

witness Koman. It is the view of Commissioner MacIntyre that the testimony of witness Koman should have been stricken for the reason stated in a dissenting opinion by him in January 1971 [78 F.T.C. 1564], during the course of an interlocutory appeal proceeding herein. Commissioner Jones agreed to the opinion on liability, but dissented to the order, and submitted a dissenting statement.

IN THE MATTER OF

GEORGIA-PACIFIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND CLAYTON ACT, SEC. 7

Docket 8843. Complaint, May 26, 1971—Decision, Dec. 26, 1972.

Consent order requiring, among other things, the divestiture by the nation's leading producer and distributor of softwood plywood, headquartered in Portland, Ore., of certain acquisitions alleged to be anticompetitive and monopolistic in nature. The principal provisions of the order are that the respondent shall create an independent corporation and transfer approximately 20 percent of its assets to said corporation. The order further restricts and prohibits future acquisitions in the timber industry in the South for five years and places a ten-year ban on the acquisition of the stocks and assets of softwood plywood concerns without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named above, as hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) through the acquisition of the stock and assets of various corporations, as hereinafter more particularly designated and described, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (U.S.C. Title 15, Section 21) stating its charges in this respect in the following Count I.

The Federal Trade Commission, having further reason to believe that aforesaid party respondent also has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (U.S.C. Title 15, Section 45), through the acquisition of the stock and assets of various corporations, as hereinafter more particularly designated and described, and it appearing to the Commission that a proceeding by it with reference thereto would be in the public

interest, also issues its complaint pursuant to the provisions of the aforesaid Federal Trade Commission Act stating its charges in this respect in the following Count II.

COUNT I

DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

Softwood—wood coming from a gymnosperm tree, otherwise known as coniferous woods such as pines, firs, spruces, and hemlocks. Generally light in texture, non-resistant and easily worked.

Softwood plywood—materials consisting of sheets of softwood glued or cemented together with the grains of adjacent layers arranged at right angles or at a wide angle and usually being made

- (a) of uniformly thin veneer sheets, or
- (b) of equal number of veneer sheets on either side of a thicker central layer.

THE RESPONDENT

PAR. 2. Respondent, Georgia-Pacific Corporation, sometimes hereinafter referred to as "G-P," is, and has been, at least since January 1, 1960, a corporation organized, existing and doing business under the laws of the State of Georgia with its present office and principal place of business located at the Commonwealth Building, Portland, Oregon.

PAR. 3. G-P is engaged in the manufacture, sale, and distribution of a wide variety of wood products including, but not restricted to, softwood plywood, plywood specialties, lumber, and furniture. It also is engaged in the manufacture, sale and distribution of gypsum products, chemicals, wood by-products, and a variety of paper and paper products including board, newsprint, tissues, toweling and napkins, and paper.

PAR. 4. In the course and conduct of its business, G-P is, and has been, at least since January 1, 1960, engaged in selling its products to purchasers located in various States of the United States, and caused such products, when sold, to be transported from its facilities in various States of the United States to such purchasers located in various other States of the United States. In so doing G-P is engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since 1960.

PAR. 5. G-P's development has been characterized through the years by continuous growth. For calendar year 1949, G-P had net

sales of approximately \$35,042,000, and its total assets approximated \$16,973,000. For calendar year 1959, net sales were approximately \$191,997,000, and its total assets had risen to approximately \$264,225,000.

PAR. 6. Much of G-P's growth prior to 1960 was the result of its acquisitions of stock or assets of other corporations. By 1960, G-P had become a highly integrated corporation within the lumber and softwood plywood industries, having its own source of raw materials, its own manufacturing plants, and its own distribution system. In 1960, G-P was a leading producer of softwood plywood, with production in that year of approximately 620,934,000 square feet ($\frac{3}{8}$ " basis).

PAR. 7. By the end of 1969, G-P was the nation's largest producer of softwood plywood, with production in that year of approximately 1,922,379,000 square feet ($\frac{3}{8}$ " basis).

PAR. 8. In 1960, G-P had ten softwood plywood plants located on the West Coast. By the end of 1969, it had 17 softwood plywood plants, nine of which were located in the southern part of the United States.

PAR. 9. As of the early part of 1970, G-P had formulated plans for the construction of four additional softwood plywood plants, all located in the South. When construction of these plants is completed, G-P's softwood plywood capacity will be increased by approximately 480 million square feet ($\frac{3}{8}$ " basis).

PAR. 10. By 1969, G-P was the third largest producer of lumber in the United States and Canada, and the third largest producer of gypsum products in the United States. Additionally, it is a leading manufacturer of paper, pulp, and board products.

PAR. 11. In 1960, G-P owned in fee approximately 615,000 acres of timberland, and held cutting rights covering approximately 50 million additional board feet. At the end of 1969, G-P owned in fee in the United States, Canada, and Brazil, timberlands totaling approximately 4.5 million acres, of which approximately 3.5 million acres were in the United States. Also, it held exclusive cutting rights to an additional 1.5 million acres of timberlands.

PAR. 12. A significant portion of G-P's growth subsequent to 1960 is directly attributable to acquisitions by G-P of the stock or assets of formerly independent forest products corporations. During the period 1961-1968, G-P acquired 45 companies, whose total combined assets approximated \$396,000,000. Through these acquisitions, G-P gained ownership in excess of 2,432,000 acres of timberland.

THE NATURE OF TRADE AND COMMERCE

PAR. 13. Softwood plywood is a separate and distinct product which is distinguished from all other building materials and all other products in a number of ways including, but not restricted to, its unique manufacturing process, physical characteristics, and end uses.

PAR. 14. In the United States prior to 1964, softwood plywood was manufactured almost entirely on the West Coast. In that year the domestic production of softwood plywood began in the South as a result of the development of new manufacturing techniques permitting utilization of the woods of southern pine trees, hitherto unsuitable for the manufacture of softwood plywood.

PAR. 15. The manufacture of softwood plywood is a very substantial industry in the United States. In 1968, approximately 14.7 billion square feet ($\frac{3}{8}$ " basis) was produced with value of shipments approximately \$1,044,000,000.

PAR. 16. There has been a significant increase in the production of softwood plywood since 1963, with most of the increase occurring in the South. National production increased approximately 3.5 billion square feet ($\frac{3}{8}$ " basis) during the period 1963-1969, while southern production accounted for approximately 2.8 billion square feet ($\frac{3}{8}$ " basis) of this national increase.

PAR. 17. The participation by G-P in this increase in southern production has been substantial. G-P established the first plant for the production of southern pine softwood plywood at Fordyce, Arkansas, in 1963. By 1968 G-P had achieved a dominant position in the production of softwood plywood in the South, accounting for approximately 35.4 percent of softwood plywood produced in that region in that year. G-P's success in achieving this position has resulted primarily from a series of acquisitions and subsequent development of southern pine timber bases suitable for support of long term production of softwood plywood, including the acquisitions mentioned hereinafter, with the result that there is now a shortage of such bases in the southern pine region of the United States for development by others.

PAR. 18. Additionally, G-P is the leading producer of softwood plywood in the United States, accounting for approximately 14 percent of the nation's production in 1969, almost double the production of its nearest competitor.

PAR. 19. G-P is also the leading distributor of softwood plywood, accounting for approximately 18.3 percent of the mill shipments in the United States in 1969.

PAR. 20. There has been a significant increase in the level of concentration in the production of softwood plywood. In 1963, the top four and top eight producers had approximately 25.92 percent and 38.60 percent of the nation's production, respectively. By the end of 1969, these shares had increased to 34.59 percent and 49.21 percent, respectively.

PAR. 21. There has also been a significant increase in the level of concentration in the national distribution of softwood plywood. In 1963, the top four and top eight distributors of softwood plywood accounted for 36.38 percent and 50.04 percent of domestic mill shipments, respectively. By 1969, these shares had increased to 48.22 percent and 63.50 percent, respectively.

PAR. 22. The aforesaid increase in concentration has been paralleled by a number of independent softwood plywood concerns leaving the industry, either by virtue of merger, joint venture, or by voluntarily ceasing operations.

THE ACQUISITIONS

Fordyce Lumber Company

PAR. 23. Prior to and until April 1963, Fordyce Lumber Company, sometimes hereinafter referred to as "Fordyce," was a corporation organized, existing and doing business under the laws of the State of Arkansas with its office and principal place of business located at Fordyce, Arkansas.

PAR. 24. Fordyce was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, Fordyce produced approximately 32,384,000 board feet of lumber. In that year Fordyce's lumber sales amounted to approximately \$2,300,000, and the stated value of its assets was approximately \$20,937,000. Included among such assets were approximately 160,000 acres of forested timberlands.

PAR. 25. In the course and conduct of its business prior to April 1963, as aforesaid, Fordyce sold its products to purchasers located in various States of the United States and caused such products, when sold to be transported from its facilities in Arkansas to such purchasers located in various other States of the United States. In so doing Fordyce was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 26. In April 1963, Georgia-Pacific Corporation acquired all of the stock and assets of Fordyce Lumber Company for approximately \$20,800,000.

PAR. 27. Subsequent to the aforesaid acquisition G-P abandoned the lumber operation at Fordyce, Arkansas and constructed a plant for the

production of softwood plywood. Such plant with an original annual capacity to produce 90 million square feet of softwood plywood, subsequently enlarged to a 120 million square feet capacity, began production in December 1963. Such plant was supplied, at least in substantial part, with timber acquired in the aforesaid acquisition of Fordyce.

American Timber Products Company

PAR. 28. Prior to and until September 1, 1965, American Timber Products Company, sometimes hereinafter referred to as "American Timber," was a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at Portsmouth, Virginia.

PAR. 29. American Timber was engaged in the production of lumber which was used internally by it and by its wholly-owned subsidiary corporations in the manufacture of a variety of wood products, including wooden crates and baskets, wire bound crates and veneer stock. American Timber had lumber facilities located at Portsmouth, Virginia and Murfreesboro, North Carolina. Various plants of its subsidiary corporations were located in Arkansas, Georgia, New Jersey, and North Carolina. In the year preceding its acquisition by G-P, American Timber produced approximately 8,677,000 board feet of lumber which it used internally. In that year the stated value of its assets was approximately \$11,667,960. Included among such assets were approximately 30,000 acres of timberlands situated in North Carolina and Virginia.

PAR. 30. In the course and conduct of its business prior to September 1, 1965, as aforesaid, American Timber sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from its facilities in various States to purchasers located in various other States of the United States. In so doing American Timber was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 31. On or about September 1, 1965, Georgia-Pacific Corporation acquired all of the assets of American Timber Products Company for approximately 210,000 shares of G-P common stock valued at approximately \$11,970,000.

PAR. 32. In 1965, G-P constructed a softwood plywood plant at Emporia, Virginia, with a rated annual capacity of 100 million square feet. Subsequent to the aforesaid acquisition, G-P began using the timber so acquired to supply a part of the needs of this plant.

Jeffreys, Spaulding Manufacturing Company, Incorporated and
Spaulding Lumber Company, Incorporated

PAR. 33. Prior to and until October 1965, Jeffreys, Spaulding Manufacturing Company, Incorporated, sometimes hereinafter referred to as "Jeffreys," and Spaulding Lumber Company, Incorporated, sometimes hereinafter referred to as "Spaulding," were corporations organized, existing, and doing business under the laws of the State of Virginia, with their offices and principal places of business located at Chase City, Virginia.

PAR. 34. Jeffreys and Spaulding were closely held corporations administered by the same executive officer, George M. Spaulding, and operated so as to mutually benefit each other.

PAR. 35. Jeffreys and Spaulding were both engaged in the production and sale of lumber. In the year preceding their acquisition by G-P the combined lumber sales of Jeffreys and Spaulding amounted to approximately \$2,654,000, and the stated values of their assets were approximately \$2,300,000 and \$2,700,000, respectively. Included among such assets were the combined total of approximately 33,000 acres of timberland.

PAR. 36. In the course and conduct of their businesses prior to October 1965, as aforesaid, both Jeffreys and Spaulding sold their products to purchasers located in various States of the United States and caused such products, when sold, to be transported from their facilities in Virginia to such purchasers located in various other States of the United States. In so doing both Jeffreys and Spaulding were engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 37. In October 1965, Georgia-Pacific Corporation acquired all of the assets of Jeffreys, Spaulding Manufacturing Company, Incorporated and Spaulding Lumber Company, Incorporated. The combined consideration paid by G-P for these acquisitions was 80,112 shares of G-P common stock, which was valued at approximately \$4,570,000.

PAR. 38. The timberlands acquired in the aforesaid acquisitions served to assure long-term production stability for G-P's softwood plywood plant at Emporia, Virginia.

Barrow Manufacturing Company and Barrow Land & Timber
Company

PAR. 39. Prior to and until November 1966 Barrow Manufacturing Company, sometimes hereinafter referred to as "Barrow," and Barrow

Land & Timber Company, sometimes hereinafter referred to as "Barrow Land," were corporations organized, existing, and doing business under the laws of the State of North Carolina, with their offices and principal places of business located at Ahoskie, North Carolina.

PAR. 40. Barrow and Barrow Land were closely held corporations administered by the same executive officer, John K. Barrow, Jr., and operated so as to mutually benefit each other.

PAR. 41. Barrow was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, Barrow produced approximately 12,676,000 board feet of lumber. In that year Barrow's lumber sales amounted to approximately \$1,110,000. Barrow Land was a land and timber holding company which did not engage in manufacturing. The combined stated value of the assets of Barrow and Barrow Land was approximately \$1,015,000. Included among such assets were the combined total of approximately 6,000 acres of timberlands and cutting contract rights to approximately 5,000,000 board feet of timber.

PAR. 42. In the course and conduct of these businesses prior to November 1966, as aforesaid, Barrow sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from Barrow's facilities in North Carolina to such purchasers located in various other States of the United States. In so doing Barrow was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended, and by virtue of the manner in which Barrow Land was operated for the benefit of Barrow, aforesaid Barrow Land was likewise engaged in "commerce."

PAR. 43. In November 1966, Georgia-Pacific Corporation acquired all of the assets of Barrow Manufacturing Company and all of the stock and assets of Barrow Land & Timber Company. The combined consideration paid by G-P for these acquisitions was 25,000 shares of G-P common stock, which was valued at approximately \$1,200,000.

PAR. 44. The timberlands acquired in the aforesaid acquisitions served to supplement G-P's timber supply for its softwood plywood plant at Emporia, Virginia.

Reynolds & Manley Lumber Company

PAR. 45. Prior to and until February 1966, Reynolds & Manley Lumber Company, sometimes hereinafter referred to as "Reynolds & Manley," was a corporation organized, existing, and doing business under the laws of the State of Georgia with its office and principal place of business located at Savannah, Georgia.

PAR. 46. Reynolds & Manley was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, Reynolds & Manley produced approximately 7,266,000 board feet of lumber. In that year, Reynolds & Manley's lumber sales amounted to approximately \$1,300,000, and the stated value of its assets was approximately \$1,877,000. Included among such assets were approximately 13,000 acres of timberland.

PAR. 47. In the course and conduct of its business prior to February 1966, as aforesaid, Reynolds & Manley sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from its facilities in Georgia to such purchasers located in various other States of the United States. In so doing Reynolds & Manley was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 48. In February 1966, Georgia-Pacific Corporation acquired all of the assets of Reynolds & Manley Lumber Company for 40,500 shares of G-P common stock valued at approximately \$2,470,500.

PAR. 49. Subsequent to the aforesaid acquisition, G-P abandoned the lumber operations at Savannah, Georgia, and replaced them with a new mill located at Port Wentworth, Georgia. It also constructed a plant for the production of softwood plywood at Savannah, Georgia. This plant had an original annual capacity of 50 million square feet of softwood plywood. The acquisition of Reynolds & Manley served to assure long-term production stability for G-P's softwood plywood plant at Savannah, Georgia.

Williams Furniture Corporation and Southern Coatings and
Chemical Company

PAR. 50. Prior to and until October 20, 1967, Williams Furniture Corporation, sometimes hereinafter referred to as "Williams," and Southern Coatings and Chemical Company, sometimes hereinafter referred to as "Southern," were corporations organized, existing and doing business under the laws of the State of South Carolina with their offices and principal places of business located at Sumter, South Carolina.

PAR. 51. Many of the stockholders of Williams were also stockholders of Southern. The two corporations together with their subsidiaries were operated under similar management as a complex of interrelated businesses.

PAR. 52. Williams and its five wholly-owned subsidiaries were engaged in the manufacture and sale of furniture, softwood plywood and doors. Southern was engaged in the production and sale of paint

and a variety of chemical products. Additionally, it operated a pine sawmill at Russellville, South Carolina. In the year preceding their acquisition by G-P, Williams and Southern had combined sales of approximately \$26,290,000, and the stated value of their combined assets was approximately \$31,100,000. Included among such assets were approximately 170,000 acres of land in South Carolina containing in excess of 400 million board feet of pine and hardwood timber.

PAR. 53. In the course and conduct of their businesses prior to October 20, 1967, as aforesaid, both Williams and Southern sold their products to purchasers located in various States of the United States and caused such products, when sold, to be transported from their respective facilities located in various States of the United States to such purchasers located in various other States of the United States. In so doing both Williams and Southern were engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 54. By virtue of a merger occurring on or about October 20, 1967, whereby Williams Furniture Corporation and Southern Coatings and Chemical Company were merged with and into Georgia-Pacific Corporation, said Georgia-Pacific Corporation acquired all of the assets of said Williams Furniture Corporation and said Southern Coatings and Chemical Company. In connection with the aforesaid merger the consideration for the conversion of Williams stock and Southern stock was approximately 1,142,857 shares of G-P \$1.40 convertible preferred stock values at approximately \$40,000,000.

PAR. 55. Subsequent to the aforesaid merger, G-P constructed a softwood plywood plant at Russellville, South Carolina which was supplied, at least in substantial part, with timber acquired in the aforesaid merger with Williams and Southern.

Tommy Reynolds Lumber Company

PAR. 56. Prior to and until December 1967, Tommy Reynolds Lumber Company, sometimes hereinafter referred to as "T.R.," was a corporation organized, existing and doing business under the laws of the State of Arkansas with its office and principal place of business located at Hamburg, Arkansas.

PAR. 57. T.R. was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, T.R. produced approximately 42,162,000 board feet of lumber. In that year T.R.'s lumber sales amounted to approximately \$3,400,000, and the stated value of its assets was approximately \$2,300,000. Included among such assets was a 10-year cutting contract relating to Georgia-Pacific Corpora-

tion land, under the terms of which 100 million feet of timber remained to be cut by T.R.

PAR. 58. In the course and conduct of its business prior to December 1967, as aforesaid, T.R. sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from its facilities in Arkansas to such purchasers located in various other States of the United States. In so doing T.R. was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 59. In December 1967, Georgia-Pacific Corporation acquired all of the assets of Tommy Reynolds Lumber Company for 27,080 shares of G-P common stock valued at approximately \$1,547,000.

PAR. 60. Subsequent to the aforesaid acquisition, G-P abandoned the lumber operations at Hamburg, Arkansas. Prior to the acquisition, G-P had constructed two softwood plywood plants at Crossett, Arkansas. The T.R. acquisition facilitated the utilization of such plants, and afforded access to needed timber supplies for these softwood plywood facilities.

The Urania Lumber Company, Limited

PAR. 61. Prior to and until September 1968, the Urania Lumber Company, Limited, sometimes hereinafter referred to as "Urania," was a corporation organized, existing, and doing business under the laws of the State of Louisiana with its office and principal place of business located at Urania, Louisiana.

PAR. 62. Urania was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, Urania produced approximately 25,281,000 board feet of lumber. In that year, Urania's lumber sales amounted to approximately \$2,200,000, and the stated value of its assets was approximately \$42,422,200. Included among such assets were approximately 130,000 acres of pine timberlands.

PAR. 63. In the course and conduct of its business prior to September 1968, as aforesaid, Urania sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from its facilities at Urania, Louisiana to such purchasers located in various other States of the United States. In so doing Urania was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 64. In October 1967, Georgia-Pacific Corporation acquired all of the stock and assets of Edenborn, Inc., a Louisiana corporation, for approximately \$12,000,000. The principal asset of Edenborn, Inc.

was a 30 percent ownership in the outstanding capital stock of the Urania Lumber Company, Limited.

PAR. 65. In September 1968, Georgia-Pacific Corporation acquired the remaining outstanding stock and assets of the Urania Lumber Company, Limited for approximately \$34,122,200.

PAR. 66. Subsequent to the aforesaid acquisition of Urania, G-P abandoned the lumber operation at Urania, Louisiana and constructed a plant for the production of softwood plywood. Such plant had an original annual capacity to produce 140 million square feet of softwood plywood. Such plant will be supplied, at least in substantial part, with timber acquired in the aforesaid acquisition of Urania.

Sledge Lumber Corporation

PAR. 67. Prior to and until April 1969, Sledge Lumber Corporation, sometimes hereinafter referred to as "Sledge," was a corporation organized, existing and doing business under the laws of the State of North Carolina with its office and principal place of business located at Whiteville, North Carolina.

PAR. 68. Sledge was engaged in the production and sale of lumber. In the year preceding its acquisition by G-P, Sledge produced approximately 15,000,000 board feet of lumber. In that year Sledge's lumber sales amounted to approximately \$1,625,000, and the stated value of its assets was approximately \$7,070,000. Included among such assets were approximately 20,000 acres of forested timberlands.

PAR. 69. In the course and conduct of its business prior to April 1969, as aforesaid, Sledge sold its products to purchasers located in various States of the United States and caused such products, when sold, to be transported from its facilities in North Carolina to such purchasers located in various other States of the United States. In so doing Sledge was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

PAR. 70. In April 1969, Georgia-Pacific Corporation acquired all of the assets of Sledge Lumber Corporation for approximately \$6,985,000.

PAR. 71. Subsequent to the aforesaid acquisition, G-P commenced the construction of a plant for the production of softwood plywood in Whiteville, North Carolina. Such plant with an original annual capacity to produce 110 million square feet of softwood plywood is scheduled to begin production in 1971. Such plant will be supplied, at least in substantial part, with timber acquired in the aforesaid acquisition of Sledge.

