and east of the Mississippi River.

PAR. 4. All of said respondent lime producers have been for more than 3 years last past, and are now, engaged in the manufacture and distribution of agricultural, chemical, and building lime which they sell to their respective customers located in various States of the United States and cause said products when sold to be transported from their respective plants to purchasers located at various places in the several States of the United States other than the State where they are pro-

duced and from which they are shipped. Respondent lime producers sell their product direct to municipalities, State and Federal Governments and also to dealers, jobbers, and large contractors. Said respondent lime producers manufacture and sell a large majority of the total volume of agricultural, chemical, and building lime that is produced and sold in the southeastern part of the United States. To the extent that they act collusively and collectively in the production and pricing of their goods, respondent lime producers are in a position to dominate and manipulate the market in which Governmental agencies and unorganized purchasers must buy such goods in the southeastern part of the United States.

PAR. 5. Lime, the commodity with which this proceeding is concerned, is produced in a variety of qualities, has varied chemical constituents and is used for correspondingly varied purposes. Among the more important purposes for which it is used are as a building and construction material where it is widely in demand as an ingredient in mortar and plaster, as a bactericide, purifier and deodorant of municipal and other public water supplies, as an agricultural fertilizer and soil conditioner, as a plant insecticide and fungicide, and for miscellaneous household purposes.

PAR. 6. For more than 3 years last past respondents, their officers, agents, and employees, have engaged in a wrongful and unlawful combination and conspiracy among themselves, for the purpose and with the effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among the several States where respondent lime producers do business. To that end respondent by concerted action, agreement, and understanding among themselves and with others not joined herein as respondents, have adopted and carried out the following policies, rules, practices, and methods of competition:

(a) Respondents have continued in effect by agreement, understanding, and concerted action among themselves a system of non-competitive delivered prices that was embodied in an express agreement among them during the period that a Code for the industry was in operation under the National Industrial Recovery Act. Said system of delivered prices was designed to prevent differences in the cost of freight delivery between the various producers' plants and the respective places of delivery from creating any advantage or disadvantage to a purchaser in delivered cost without regard to which respondent lime producer the intending purchaser might apply. Said system of identical delivered prices was predicated upon the use of a number of so-called basing points whereby all delivered prices were calculated as

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though shipments were made by rail from a single point or points having a common freight rate to destination.

(b) Respondents have employed and operated a cooperative system of filing and exchanging among themselves the base prices applicable to the respective basing points, but it was understood and agreed among respondent lime producers that quotations and sales would be made only on a delivered price basis and by adding to such understood common basing point prices the rail freight from the applicable basing point to destination. Said system, understanding and agreement were likewise a continuation of an express agreement among respondents that existed under the Code during the period of the National Industrial Recovery Act. By understanding, agreement, and concerted action respondents continued to adhere to the specific basing points and basing point prices in effect under the Code until higher basing point prices could be and were established.

(c) Respondents have employed and operated a cooperative system of calculating and circulating among themselves a compilation of freight rates from the respective basing points to various destinations in order to insure that differences in the actual freight from actual shipping points to a given destination and differences in the interpretation and application of freight tariffs would not create differences in the delivered price at any given destination. Said system was likewise a continuation of a practice carried on under the express agreement that existed under the Code during the period of the National Industrial Recovery Act.

(d) Respondent lime producers have agreed among themselves and with respondent Covert that the prices, terms and conditions of sale filed with respondent Covert and distributed among the producers should be adhered to without deviation until after other prices, terms and conditions of sale were likewise filed and distributed. The prices to be charged were agreed upon by respondent lime producers at meetings with the understandings that such agreed prices would thereafter be filed with respondent Covert as a formality or even not filed at all. Printed price lists showing delivered prices at various delivery points were distributed by respondent Covert for use of respondent lime producers and were calculated according to the applicable basing point price and freight rates therefrom. Respondent lime producers have sought the advice and permission of respondent Covert as to whether they should meet lower prices quoted by non-respondent producers of lime. Respondent Covert has endeavored from time to time to induce respondent lime producers not to reduce their prices to meet the lower prices of non-respondent lime producers and not to meet lower prices filed with him by certain of respondent lime producers.

(e) Respondent lime producers have made and carried out an agreement among themselves and with respondent Covert that they would submit identical delivered prices, terms and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments and would refuse to quote other than delivered prices or their equivalent in making such bids.

(f) Respondent lime producers have delegated to respondent Covert the function of forestalling and correcting deviations from the price agreements and other agreements herein alleged that restrict competition among said producers. Pursuant to such delegation they have reported to respondent Covert suspected deviations from the prices and terms agreed upon and have caused him to make investigations of their complaints regarding such deviations. Respondents have discussed such deviations among themselves and with producers suspected or charged therewith for the purpose and with the effect of obtaining renewed adherence to the alleged agreements on and affecting prices. Both regular and special meetings of respondent lime producers and respondent Covert have been used by them as the occasion for discussing, making, amending, and renewing such agreements.

(g) Respondent lime producers have agreed among themselves upon a uniform premium or addition to the price to be charged for delivery in carload lots of less than 15 tons as compared with the price for larger carloads.

(h) Respondent lime producers have agreed among themselves, with respondent Covert, and with non-respondent lime producers located in other sections of the country that when selling into territory outside that where respondents' basing point prices controlled the delivered prices they would recognize, adopt, and sell according to the delivered prices prevailing in such territory. Respondent Covert on behalf of respondent lime producers has exchanged information as to basing point prices, freight rates from basing points and delivered prices with persons providing services similar to those of respondent Covert for the lime producers in other districts of the country for the purpose and with the effect of inducing reciprocal adherence to the delivered prices prevailing in the respective districts.

(i) Respondent lime producers have agreed among themselves as to what concerns should be recognized as jobbers and dealers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms and conditions of sale; and have compiled and circulated lists of such recognized jobbers and dealers in order to facilitate the execution of said agreement. Respondent lime producers have agreed among themselves upon a uniform amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipal-

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ities, State and Federal Governments and other large consumers, and have agreed upon a uniform differential between the prices to dealers and the price to contractors.

(j) Respondent lime producers have agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on lime to be purchased by municipalities, State and Federal Governments and other large consumers.

(k) For the purpose and with the effect of making more difficult the detection and prevention of their unlawful combinations, agreements, and understandings herein alleged, respondents have destroyed documentary records and evidence of certain activities herein set forth or have avoided making such records and evidence.

PAR. 7. As a necessary result of respondents' agreement to use and their use of the above described basing point system of delivered prices, respondent lime producers whose plants are not located at any basing point have frequently assessed and collected sums of money from their customers in the guise of freight charges but in amounts that are greater than the actual freight expense incurred and on sales made for local use assess and collect such sums when there is no actual freight expense incurred.

PAR. 8. As an incident to and a necessary result of their agreed policy and practice of making delivered prices only and of making such prices identical notwithstanding differences in the actual freight from the various shipping points to given destinations, the respective respondent lime producers have habitually and systematically demanded, charged, accepted, and received larger sums of money per unit of product from their customers located near their respective plants than from their customers located at greater distances, have thereby forced their nearby customers to pay more to respondent lime producers per unit of product in order that more distant ones might pay less, have deprived their nearby customers of any price advantage by reason of their proximity to the place of production, and have thereby habitually and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among respondent lime producers.

PAR. 9. By means of the aforesaid agreements, understandings, rules, policies, practices, and cooperative methods of competition, respondents have deprived purchasers and consumers of agricultural, chemical, and building lime of the advantages of normal competition that would otherwise exist among respondent lime producers. Respondents have thereby compelled unorganized purchasers to buy at prices and terms determined collectively and collusively by respondents and have artificially enhanced the amounts exacted from such purchasers above the

amounts obtainable had there been no such determination. The amounts so exacted from public agencies constitute part of the financial obligations of government payable either with or without interest out of tax receipts.

PAR. 10. The above alleged acts and things done by respondents are all to the injury and prejudice of the public engaged in the purchase and resale of agricultural, chemical, and building lime, of competitors engaged in the production and sale thereof and of consumers of such commodities, and constitute unfair methods of competition and unfair acts and practices in interstate commerce within the intent and meaning of section 5 of an act of Congress 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 the 16th day of September, A. D., 1938, issued its complaint against the respondents named in the caption hereof, and on the 11th day of January, A. D., 1939, and on the 29th day of July, A. D., 1939, issued its amended complaints, and caused said complaints to be served upon each of said respondents, charging them with unfair methods of competition and unfair acts and practices in interstate commerce, and with restricting and suppressing competition in the interstate sale of agricultural, building, and chemical limes, in violation of the Federal Trade Commission Act. After the issuance of said complaints and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaints were introduced by Curtis C. Shears and Merle P. Lyon, attorneys for the Commission, and in opposition to the allegations of the complaints by Abram F. Myers, Edgar Watkins, and Allan Watkins, Jr., attorneys for the respondents, before Randolph Preston, trial examiner of the Commission, duly designated by it to take testimony and receive evidence in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaints, answers, testimony, and other evidence, the report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument on behalf of the Commission and of the respondents; and the Commission, having duly considered the matter 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pine Hill Lime & Stone Co. is a corporation, with its principal office and place of business in Pine Hill, Ky., where it owns and operates a lime manufacturing plant, where it produces chemical and construction lime.

Respondent Southern States Lime Corp. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located in the city of Charleston, S. C. Said respondent owns and operates a lime manufacturing plant located at Crab Orchard, Tenn. It produces no agricultural lime.

Respondent Gager Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at Room 605, Provident Building, in the city of Chattanooga, Tenn. Said respondent owns and operates a lime manufacturing plant located at Sherwood, Tenn.

Respondent Knoxville Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located in Knoxville, Tenn., where said respondent owns and operates a lime manufacturing plant. It produces no agricultural lime.

Respondent Longview-Saginaw Lime Works, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 721 Chamber of Commerce Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Longview and Saginaw, Ala.

Respondent Cheney Lime & Cement Co. is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in the Martin Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Landmark and Greystone, Ala.

Respondent Ladd Lime & Stone Co. is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at Cartersville, Ga. Said respondent owns and operates a lime manufacturing plant located at Cartersville, Ga. It produces a high magnesium lime used only for structural purposes, as well as some agricultural lime.

Respondent Virginia Lime Products Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Kimbalton Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Shawsville, Va. Said respondent owns and operates a lime manufacturing plant located at Shawsville, Va.

Respondent Eagle Rock Lime Co. is a corporation organized and existing under the laws of the State of Maine, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Williams Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the Hamilton National Bank Building, Knoxville, Tenn. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn., where it makes chemical lime.

Respondent Florida Lime Products Co., Inc. (named in the complaint as Florida Lime Co.), is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Dixie Lime Products Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 19 North Main Street, in the city of Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla., where it produces a high calcium lime for structural and chemical uses and ground limestone for agricultural use.

Respondent Keystone Lime Works, Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in Keystone, Ala. Said respondent owns and operates a lime manufacturing plant located at Keystone, Ala.

Respondent M. J. Grove Lime Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Lime Kiln, Md. Said respondent owns and operates lime manufacturing plants located at Bonsville and Frederick, Md., and Stevensville, Va.

Respondent Ripplemead Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Ripplemead, Va. Said respondent owns and operates a lime manufacturing plant located at Ripplemead, Va. It makes no agricultural lime.

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Respondent Riverton Lime & Stone Co. is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Riverton, Va. Said respondent owns and operates a lime manufacturing plant located at Riverton, Va., where it makes structural lime.

Respondent Jesse Allen Lime Co. is a corporation with its principal office and place of business at Burns, Tenn. Said respondent owns and operates a lime manufacturing plant located at Burns, Tenn., where it makes a high calcium structural and chemical lime.

Respondent George L. Scott, Sr. is an individual trading as Alabaster Lime Co. and maintains his office and place of business at Siluria, Ala. Said respondent owns and operates a lime manufacturing plant located at Siluria, Ala.

Respondent Green Bag Cement Co. of West Virginia is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Kenova, W. Va. Said respondent owns and operates lime manufacturing plants located at Lawton, Ky., and Kenova, W. Va. It makes building lime only, and its building lime is an adjunct to its main cement business and constitutes less than one-half of 1 percent of its total business.

All of the respondents described as lime manufacturers are engaged in the manufacture, sale, and distribution of lime used for various purposes and are hereinafter referred to for convenience as "respondent lime producers."

As to respondent Green Bag Cement Co. of West Virginia, there is not sufficient evidence upon which to base an order to cease and desist. The references herein made to respondents as "lime producers" do not include the respondent Green Bag Cement Co. of West Virginia.

PAR. 2. Lime, which respondent lime producers manufacture, is produced in a variety of qualities, has varied chemical constituents and is used for correspondingly varied purposes. Among the more important purposes for which it is used are as a building and construction material where it is widely in demand as an ingredient in mortar and plaster, as a bactericide, purifier, and deodorant of municipal and other public water supplies, as an agricultural fertilizer and soil conditioner, as a plant insecticide and fungicide, and for miscellaneous household purposes.

Lime is a bulky, relatively cheap commodity, and consequently freight is an important and often the principal factor in the delivered cost. As regards its chemical constituency, lime is classified as high calcium lime and high magnesium lime. As regards its use, lime is classified as chemical, structural, and agricultural. Generally speak-

ing, calcium lime is usable for all three purposes, although in some cases a high magnesium lime is preferred for building purposes. Magnesium lime is used primarily in construction work. Both compete with cement, gypsum, and the various masonry cements and mortar mixes.

PAR. 3. The respondent lime producers, considered collectively, have been for more than 3 years last past, and are now, engaged in the manufacture and distribution of lime of various kinds, qualities, and descriptions, which they sell to their respective customers located in various States of the United States and cause said products when so sold to be transported from their respective plants to purchasers located at various places in various States of the United States other than the State where the products so purchased were produced and from which shipped. In the course of said operations said respondent lime producers sell their products direct to municipalities, State and Federal Governments, and also to dealers, jobbers, and contractors, located in various States of the United States.

Respondent lime producers produce a majority of the lime of all kinds and grades produced in the southeastern part of the United States as herein elsewhere defined, but somewhat less than a majority of the lime sold in that region. Respondent Hal S. Covert admitted that respondent lime producers produced 42.2 percent of the total lime sold in the southeast area, 32.9 percent is produced by other non-respondent lime producers in the southeast, and shipments from all plants outside the southeastern area were 24.9 percent of the total.

To the extent that they act, and have acted, collusively and collectively in the production and pricing of their products as hereinafter set forth, respondent lime producers are in a position to dominate, and have dominated, the market in which governmental agencies and unorganized purchasers must buy such products in the southeastern part of the United States. The price rise from \$8.50 to \$9.00 per ton on hydrated lime simultaneously put into effect by respondent lime producers in September 1935, and the simultaneous price rise put into effect by a large number of respondent lime producers on January 15, 1940, illustrate the ability of respondent lime producers to manipulate and control the market in the southeastern part of the United States. A fixed base price of \$9.00 per ton was maintained by respondent lime producers for a number of years beginning in September 1935.

PAR. 4. Respondent Hal S. Covert for the 5 years last past had an office in Knoxville, Tenn. From the approximate date of June 30, 1935, and until the approximate date of March 1, 1939, said Covert acted as the paid representative of the respondent lime producers and

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in conjunction with other lime producers in certain other portions of the United States. During the operation of the N. R. A. and prior to the decision of the Supreme Court of the United States in the case of *U. S. v. Schechter*, 295 U. S. 495, in the year 1935, which declared the N. R. A. unconstitutional, lime codes had apparently proved advantageous to the southeastern lime manufacturers, among whom were the said respondent lime producers. During said N. R. A. period the southeastern territory theretofore comprising districts 4, 10, and 11 of the National Lime Institute, also constituted the same numbered districts under the N. R. A. District 4 comprised the State of Virginia, Districts 10 and 11 the territory east of the Mississippi and south of the Ohio Rivers, exclusive of Virginia. Respondent Covert became, and continued to act as, secretary of the Districts Control Committee of the N. R. A. for said districts from and after March 4, 1934, and until its dissolution as aforesaid. After the termination of the N. R. A. he continued informally as secretary of substantially the same group of lime producers in the southeastern territory with the exception of a few concerns which immediately withdrew their support. Respondent Covert set out obtaining the consent of all the producers in said Districts 4, 10, and 11, to continue the N. R. A. activities or similar activities on a voluntary basis. He sent out, among other things, a circular asking said producers or manufacturers (the terms being used apparently interchangeably), to pledge themselves to aid him according to the plan he suggested for continuing the benefits of the N. R. A. Some producers responded and some did not. Respondent Covert succeeded in getting approximately 20 subscribers to his plan of operation who are the respondent lime producers named herein. They agreed to pay, and in most instances did pay, to him up to March 1, 1939, 5 cents per ton on all lime shipped by them and each of them, respectively, during the month preceding their said respective payments. There was a similar charge made under the N. R. A.

PAR. 5. For more than 3 years prior to the commencement of this proceeding, respondent lime producers, except Green Bag Cement Co. of West Virginia, their officers, agents and employees, engaged in a wrongful and unlawful combination and conspiracy among themselves, for the purpose and with the effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among various States in which said respondent lime producers do business. To that end said respondent lime producers, by concerted action, agreement, and understanding among themselves and with others not joined herein as respondents, adopted and carried out, among others, the following policies, rules, practices, and methods of competition, to wit:

Said respondents continued in effect by agreement, understanding, and concerted action among themselves a system of non-competitive delivered prices that was embodied in an express agreement among them during the period that a Code for the industry was in operation under the National Industrial Recovery Act. Said system of delivered prices was designed to prevent, and did in many instances prevent, differences in the cost freight delivery between various producers' plants and the respective places of delivery from creating any advantage or disadvantage to a purchaser or purchasers in delivered cost without regard to which of the respondent lime producers the intending purchaser or purchasers might apply. Said system of identical delivered prices was predicated upon the use of a number of so-called basing points as herein elsewhere named, whereby all delivered prices were calculated as though shipments were made by rail from a single basing point or points having a common or the same freight rate to respective destination or destinations.

Respondent lime producers employed and operated a cooperative system of filing and exchanging among themselves through respondent Covert the base prices applicable to the respective basing points, but it was understood and agreed among respondent lime producers that quotations and sales would be made only on a delivered price basis by adding to such understood or agreed common mill base prices the rail freight on said lime so shipped from the applicable basing point to destination.

This cooperative system of filing and exchanging among respondent lime producers the base prices applicable to the respective basing points through the medium of respondent Covert in effect carried over and continued in operation practices which had been carried on under the said N. R. A. code. Respondent Covert undertook to carry out, so far as he was able, the services which he had rendered as district secretary under the N. R. A. Up to March 1, 1939, the subscriber respondents to Covert's service agreed to send to Covert's office in Knoxville, Tenn., their published quotations on lime f. o. b. their respective plants, and Covert in return was to, and did, distribute this and other information to the other subscribers to the said service or association. Meetings of subscribers were called by respondent Covert at irregular but frequent intervals in various places in various States. Bulletins were sent out by Covert as a result of these meetings and the discussions had at these meetings, but no formal minutes and very few notes were kept of these proceedings.

Respondent lime producers also employed and operated a cooperative system of calculating and circulating among themselves through

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respondent Covert a compilation of freight rates from the respective basing points herein named to various destinations in order to insure that the differences in the actual freight from said respective shipping points to a given destination and differences in the interpretation and application of freight tariffs would not create differences in the delivered price at any given destination as quoted and charged by respondent lime producers.

Respondent lime producers in many instances agreed among themselves or with respondent Covert that the prices, terms, and conditions of sale filed with respondent Covert and distributed among the producers should be adhered to without deviation until other prices, terms, and conditions of sale were likewise filed and distributed among said respondent lime producers. Printed price lists showing delivered prices at various delivery points were distributed by respondent Covert for use of respondent lime producers and were calculated according to and upon the agreed base price plus the applicable freight rates from the nearest basing point theretofore agreed upon. Respondent lime producers in numerous instances sought the advice of their said representative, respondent Covert, as to whether they should meet lower prices quoted by non-respondent producers of lime. Said respondent Covert endeavored from time to time to induce, and has induced, respondent lime producers not to reduce their prices to meet the lower prices of non-respondent lime producers and not to meet lower prices filed with him by certain of respondent lime producers.

Information relative to published base prices of competitors, freight rates, lime market conditions, and other similar matters was furnished by respondent Covert not only to his own subscribers, but also, through the secretaries of lime associations in so-called "outside territory," to competitors located north of the Ohio River and west of the Mississippi. Covert published the delivered prices for lime in various sections of the country, together with changes in the market conditions and volume of sales, and kept his subscribers and others advised of changes in freight rates and in the published prices for lime within and without the southeastern area.

Respondent lime producers made and carried out an agreement or understanding among themselves and with respondent Covert that they would quote identical delivered prices, terms, and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments and failed or refused to quote other than delivered prices or their equivalent in making such bids.

Respondent lime producers have as a practice delegated to respondent Covert the function of forestalling and correcting any deviations from the price agreements and other agreements as herein referred to

in order to restrict or eliminate price competition among said producers. Pursuant to such delegation they reported to respondent Covert suspected deviations from the prices and terms agreed upon and caused him to make investigations of their complaints regarding such deviations. Respondent lime producers discussed such deviations among themselves and with producers suspected or charged therewith for the purpose and with the effect, in part, of obtaining renewed adherence to the agreements on and affecting prices. Both regular and special meetings of respondent lime producers and respondent Covert have been used by them as the occasions for discussing, making, amending, and renewing such agreements or understandings.

Respondent Covert was very active in suggesting to respondent lime producers the necessity of maintaining the published prices and other matters in regard to which respondent lime producers had passed resolutions at the various meetings above referred to. He issued numerous notices and bulletins from time to time to respondent lime producers, directing or urging them to maintain their published prices and in some instances to ignore the cuts or reductions of other manufacturers, including some of the respondent lime producers. Typical of these is the following circular issued by respondent Covert:

Riverton base is still \$8.50; Knoxville base is now \$9.00, but the above earlier price will only apply as long as all manufacturers observe it.

He had practically a 100-percent response from respondent lime producers to the effect that they intended to observe the lime industry base prices and terms and would notify him of any proposed changes.

In December 1937 the respondent Riverton Lime & Stone Co. announced a reduction of \$2.00 per ton on its lime. Respondent Covert at once took up with Judge A. C. Carson, an officer of the Riverton Co., the matter of restoring the price to \$9.00, which respondent Riverton Co. shortly thereafter did.

On other occasions respondent Covert wrote letters or held consultations with other respondent lime producers with a view to maintaining the published prices.

On March 1, 1939, respondent lime producers and others organized the Southern Lime Institute, a corporation organized under the laws of Georgia.

Respondent lime producers agreed among themselves upon a uniform premium or addition to the price to be charged for delivery in less than carload lots of less than 15 tons as compared with the price for 15 or more ton carload lots, said premium being \$1.00 per ton additional for all shipments of less than 15 ton carload lots.

Respondent lime producers agreed among themselves and with respondent Covert, and with certain non-respondent lime producers

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located in other sections of the country that when selling into territory, or sections of the United States outside of those where respondents' basing point prices controlled the delivered prices, they would recognize, adopt and sell according to the delivered prices prevailing in such other respective territories or sections. Respondent Covert on behalf of respondent lime producers exchanged information as to basing point prices, freight rates from basing points and delivered prices with persons providing services similar to those of respondent Covert for the lime producers in certain other districts or sections of the United States for the purpose and with the effect of inducing reciprocal adherence to the delivered prices prevailing in all of the respective districts, including the said southeastern territory in which respondent lime producers operate.

Respondent Covert and some of the respondent lime producers have undertaken or attempted to agree among themselves as to what concerns should be recognized as jobbers and dealers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms, and conditions of sale; and have compiled and circulated lists of such recognized jobbers and dealers in order to facilitate the execution of said agreement.

Respondent lime producers made an agreement among themselves as to the amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipalities, State and Federal Governments and other large consumers, and agreed upon a uniform differential between the prices to dealers and the price to contractors, said amount being usually 50 cents for each ton of lime when sold, deducted from the price quoted by respondent lime producers.

Respondent lime producers agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on lime to be purchased by municipalities, State and Federal Governments, to wit, the price quoted the dealer by the respondent lime producer or producers.

PAR. 6. As a necessary result of respondents' agreement to use and their use of the above-described basing point system of delivered prices, respondent lime producers whose plants are not located at any basing point have frequently assessed and collected sums of money from their customers in the guise of freight charges but in amounts that are greater than the actual freight expense incurred by them and also on sales made for local use, assess and collect such sums when there is no actual freight expense incurred.

PAR. 7. The system or method of respondent lime producers, as hereinabove set out, results and has resulted in identical delivered

prices being quoted and charged to any given destination within the area hereinbefore described. It also results and has resulted in varying net prices received by the producers at the plant depending upon the freight rate from the respective plants to the various and respective points of destination which had to be absorbed. Consumers of lime in Ocala, Fla., who purchase from the Dixie Lime Products Co., hereinafter called Dixie Co., and the Florida Lime Products Co., hereinafter called the Florida Co., (two of the respondents having plants located within a few miles of the city of Ocala, Fla.) pay the identical delivered prices for the lime so purchased, as the prices they would be charged by other lime producers located within the Keystone area consisting of the States of Florida, part of Georgia, and Alabama, as herein described; that is, the prices charged by the said Dixie Co. and the Florida Co. are the identical lime prices quoted at the Keystone, Ala., plant plus the freight rate from Keystone, Ala., to Ocala, Fla., or any other point of destination nearby the location of the said local plants. This practice is followed even though the actual delivery is made by truck or rail over a few miles journey from respondents' plant to point of destination at Ocala. As an illustration of how this practice enables a producer close to the point of delivery to collect "phantom freight," the net mill price realized by respondent Dixie Lime Products Co. in its sales to consumers at Tampa, Fla., amounted to \$11.00 or more per ton during a period of years, when the base price was only \$9.00 a ton, a clear net extra profit of \$2.00 or more per ton due solely to its use of the "lowest combination" system followed by it in common with other respondent lime producers.

Nearby purchasers of lime from the Ladd Lime & Stone Co. located near Cartersville, Ga., pay the identical price for lime as they do, or would do, to respondent lime producers who are located anywhere within the said Keystone area, the said prices being arrived at in a similar manner to that made use of by the Dixie and Florida companies aforesaid. This same method of quoting and charging similar prices applies generally throughout the said Districts 10 and 11 herein elsewhere defined. The aforesaid prices are fixed and charged without regard to how far or how near the respondent lime producer quoting the price is located from the purchaser or purchasers and without regard to whether the actual freight rate from said points is less or more than the basing point freight rate from the said Keystone to the respective points of destination. The same methods obtain, and have obtained, as to sales by respondent lime producers in which basing points in the said southeastern area (other than Keystone) are made use of in computing the prices charged.

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Respondent lime producers, whose plants are located in Virginia, when quoting prices in territories outside of Virginia and in the basing point areas of the Keystone, Sherwood, or Knoxville basing points aforesaid, always quote their uniform base price plus the freight from the nearest of the aforesaid bases to the point or points of destination. This practice is known in the lime trade as the "lowest combination."

PAR. 8. Respondent lime producers have continued in effect by agreement, understanding and concerted action among themselves a system of noncompetitive delivered prices. All of said producers have utilized a basing point system of pricing their products with the exception of agricultural lime sold through pickups to consumer purchasers at the location of the plant itself. Within the southeastern territory involved in this proceeding the basing points used are Riverton, Va., Knoxville, Tenn., Sherwood, Tenn., and Keystone, Ala., and the delivered prices to consumers or dealers are quoted as based upon the agreed prices at the different plants plus the freight rate from the nearest of the above basing points to points of delivery. As the "lowest combination" base price plus freight determined the delivered price of lime, identical prices were, in practically all cases, quoted to intending purchasers by the various respondent lime producers and other producers within and without the South. Some or all of respondent lime producers submitted identical bids to municipalities in the following instances:

In Knoxville, Tenn., in 1936, the four low bids submitted to the city of Knoxville were \$9.288 per ton. The bids received by the city of Knoxville for several years were all identical, so finally the city did not ask for bids.

After the year 1936, the city of Tampa, Fla., bought lime on the open market because they got identical bids under the previous tenders. In 1934, there were eight identical bids at \$12.42 per ton. In 1935, there were five identical bids by respondent lime producers at \$12.62 per ton. In 1936, there were 15 identical bids at \$13.12 per ton. One of the respondent companies in 1936 bid directly to the city of Tampa at \$13.12 a ton and also through a local dealer at the same price in order to get double representation so that if the names were drawn out of a hat they would have a better chance. The practice in bidding on Tampa, Fla., requirements was to take the base mill price of the Keystone group and add the freight from Keystone, Ala., to Tampa, Fla.

The bids to the city of Atlanta for the year 1936 were all identical and the contract was awarded one car to each of 10 identical bidders

to be ordered as needed. The 10 names were put in a hat and drawn out, one at a time.

In bids for the city of Miami, Fla., requirements for the year 1937, five low bids were identical at \$14.36. For the year 1938, eight were identical at \$14.89.

The bids for the supply of hydrated lime to the city of Charlotte, N. C., for water purification purposes were identical for 1936 and several years subsequently, and in 1936 the successful bidder was decided by placing the names of all bidders in a hat and a councilman drawing out one name, because they were identical.

The municipalities of Winston-Salem, N. C.; Durham, N. C.; Norfolk, Va.; and Cincinnati, Ohio, received identical bids from respondent lime producers for several years and said cities did not receive the benefit of price competition in the purchase of lime for said years.

It has been a practice of respondent lime producers to submit identical bids in other cities in the said southeastern territory.

Some of the respondent lime producers maintain their own traffic department where complete freight information is kept up to date and are not dependent on and do not use the freight rate information disseminated by respondent Covert.

Municipalities often prefer, and have preferred, to buy from local dealers who are taxpayers and voters of their respective municipalities although manufacturers occasionally quote directly. The bidding is generally done by and through local dealers. Such dealers were not allowed to or did not in fact quote prices below the price fixed for them by the manufacturer or respondent they represented. In the sale of municipal lime, the contracts are usually entered into between the city and the local dealer. The lime is shipped by manufacturer to the place designated by the city. The city then pays dealer who deducts 50 cents per ton and remits the balance to the manufacturer. As price uniformity prevailed, attention was in some instances paid by the municipalities to the quality of the different respondents' products. In passing upon bids submitted, there was in most instances a local ordinance or practice which required the municipal authorities involved to accept the lowest bid which met the specifications.

PAR. 9. In addition to the foregoing, there were other identical price changes made and practices followed by respondent lime producers as a result of the said agreements and understanding.

A resolution was passed at a meeting of respondent lime producers held in Atlanta, Ga., providing for the listing of all jobbers and distributors with Secretary Covert. A notice was sent out by respondent Covert announcing no jobbing commissions were to be given without

supporting affidavits agreeing to strict adherence by respondent lime producers to published prices. Strict adherence was obtained to manufacturers' prices as is herein elsewhere set out in detail. There was an agreement at the meeting of respondent lime producers that resale commissions to dealers should be fixed at 50 cents per ton and 5 cents per barrel upon lime sold by dealers, agents or jobbers. This agreement was also generally followed by respondent lime producers.

In September 1935, there was a meeting held at Atlanta, Ga., called and attended by respondent lime producers or a majority of them. Shortly thereafter and as a result of action taken at said meeting, all respondent lime producers simultaneously raised their prices from \$8.50 to \$9.00 per ton for future deliveries. This agreed advance was thereafter followed by all respondent lime producers in making actual sales and remained in effect for some years as the consistent practice of all or a majority of respondent lime producers. There was some variation, however, in prices in the State of Virginia. In the latter part of December 1939, or in the early part of January 1940, the majority of the respondent lime producers published new base prices to be in effect immediately thereafter, to wit, January 15, 1940. The prices so published have remained in effect from that date to the date of the hearings in this proceeding. In substantially all instances this rise of base prices amounted to \$1.00 over the price formerly charged by the respective lime producers.

PAR. 10. The said practices and methods as to the fixing and quoting of prices of lime by the respondent lime producers in Southeastern districts, as herein named, have also resulted in purchasers in many instances within said territory having to pay higher prices for lime than persons purchasing similar amounts of lime have had, or would have had, to pay at points located out of the said Southeastern territory. For example, lime which is produced in Florida a few miles from Ocala, as heretofore referred to, sells or has sold in Ocala for \$14.00 a ton whereas lime was sold and delivered in the city of St. Louis for the years 1936 to 1940 at approximately \$8.00 a ton with the trend of prices in said city sharply downward from and after January 1939. On and after January 1, 1940, lime similar to that which was sold at Ocala for \$14.00 was sold to the city of St. Louis for \$4.89, delivered. The Peerless Lime Company located near St. Genevieve, Mo., received a higher net mill price, to wit, \$6.95 per ton, when bidding in the Southeastern territory and by reason of adopting the same methods as described aforesaid, than it received in making deliveries to nearby points in the neighboring State of Illinois, in which latter instance its net mill price was \$5.15 per ton. As a result of the said method of price fixing herein else-

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where set out, Missouri lime producers can and do sell and ship to purchasers at Charleston, S. C., and certain other points in the Southeastern territory and have and do obtain a net mill price or prices that are, after deduction of freight, higher than the net price or prices obtained within a few miles of the location of their respective plants and as a further result certain producers outside of the Southeastern territory have made a practice of adopting, and have adopted in many instances, the same system of arriving at prices as that used by respondent lime producers as herein elsewhere described, in the said Southeastern territory. While prices for lime have been decreasing in and near St. Louis, Mo., and in other points outside of said Southeastern area, the lime prices in said Southeastern area have increased since the Schechter decision hereinbefore referred to.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of lime in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have increased the prices of lime paid by the purchasers thereof and consequently the prices paid by the public; have created in the respondents a monopoly in the sale of lime in such commerce; have unreasonably restrained such commerce in lime and constitute unfair methods of competition and unfair acts and practices 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 and amended complaints of the Commission, the answers of respondents, testimony and other evidence taken before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and amended complaints, and in opposition thereto, report of the trial examiner thereon, exceptions to said report, briefs of the attorneys for the Commission and respondents, and oral arguments by Curtis C. Shears and Merle P. Lyon, attorneys for the Commission, and by Abram F. Myers and Edgar Watkins, attorneys for the respondents, and the Commission having made its findings as to the facts and its conclusion that all of said respondents except Green Bag Cement Co. of West Virginia have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondents, Pine Hill Lime & Stone Co., Southern States Lime Corporation, Gager Lime Manufacturing Co., Knoxville Lime Manufacturing Co., Longview-Saginaw Lime Works, Inc., Cheney Lime & Cement Co., Ladd Lime & Stone Co., Virginia Lime Products Co., Inc., Kimbalton Lime Co., Inc., Eagle Rock Lime Co., Williams Lime Manufacturing Co., Florida Lime Products Co., Inc., Dixie Lime Products Co., Keystone Lime Works, Inc.; M. J. Grove Lime Co., Ripplemead Lime Co., Inc., Riverton Lime & Stone Co., Jesse Allen Lime Co., corporations, George L. Scott, Sr., an individual, trading as Alabaster Lime Co., and Hal S. Covert, both separately and as representatives of each other, and their officers, representatives, agents, and employees, directly or through respondent Hal S. Covert or through any corporate or other device, in connection with the offering for sale, sale and distribution of lime in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from continuing, entering into, carrying out, or aiding or abetting the carrying out of, any agreement, understanding, combination or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and any other persons, partnerships or corporations, for the purpose, or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the purchase or sale in said commerce of such product, and from doing and performing by cooperative or concerted action, agreement or understanding between any two or more of them or between any one or more of them and other persons, partnerships or corporations, the following acts and things:

(a) Fixing, establishing, quoting, or maintaining delivered prices to any given point of delivery, predicated upon the use of basing points, by the use of which all delivered price quotations are calculated as though shipments are made by rail from a single point or points having a common freight rate to destination.

(b) Filing or exchanging among themselves or with others the base prices applicable to the respective basing points, and adhering or agreeing to adhere to specific basing points and specific basing point prices.

(c) Making quotations and sales of their said products upon a delivered basis only, with freight equalized from their respective shipping points, wherever the cost of their said products to any given buyer, when delivered from any point, is thereby made identical at any given destination, regardless of variations in freight from different places of production and shipment.

(d) Promising to adhere to filed prices, terms, and conditions of sale for their said products.

(e) Pursuant to any promise, assurance, or understanding, adhering to filed prices, terms, and conditions of sale in the making of quotations or sales of their said products.

(f) Fixing or establishing prices, terms, and conditions of sale at which they will sell lime to the purchasing public, and fixing or maintaining uniform prices, terms, and conditions of sale for such products.

(g) Compiling and circulating among themselves or others lists of freight rates from various basing points to various destinations in order to insure that differences in the actual freight from actual shipping points to a given destination and differences in the interpretation and application of freight tariffs will not create differences in the delivered price at any given destination.

(h) Submitting identical delivered price quotations, terms, and conditions of sale in sealed bids or other bids on invitations from municipalities, State or Federal Governments, or refusing to quote other than delivered prices or their equivalent in making such bids.

(i) Entering into, participating in, or carrying on, through respondent Hal S. Covert or under his auspices or direction, or through any central agency, meetings, or otherwise, discussions and exchanges of information concerning proposed or future prices, terms, and conditions of sale at which they will quote or sell lime to the purchasing public.

(j) Fixing or increasing the price to be charged for delivery in carload lots of less than 15 tons as compared with the price for larger carloads by adding thereto a uniform premium or surcharge.

(k) Collaborating or exchanging price information with trade associations composed of lime producers located in other sections of the United States, but who sell lime in the territory served by said respondent producers east of the Mississippi River and south of the Ohio and Potomac Rivers, for the purpose and with the effect of restricting and restraining competition as to prices, terms, and conditions of sale of said products in said territory.

(l) Collaborating or exchanging price information with trade associations composed of lime producers located in other sections of the United States, for the purpose and with the effect of recognizing, adopting, or selling their lime products according to delivered price quotations prevailing in other sections of the United States west of the Mississippi River and north of the Ohio and Potomac Rivers, when offering for sale or selling their said products in such "outside" territory and thereby restricting and restraining competition as to prices, terms and conditions of sale of said products in such "outside" territory.

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(m) Exchanging information as to basing point price quotations, freight rates from basing points, and delivered price quotations with trade associations composed of lime producers located in other sections of the United States, for the purpose or with the effect of inducing reciprocal adherence to the delivered price quotations prevailing in the respective districts.

(n) Determining what concerns shall be recognized as dealers and jobbers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms, and conditions of sale, or compiling or circulating lists of such recognized jobbers and dealers.

(o) Establishing or allowing uniform discounts, commissions, or compensation to their respective dealers when bidding upon the requirements of municipalities, State or Federal Governments or other large consumers, or establishing or allowing a uniform differential between the price to dealers and the price to contractors.

(p) Exchanging among themselves or with their dealer customers, in advance of the submission and opening of sealed bids on Federal, State and municipal requirements for lime products, the prices which they propose to quote in such bids.

(q) Fixing, establishing, or maintaining prices to be quoted by their dealer customers when bidding on lime to be purchased by municipalities, State or Federal Governments or other large consumers.

(r) Employing the respondent Hal S. Covert or any other person, partnership, or corporation, to act as an agency for putting into effect or carrying out, directly or indirectly, any of the policies, rules, practices, or methods of competition prohibited by this order; or adopting or taking any other concerted or cooperative action to carry out or make effective the acts and things prohibited by this order.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Green Bag Cement Co. of West Virginia.

It is further ordered, That the respondents, except Green Bag Cement Co., of West Virginia, 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

I. BURMAN, DOING BUSINESS AS BURTLEY COMPANY

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

Docket 3665. Complaint, Dec. 16, 1938—Decision, June 30, 1941

Where an individual engaged in interstate sale and distribution of his "Marrilis" drug or cosmetic preparation for use in the removal of excess weight through application to the body, followed by immersion in a hot bath, and theory of which was that such coating closed the pores and prevented their taking into the body the usual amount of oxygen, and that the result and efforts of the body to supply its own oxygen from the system produced increased heat and heavy perspiration, leading to the burning up of fat and consequent reduction in weight;

In advertising his said product in newspapers of general circulation, advertising circulars and other pieces of advertising literature supplied to and distributed by department stores and other business establishment, to which he furnished demonstrators and sales persons to assist in the sale thereof, and in advertisements placed by said establishments in newspapers for which he supplied the copy or materials—

Represented, directly or by implication, that his preparation constituted an effective means and method whereby substantial reduction in body weight might be obtained, and that particular parts or areas of the body might be reduced in size and weight by application thereto without affecting other parts; and that preparation in question had been prepared or compounded by one of the world's leading cosmetic scientists;

The facts being that aforesaid theory upon which his product was based is not tenable, in that oxygen is not taken into the body through the skin in any appreciable amount, and it is impossible effectively to close or seal the pores through use of said preparation; said product was nothing more than an emollient ointment and possessed no value in removal of excess weight, favorable results apparently accomplished thereby being due to regulation of diet rather than use thereof; and while person referred to was a commercial chemist and consultant for certain cosmetic concerns, such facts did not constitute sufficient basis for representing him as one of the world's leading cosmetic scientists;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said product and to cause it, because of the erroneous belief so engendered, to purchase substantial quantities thereof, with result that trade was diverted unfairly to him from his competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. R. A. McQuat for the Commission.

Mr. Maxwell Stettner, of New York City, for respondent.