

Superior Court of Maine, Kennebec County.

STATE of Maine
v.
CONNORS BROS., LIMITED, et al

Nos. CV-87-321, CV-88-318.
Feb. 8, 1991.

Amended Consent Decree

ALEXANDER, Justice.

Whereas Plaintiff, the State of Maine (“the State”), filed the Complaints in these cases on September 10, 1987 and September 9, 1988, respectively; and Plaintiff and Defendant agreed to the entry of Consent Decrees in both cases without trial or adjudication of any issue of fact or law raised by the Complaints, and without any admission by Defendant with respect to such issues; and

Whereas Plaintiff and Defendant wish to amend the Consent Decrees in various respects, and to combine them in a single, Amended Consent Decree;

Now Therefore, without the taking of any testimony and without trial of any issue of fact or law and upon consent of the parties hereto, it is hereby Ordered and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of these actions. The Complaints herein state claims upon which relief may be granted against the Defendant under 10 M.R.S.A. §§§§ 1102-A, 1104.

II. *Definitions*

As used in this final judgment:

(a) “Connors” refers collectively to the Defendant Connors Bros., Limited and any other affiliate or wholly-owned subsidiary of Connors Bros., Limited now in existence or to be formed in the future, which is or becomes concerned with the operation of production facilities for processing and canning herring, or producing cans or covers, in Canada or the United States, or with the alteration or redesign of any such facility, or with the purchasing from other sources of finished canned herring products.

(b) “Lubec Packing” refers to Lubec Packing Co., Inc., owner of a facility for processing and canning herring located at Lubec, Maine which was formerly owned and operated by Lyon Food Companies, Inc. and its division, Booth Packing Co.

(c) “The Lubec facility” refers to the facility for processing and canning herring located at Lubec, Maine, owned and operated by Lubec Packing Co., Inc., and formerly owned and operated by Lyon Food Companies, Inc. and its division, Booth Packing Co.

(d) “Stonington Canning” refers to Stonington Canning Co., Inc., owner of a facility for processing and canning herring located at Stonington, Maine which was formerly owned and operated by Holmes Canning Corporation and its subsidiaries.

(e) "The Stonington facility" refers to the facility for processing and canning herring located at Stonington, Maine, owned and operated by Stonington Canning Co., Inc., and formerly owned and operated by Holmes Canning Corporation and its subsidiaries.

(f) "The Rockland facility" refers to the facility for processing and canning herring located at Rockland, Maine, owned and operated by Defendant Connors Bros., Limited, and formerly owned and operated by Holmes Canning Corporation and its subsidiaries.

(g) "Holmes-Port Clyde" refers collectively to Holmes Canning Corporation and its wholly-owned subsidiaries, Holmes Packing Corporation and Port Clyde Foods, Inc.

(h) "Court" means the Superior Court of Kennebec County.

(i) "Department" means the State of Maine, Department of the Attorney General.

(j) "The Consent Decrees" refers to the Consent Decrees entered in these cases on September 10, 1987, and September 9, 1988, respectively.

(k) "The Amended Consent Decree" means this Amended Consent Decree, which replaces and supersedes the Consent Decrees.

III. *Amendment*

This Amended Consent Decree amends, replaces and supersedes the Consent Decrees.

IV. *Relief*

1. Connors shall continue the herring processing and canning operations formerly carried out by Holmes-Port Clyde at the Rockland facility at least through September 10, 1995. The annual production of canned herring products processed from fresh fish at the Rockland facility shall in no event fall below 15.28% of the total annual figure for canned herring products produced in the State of Maine, as computed by the Maine Sardine Council, unless Connors shall first have obtained the written approval of the Department or of this Court to produce a lesser quantity.

2. Connors shall use best efforts to ensure that the largest possible proportion of the fish processed at the Rockland facility consists of fresh fish landed in the U.S. by U.S. fishermen.

3. In the event that Connors should decide to close the Rockland facility after September 10, 1995 but during the term of this Amended Consent Decree, it shall provide the Department with at least six months confidential notice of its intention to take this action, and shall offer the Rockland facility for sale as a going concern to interested parties at a fair and competitive price for a period of at least six months prior to closure. The Department shall maintain the confidentiality of any notice provided by Connors pursuant to this paragraph.

4. Connors shall not, without the prior written approval of the Department or of this Court, carry out major alterations to the Rockland facility or remove or otherwise dispose of the Production equipment housed there, other than equipment for manufacturing cans, where such alteration, removal or disposal would result in a reduction in the capacity of the Rockland facility to process fresh fish. Major alterations shall be deemed to include any alterations costing in excess of \$50,000.

5. Connors may, at any time on or prior to February 8, 1991, enter into a new contract with Lubec Packing and Stonington Canning to replace the contracts then in force, which new contract shall be in the form and shall incorporate the terms set forth in the Appendix filed under seal herewith. Any subsequent amendment or modification of the new contract shall require the approval of the Department or of this Court. Any material breach of the new contract shall constitute a violation of this Amended Consent Decree. In substance, the new contract shall, without limitation:

(a) Commit Connors to purchase from Lubec Packing and Stonington Canning the output

of the Lubec and Stonington facilities up to an aggregate maximum total purchase requirement of 205,000 cases for calendar year 1991, 195,000 cases for calendar year 1992, and 175,000 cases for each calendar year thereafter. Connors may purchase less than the required maximum in any year only to the extent that Lubec Packing and Stonington Canning collectively produce less than the required maximum in that year, or to the extent that Lubec Packing and Stonington Canning collectively sell to third parties a quantity of product greater than the difference between their total output at both facilities and the required maximum for that year; provided, however, that to the extent that Connors purchases less than the aggregate maximum required for any calendar year, the difference between the maximum purchase requirement and the number of cases actually purchased shall be carried forward to future contract years. In the event that Connors ceases production at its Rockland facility prior to September 10, 1995, the annual purchase commitment referred to in this paragraph shall increase by the difference between the annual purchase commitment for the year in which Rockland production ceases and 205,000 cases, with a *pro rata* adjustment for the time of year that it occurs. Notwithstanding the foregoing, in the event Stonington Canning ceases production at the Stonington facility, the maximum annual aggregate purchase obligation of Connors shall be reduced to 175,000 cases plus any then existing carry forward;

(b) Commit Lubec Packing and Stonington Canning to exercise best efforts to sell the maximum number of cases possible to third parties during the contract term and any renewal term, and commit Connors to cooperate with the efforts of Lubec Packing and Stonington Canning to develop outside markets; nothing herein shall, however, require Lubec Packing and Stonington Canning to sell finished product in excess of the difference between their total combined output and Connors' annual aggregate purchase obligation to third parties at prices below those payable by Connors pursuant to the new contract;

(c) Commit Connors to supply cans, covers and cases to Lubec Packing and Stonington Canning free of charge for purposes of packing canned herring products for Connors, and commit Connors to supply cans and covers to Lubec Packing and Stonington Canning for purposes of packing canned herring products for third parties at the prices reflected in the Appendix hereto, such prices to be FOB the Lubec and Stonington facilities, duty and customs charges payable by Connors. The obligation to sell cans and covers to Lubec Packing and Stonington Canning for purposes of packing canned herring products for third parties, at the agreed-upon prices, shall remain in effect during the term of the new contract and any renewal term, and for a period of two years after the final expiration of the contract;

(d) Provide that the contract is not subject to termination by Connors prior to the expiration of its term or any renewal term for any reason without the prior approval of the Department or of this Court.

6. Connors shall pay to the Department its costs and attorney fees in prosecuting the Motions for Civil Contempt and the Joint Motion to Amend the Consent Decrees in the amount of \$7,500.

7. Connors shall provide the Department with 120 days advance notice of any acquisition of any of the stock or assets of any person or business operating facilities for processing and canning herring, or producing cans and covers, or raising and processing salmon, in the State of Maine; however, this provision shall not apply to the purchase of equipment, vessels, vehicles, cans and covers in an aggregate amount less than \$25,000 in any 12 month period from one person or business; and this provision shall not apply to the purchase of inventory other than a bulk sale of substantially all of the inventory of any person or business.

V. Compliance

Connors shall submit to the Department quarterly, until the expiration of this Amended Consent Decree, a written report setting forth for the period immediately preceding the date of such report:

(a) The total number of cases of canned herring products produced from fresh fish at the Rockland facility;

(b) The total quantity of fresh fish purchased by Connors for processing at the Rockland facility which was landed in the U.S. by U.S. fishermen, and the total quantity of fish purchased by Connors for processing at the Rockland facility from other sources;

(c) The total number of cases of canned herring product purchased by Connors from Lubec Packing and Stonington Canning respectively.

VI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the Amended Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or implementation of the Amended Consent Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. In ruling upon any application or motion submitted pursuant to the preceding sentence, the Court may consider any factors, including but not limited to, the effect upon production or capacity to process fresh fish at the Rockland, Lubec or Stonington facilities of:

(a) A shortage of labor;

(b) The unavailability of fresh fish;

(c) Fire, or an act of God; or

(d) A need to make substantial capital improvements at the facility, which need was not reasonably foreseeable as of the date of the acquisition.

If the Department and Connors disagree concerning the interpretation of any of the provisions of the Amended Consent Decree, either party may apply to the Court for resolution of any such disagreement.

VII. Public Interest

Entry of this Amended Consent Decree is in the public interest.

VIII. Term

This Amended Consent Decree shall terminate on September 9, 2001.

It is hereby Ordered and Decreed as set forth above; judgment shall enter in accordance with the above terms, which are incorporated by reference herein.