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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CV. 70-310

GREATER PORTLAND CONVENTION AND ASS'N, HILTON HOTELS CORP., ITT SHERATON CORP. OF AMERICA, AND COSMOPOLITAN INVESTMENT, INC.,

Defendants.

UNITED STATES' MEMORANDUM IN RESPONSE TO DEFENDANT HILTON AND STARWOOD HOTELS' MOTION TO TERMINATE THE PARTIAL FINAL JUDGMENT AND FINAL JUDGMENT

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I. INTRODUCTION

Defendant Hilton Hotels Corp. ("Hilton") and successor in interest Starwood Hotels and Resorts Worldwide, Inc. ("Starwood") have jointly moved to terminate two consent decrees, the Partial Final Judgment in *United States v. Greater Portland Convention Association, Inc., et al.*, Civil No. 70-310, 1971 Trade Cas. (CCH) ¶73,731 (D. Or. 1971), entered by the Court on November 29, 1971 (hereinafter "Partial Final Judgment"), and the Final Judgment in *United States v. Greater Portland Convention Association, Inc., et al.*, Civil No. 70-310, 1973 Trade Cas. (CCH) ¶74,614 (D. Or. 1973), entered by the Court on September 14, 1973 (hereinafter "Final Judgment").[1] A copy of the Partial Final Judgment is attached as Appendix 1, and a copy of the Final Judgment is attached as Appendix 2.

After soliciting initial public comments on the proposed termination and conducting an extensive investigation, the United States tentatively consents to termination of both the Partial Final Judgment and the Final Judgment, subject to further public notice and comment.[2] The United States concludes that these decrees are no longer necessary to protect competition, that

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[1] Four defendants were subject to the Partial Final Judgment: Hilton, ITT Sheraton Corporation of America ("Sheraton"), Cosmopolitan Investment, Inc. ("Cosmopolitan"), and the Greater Portland Convention Association ("GPCA"). Western International Hotels Company ("Westin") was the sole defendant to the Final Judgment. Of these five original defendants, only one original defendant, Hilton, and two successors in interest, Starwood and the Portland Oregon Visitors Association ("POVA"), exist today. Starwood is a successor in interest to defendants Sheraton and Westin; POVA is a successor in interest to defendant GPCA; and defendant Cosmopolitan is now defunct. Hilton notified POVA of its intent to terminate the Partial Final Judgment. POVA does not oppose termination.

[2] The Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act"), which provides for public notice and comment on antitrust settlements proposed by the United States, does not apply to decree terminations. Nevertheless, the United States solicits public comments in furtherance of its investigation of the proposed termination of antitrust decrees.

some of their provisions may well be inhibiting competition, and that the continued existence of these decrees does not provide any public benefit. The decrees bar defendants from participating in arrangements that are known to have procompetitive benefits and that the defendants' competitors are free to undertake. Therefore, it would be in the public interest for the Court to terminate both the Partial Final Judgment and the Final Judgment as to all defendants.

As discussed below, the decrees to be terminated involve identical legal and factual issues. Furthermore, both decrees arise from the same case, and due to consolidation in the industry, the sole party to the second decree, successor in interest Starwood, is also party to the first decree. Accordingly, the parties submit that, in the interest of judicial economy, termination of these decrees should be addressed simultaneously. *See United States v. Eastman Kodak Co.*, 63 F.3d 95, 97-100 (2d Cir. 1995) (terminating separate Kodak decrees with one order).

II. THE COMPLAINT AND THE JUDGMENTS

A. The Conduct Challenged

The Partial Final Judgment and the Final Judgment arose from a 1960s investigation into the GPCA and four of its hotel members. At that time, GPCA was a nonprofit corporation that had been organized in 1959 to aid the Portland Chamber of Commerce in attracting convention business to the city of Portland, Oregon. Tr. 608.[3] Its members were various Portland area hotels, hotel suppliers, restaurants, and similar businesses that profited from tourist business. GPCA was organized because the Chamber of Commerce decided that an "auxiliary" organization with the "special purpose of getting a little additional money to promote

[3] "Tr." refers to *United States v. Hilton Hotels Corp., et al.*, Criminal Action No. 70-123 (D. Or. Transcript of Proceedings November 30- December 4, 1970.)

conventions" would be useful in developing Portland as a convention destination. Tr. 608. In order to raise more money to promote conventions, the GPCA hotel members agreed to require that each supplier to the hotels contribute to GPCA, as a membership fee, an amount equal to one percent of the total business it conducted with the hotels. Tr. 816.

To determine the amount of business that each supplier conducted, GPCA sent cards to all hotels requesting that they provide their suppliers' names and the amount of business transacted with each. Tr. 363. These cards were then returned to GPCA, and each supplier was assessed a contribution to GPCA based upon the total of its sales. Tr. 363-64. Every four to six weeks GPCA sent a master list of all suppliers to the general managers and purchasing agents of the hotels. Tr. 372. On this list, GPCA identified those suppliers that had paid their "membership" assessments in full and also designated those suppliers that were still in arrears. Tr. 371. The primary concern of the United States was whether there was an agreement among the four hotel members of GPCA to boycott hotel suppliers who had not paid any assessments or were in arrears.

On May 12, 1970, a grand jury indicted GPCA and the four hotel members of GPCA – Hilton, Sheraton, Cosmopolitan, and Westin[4] – for engaging in a combination and conspiracy in restraint of trade, in violation of Section 1 of the Sherman Act. *United States v. Hilton Hotels Corp., et al.*, Criminal Action No. 70-123 (D. Or. Indictment filed May 12, 1970). Additionally, in a civil complaint filed the same day, the United States charged GPCA and the four hotel members of GPCA with *per se* violations of Section 1 of the Sherman Act. *United States v. Greater Portland Convention Association, Inc., et al.*, Civil Action No. 70-310 (D. Or. Compl.

[4] Various executives of these organizations were also individually indicted.

filed May 12, 1970). The civil complaint charged the defendants with engaging in a combination and conspiracy consisting of a "continuing agreement" under which "(a) hotel suppliers in and around Portland, Oregon are each annually assessed an amount of money fixed by defendants . . . to be paid as a contribution to GPCA, (b) the hotel defendants give . . . preferential treatment to hotel suppliers who pay . . . the GPCA assessments imposed upon them; and (c) the hotel defendants curtail . . . their respective purchases of hotel supplies from hotel suppliers who fail to pay . . . the GPCA assessments imposed upon them." *Id.* at ¶ 14.

Prior to trial, four of the five defendants – Hilton, GPCA, Sheraton, and Cosmopolitan – entered pleas of *nolo contendere* to the criminal charge and eventually entered into the Partial Final Judgment on November 29, 1971. *United States v. Greater Portland Convention Association, Inc., et al.*, Civil No. 70-310, 1971 Trade Cas. (CCH) ¶73,731 (D. Or. 1971). The fifth defendant, Westin, was tried by jury from November 30 to December 4, 1970. The jury found that Westin violated Section 1 of the Sherman Act, and Westin appealed to the Ninth Circuit. *United States v. Hilton Hotels Corporation., et al.*, 467 F.2d 1000 (9th Cir. 1972), *cert. denied,* 409 U.S. 1125 (1973). On September 26, 1972, the Ninth Circuit affirmed the verdict. Westin entered into the Final Judgment on September 14, 1973. *United States v. Greater Portland Convention Association, Inc., et al.*, Civil No. 70-310, 1973 Trade Cas. (CCH) ¶ 74,614 (D. Or. 1973).

B. Provisions of the Judgments That Remain in Force

Eleven of the substantive provisions of the Partial Final Judgment remain in effect,[5] and nine substantive provisions of the Final Judgment remain in effect.[6] Section IV(A) and (B) of both decrees prohibit the defendants from agreeing with any other hotel or convention bureau to give preference to any hotel supplier or to curtail or terminate the purchase of hotel supplies from any hotel supplier. *See Greater Portland Convention Association, Inc*, 1971 Trade Cas. (CCH) ¶ 73,731 at 91,057-058; *Greater Portland Convention Association, Inc*, 1973 Trade Cas. (CCH) ¶ 74,614 at 94,717. Section V of both decrees prohibits the hotel defendants from engaging in certain unilateral conduct, such as tracking supplier contributions to convention bureaus or distributing supplier contribution lists to their employees, that potentially could facilitate the same results as the coordinated activity prohibited in Section IV. *See Greater Portland Convention Association, Inc*, 1971 Trade Cas. (CCH) ¶ 73,731 at 91,058; *Greater Portland Convention Association, Inc*, 1973 Trade Cas. (CCH) ¶ 74,614 at 94,717. Section VI of the Partial Final Judgment prevents the convention bureau defendant from engaging in the same type of unilateral conduct as Section V prohibits for the hotel defendants. *See Greater Portland Convention Association, Inc*, 1971 Trade Cas. (CCH) ¶ 73,731 at 91,058.

As discussed below, none of these provisions is needed to protect competition in light of

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[5] Partial Final Judgment at §§ IV(A)-(B), V(A)-(G), and VI(A)-(B). The remaining provisions expired long ago.

[6] Final Judgment at §§ IV(A)-(B), and V(A)-(G). The remaining provisions expired long ago. Sections IV(A)-(B) and V(A)-(G) in the Final Judgment are prohibitions identical to those in §§ IV(A)-(B) and V(A)-(G) in the Partial Final Judgment. Section VI(A)-(B) of the Partial Final Judgment applies only to the convention bureau defendant. No convention bureau defendant was subject to the Final Judgment.

the many changes in industry circumstances over the past thirty-five years and the fact that most of the potentially anticompetitive conduct addressed by the decree provisions is also adequately addressed by existing antitrust laws. In addition, several provisions of these decrees impose obligations that are inconsistent with modern antitrust law and policy, and their continued existence may well be inhibiting rather than preserving effective competition. Because the provisions of the decrees that remain in effect either are no longer necessary or may be interfering with the competitive process, their continued existence does not provide a public benefit, and the two decrees should be terminated.

III. LEGAL STANDARDS APPLICABLE TO TERMINATION OF AN ANTITRUST FINAL JUDGMENT WITH THE CONSENT OF THE UNITED STATES

This Court has jurisdiction to terminate the Partial Final Judgment and the Final Judgment. Section X in each Judgment states that the Court retains jurisdiction to "enable the parties to apply for any such further order . . . as may be necessary or appropriate for . . . the modification or termination of any of the provisions thereof." Furthermore, "the power of a court of equity to modify an injunction in adaptation to changed conditions" is "inherent in the jurisdiction of the chancery." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932). Likewise, under Rule 60(b)(5) of the Federal Rules of Civil Procedure, "[o]n motion and upon terms as are just, the court may relieve a party . . . from a final judgment . . . [when] it is no longer equitable that the judgment should have prospective application." *See also United States v. International Business Machines Corp.*, 163 F.3d 737 (2d Cir. 1998) ("*IBM*") (affirming grant of joint motion by United States and defendant to terminate antitrust consent decree).

Where, as here, the United States tentatively consents to termination of some or all of the

provisions of an antitrust judgment, the issue before the court is whether such termination is in the public interest. *IBM*, 163 F.3d at 740; *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983); *United States v. Loew's Inc.*, 783 F. Supp. 211, 213 (S.D.N.Y. 1992) ("Loew's"); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987). Exercising "judicial supervision," *IBM*, 163 F.3d at 740, the court should approve a consensual decree termination where the United States has provided a reasonable explanation to support the conclusion that termination is consistent with the public interest. *Loew's*, 783 F. Supp. at 214. *See also United States v. Western Elec. Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990) (public interest test applies to a termination of decree restrictions with assent of all parties to the decree; district court should approve an uncontested termination "so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today"); *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576-77 (D.C. Cir. 1993) (under "deferential" public interest test, court should accept a consensual termination of decree restrictions that the United States "reasonably regarded as advancing the public interest;" it is "not up to the court to reject an agreed-on change simply because the proposal diverge[s] from *its* view of the public interest;" rather, court "may reject an uncontested modification only if it has exceptional confidence that adverse antitrust consequences will result").

The "public interest" standard takes its meaning from the purposes of the antitrust laws. *IBM*, 163 F.3d at 740; *Am. Cyanamid*, 719 F.2d at 565. As the Second Circuit has emphasized, "[t]he purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market." *IBM*, 163 F.3d at 741-42 (alteration in original) (quoting *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993)). The purpose

of an antitrust decree is to remedy and prevent the recurrence of the violation alleged in the complaint. Where the government has consented to termination, the focus is on whether there is a "*likelihood* of potential future violation, rather than the mere *possibility* of a violation." *IBM*, 163 F.3d at 742 (emphasis added). In this context, if the government reasonably explains why there is "no current need for" the constraints imposed by a decree, termination will serve "the public interest in 'free and unfettered competition as the rule of trade.'" *Loew's*, 783 F. Supp. at 213, 214 (S.D.N.Y. 1992) (quoting *N. Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958)).

Obsolete decrees are worse than unnecessary; they may themselves have anticompetitive effects, burdening the parties, the courts, and the competitive process. *See, e.g., IBM*, 163 F. 3d at 740; *Loew's*, 783 F. Supp. at 214. Where the United States and the defendants jointly seek termination long after entry of a decree that has no termination date, it is reasonable to presume that the violation has long since ceased and that competitive conditions were adequately restored. Thus, for example, the Second Circuit affirmed termination of the *IBM* decree under the public interest standard because there was no longer any material threat of antitrust violations absent the decree restrictions and because the decree "resulted in artificial restraints . . . which do not further the cause of healthy competition." *IBM*, 163 F.3d at 740. Termination of an antitrust decree, of course, leaves the parties "fully subject to the antitrust laws of general application." *Loew's*, 783 F. Supp at 214.

IV. REASONS WHY THE UNITED STATES TENTATIVELY CONSENTS TO TERMINATION OF THE PARTIAL FINAL JUDGMENT AND THE FINAL JUDGMENT

Termination of the Partial Final Judgment and the Final Judgment is plainly in the public interest. The United States' extensive experience with the enforcement of the antitrust laws has shown that, as a general matter, industries evolve and change over time in response to competitive and technological forces. In most situations, the passage of many decades results in significant industry change that renders the rigid prohibitions placed years before in consent decrees either irrelevant to the parties' ongoing compliance with the antitrust laws or an affirmative impediment to the kind of adaptation to change that is a hallmark of the competitive process.

These considerations, among others, led the Antitrust Division of the Department of Justice ("Department") in 1979 to establish a policy of including in every consent decree a so-called "sunset provision" that, except in exceptional cases, would result in the decree's automatic termination after no more than ten years.[7] As a result of the Department's consistent adherence to this policy, the only antitrust consent decrees to which the United States is a party that remain in effect are those entered within the past ten years, or before 1979 when the "sunset" policy was adopted. The Department encourages parties to old decrees to seek the Department's consent to

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[7] *Antitrust Division Manual*, § IV.E.d.2. (1998 ed.). This change in policy followed Congress' 1974 amendment of the Sherman Act to make violations a felony, punishable by substantial fines and jail sentences. With these enhanced penalties for *per se* violations of the antitrust laws, the Division concluded that antitrust recidivists could be deterred more effectively by a successful criminal prosecution under the Sherman Act than by a criminal contempt proceeding under provisions of an old consent decree aimed at preventing a recurrence of price-fixing and other hard-core antitrust violations. *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 867 (S.D.N.Y. 1987).

their termination, especially where such decrees contain provisions that may be restricting competition. *See* U.S. Department of Justice, Antitrust Division, DOJ Bull. No. 1984-04, *Statement of Policy by the Antitrust Division Regarding Enforcement of Permanent Injunctions Entered in Government Antitrust Cases* (hereinafter, "DOJ Policy Regarding Decree Enforcement") (attached hereto as Appendix 3); and U.S. Department of Justice Press Release, *New Protocol to Expedite Review Process for Terminating or Modifying Older Antitrust Decrees* (Apr. 13, 1999) (hereinafter, "New DOJ Decree Termination Protocol") (attached hereto as Appendix 4).[8] In the United States' view, decrees entered prior to 1979 should be terminated unless there are affirmative reasons for continuing them, which we would expect to exist only in limited circumstances.[9]

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[8] In addition, in the early 1980s, the Antitrust Division conducted its own review of over 1,200 old consent decrees then in effect to ensure that none "hinder[ed] . . . competition" or "reflect[ed] erroneous economic analysis and thus produce[d] continuing anticompetitive effects." The Honorable William French Smith, Attorney General of the United States, *Remarks at the Annual Meeting of the District of Columbia Bar* (June 24, 1981), at 11. Although that effort was necessarily constrained by the Division's limited resources and other enforcement priorities, it did lead to the termination of several decrees that at the time appeared most problematic. *See also* Jeffrey I. Zuckerman, *Removing the Judicial Fetters: The Antitrust Division's Judgment Review Project* (1982) at 2-3 (hereinafter "*Zuckerman Speech*") (attached hereto as Appendix 5); *see Department of Justice Authorization for Fiscal Year 1984 Before the Subcommittee on Monopolies & Commercial Law, Committee on the Judiciary*, 98th Cong. 16 (1983) (statement of William F. Baxter, Assistant Attorney General, Antitrust Division).

[9] Among the circumstances where continuation of a decree entered more than ten years ago may be in the public interest are: a pattern of noncompliance by the parties with significant provisions of the decree; a continuing need for the decree's restrictions to preserve a competitive industry structure; and longstanding reliance by industry participants on the decree as an essential substitute for other forms of industry-specific regulation where market failure cannot be remedied through structural relief. None of these circumstances is present in this case.

A. Changes in Hospitality Purchasing Have Rendered the Judgments Obsolete

Both the Partial Final Judgment and the Final Judgment have been in effect for more than 30 years. In these intervening years, hospitality industry purchasers have dramatically changed the methods by which they procure, distribute, and store their input products, as well as from whom and in what quantities they purchase these products. These substantial changes in the purchasing practices of the hospitality industry have caused the subject decree provisions to become an inadvertent impediment on competition and to bar conduct that would be allowed under the antitrust laws today.

In the 1960s and 1970s, individual hotels, including those belonging to large hotel chains, employed general managers, chefs, and purchasing agents who made many of the purchasing decisions for their hotel and often orchestrated supply contracts with local grocers, furniture companies, and office supply stores. Today, many branded hotel chains centralize their hotel purchases from cooperative distributorships and large national retailers and negotiate preferred supplier relationships. Such centralized purchasing allows hospitality companies to ensure brand consistency, reduce input costs, and ensure a reliable flow of supplies for all of their hotels.

In addition to centralized purchasing, individual hotels and hotel chains, including several of the defendants' competitors, frequently purchase supplies through group purchasing organizations. Group purchasing organizations make purchases on behalf of a number of companies that purchase the same kinds of products. For example, three of the defendants' major competitors purchase their supplies regionally and nationally through a group purchasing organization that they partly own. Group purchasing organizations can

offer potential economies of scale by providing their members with such services as negotiating with suppliers, budgeting, expediting, and managing transportation services. Members of group purchasing organizations can decrease their supply procurement costs through pooled orders, coordinated inventory management, and shared distribution costs.

B. The Judgments Are Obsolete and Prohibit Potentially Procompetitive Conduct That Modern Antitrust Law Allows

Some provisions of the decrees prohibit conduct that offers procompetitive benefits and would today likely be considered legal.[10] Section IV, subparts (A)-(B) of the decrees unconditionally prevent the defendants from agreeing with other hotels to give preference to any supplier or curtail purchases from any supplier. These prohibitions – which were meant to enjoin local hotels from collectively boycotting local suppliers who did not contribute to the local convention bureau – also prevent the defendants and their suppliers from undertaking procompetitive group purchasing opportunities and inhibit them from undertaking centralized purchasing.[11]

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[10] *See, e.g.*, Partial Final Judgment and Final Judgment at §§ IV(A)-(B) (prohibiting the hotel defendants from, among other things, entering into agreements with other hotels to utilize preferred suppliers). Other provisions prohibit unilateral conduct that, absent some evidence of an agreement to act in concert, would not even be prohibited by the antitrust laws. *See, e.g.*, Partial Final Judgment and Final Judgment at §§ V(A)-(G), and Partial Final Judgment at VI(A)-(B) (prohibiting, among other things, hotel and convention bureau defendants from sharing certain types of information with their employees).

[11] Currently, for fear of violating the decrees, the defendants' franchised hotels, which comprise a significant portion of their branded hotels, do not participate in the defendants' centralized purchasing programs. The triggering mechanism for the decrees' prohibition on group purchasing is the involvement of "other hotels," which are defined as any hotel that is not owned, operated, or managed by the defendants . *United States v. Greater Portland Convention Association, Inc., et al.*, Civil No. 70-310, 1971 Trade Cas. (CCH) ¶73,731 (D. Or. 1971).

Preventing Starwood and Hilton from joining any group purchasing organization that has other hotels among its members places them at a disadvantage relative to their competitors who are not subject to the decrees. As discussed above, many of the defendants' major competitors have formed their own hospitality-oriented centralized purchasing programs that serve their owned, operated and franchised hotels in order to operate more efficiently. Others have joined diversified group purchasing organizations that include other hotels and other purchasers of the same types of products that hotels need, such as linens or food services, in order to decrease procurement costs. By depriving defendants of these cost saving opportunities, the decrees may lead to unnecessary inefficiencies and increased prices for consumers.

Termination of the decrees will enable Hilton and Starwood to consider entering into procompetitive purchasing collaborations that include all of their branded hotels, as well as with other hospitality industry participants, in order to lower their input costs. While the possibility exists that Hilton and Starwood might enter into agreements with competitors that violate the antitrust laws, terminating the decrees will not preclude the Antitrust Division from bringing an enforcement action if that occurs. Where the government has consented to termination, the focus is on whether there is a "*likelihood* of potential future violation, rather than the mere *possibility* of a violation." *U.S. v. IBM*, 163 F.3d 737, 742 (2d Cir. 1998) (emphasis added). Here, there is no such likelihood.

C. Developments in Antitrust Law

At the time of the conduct that led to the decrees, courts treated all agreements among competitors not to deal with suppliers – including the group purchasing prohibited in the

decrees – as *per se* illegal. *See Klor's Inc. v. Broadway Hale Stores,* 359 U.S. 207 (1959) (holding the group boycotts and concerted refusals to deal are not "saved by allegations that they were reasonable in the specific circumstances, nor by a failure to show that they fixed or regulated prices, parceled out or limited production, or brought about a deterioration in quality."). Indeed, on appeal from the district court's application of the *per se* rule in this case, the Ninth Circuit rejected Westin's argument that *per se* treatment was improper. *See United States v. Hilton Hotels Corporation., et al.,* 467 F.2d 1000, 1002-1004 (9th Cir. 1972), *cert. denied,* 93 S.Ct. 938 (1973).

Today, application of the *per se* rule in the context of group boycotts turns on "'whether the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output . . . or instead one designed to increase economic efficiency and render markets more, rather than less, competitive.'" *See Northwest Wholesale Stationers Inc. v. Pacific Stationery and Printing Co.* 472 U.S. 284, 289-90 (1985) (quoting *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 19-20 (1979)).[12] Furthermore, cases in which the Supreme Court has applied the *per se* approach have "generally involved joint efforts by a firm or firms to disadvantage [direct] competitors by

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[12] The Department and the Federal Trade Commission (FTC) have recognized procompetitive benefits can come from the types of legitimate group purchasing collaborations prevented by the decrees. According to the joint DOJ/FTC *Antitrust Guidelines for Collaboration Among Competitors* (2000) ("*Guidelines*"), purchasing collaborations may be procompetitive because they enable participants to centralize ordering, and to combine warehousing or distribution functions more efficiently. *See* §3.31(a). Furthermore, these collaborations may enable the participants to offer goods and services that are cheaper, more valuable to consumers, or brought to market faster than would be possible absent collaboration with competitors. *Id.* at §2.1. Since these benefits may outweigh any anticompetitive effects arising from the agreement, rule of reason analysis is more appropriate when analyzing these restraints.

either directly denying or persuading or coercing suppliers or customers to deny relationships the competitors need in the competitive struggle." *Id.* at 294 (internal quotations omitted). Moreover, when a defendant advances plausible arguments that a practice enhances overall efficiency and makes markets more competitive, *per se* treatment is inappropriate, and the rule of reason applies. *Id.*

D. The United States Received No Evidence In Its Investigation Establishing That Continuation of the Decrees Would Serve the Public Interest

Before tentatively agreeing to join the defendants in moving the Court to terminate these decrees, the United States conducted its own investigation of the industry and also solicited public comments on Hilton's proposal to terminate the Partial Final Judgment. As discussed below, Hilton published notice of its proposal to terminate the Partial Final Judgment in *The Wall Street Journal* and *Hotel Business* and provided the public an opportunity to submit comments to the United States. The United States did not receive any public comments with respect to this proposal.

The United States conducted interviews of industry participants, including hospitality industry competitors and suppliers, all of whom supported termination of these decrees. Competitors and suppliers interviewed confirmed that, except for Hilton and Starwood, hospitality companies will usually require their owned, managed and franchised hotels to order supplies through centralized purchasing organizations operated by their parent company and often participate in group purchasing collaborations with competitors. These interviewees also noted that group purchasing organizations in the hospitality industry have improved brand consistency and reduced supply chain distribution and inventory costs for

both the hotels and their suppliers. None of the interviewees expressed concerns about future anticompetitive effects that could arise from termination of the decrees. The suppliers interviewed in connection with this investigation agreed that continuing to prevent Hilton and Starwood from engaging in the group purchasing opportunities likely would increase costs for Hilton, Starwood, their suppliers, and ultimately consumers.

E. Summary

As a result of the passage of time and the changes in hospitality supply purchasing practices, these decrees no longer serve the public interest. Their purposes are amply served by the existing body of antitrust law. The prohibitions in these thirty year old consent decrees create an affirmative impediment to the adaptation to change that is a hallmark of the competitive process. Therefore, the United States believes that termination of the Partial Final Judgment and Final Judgment would be in the public interest and tentatively consents to such termination.

V. PROPOSED PROCEDURES FOR PROVIDING PUBLIC NOTICE OF THE PENDING MOTIONS AND INVITING COMMENT THEREON

In *United States v. Swift & Co.*, the court noted its responsibility to implement procedures that will provide non-parties adequate notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification. . . .

1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,703 (N.D. Ill. 1975) (footnote omitted).

Early in the course of the Department's investigation, Hilton published notice of its proposal to terminate the Partial Final Judgment and provided the public an opportunity to submit

comments to the United States. The notice was published in two widely read industry publications: it appeared in *The Wall Street Journal* on November 7, 2006 and November 8, 2006 and *Hotel Business* on November 7, 2006 and November 21, 2006. *See* Appendix 6. The proposal to terminate the Final Judgment was not expressly included in these notices. The United States received no comments in response to these notices.

In accord with Antitrust Division policies, the United States proposes – and Hilton and Starwood have agreed to – the following additional notice and comment procedures:

1. The United States will publish in the *Federal Register* a notice announcing the motion to terminate the Partial Final Judgment and the Final Judgment, and the United States' tentative consent to it, summarizing the Complaint and Judgments, describing the procedures for inspecting and obtaining copies of relevant papers, and inviting the submission of comments.
2. Hilton and Starwood will publish, at their own expense, notice of the motion in two consecutive issues of *The Wall Street Journal* and *Hotel Business*. These periodicals are likely to be read by persons interested in the markets affected by the Partial Final Judgment and the Final Judgment. The published notices will provide for public comment during the thirty days following publication of the last notice.
3. Within a reasonable period of time after the conclusion of the thirty-day period, the United States will file with the Court copies of any written comments that it receives and its response to those comments.
4. The parties request that the Court not rule upon the Motions to Terminate for at least forty days after the last publication of the notices described above, *i.e.*, for at

least ten days after the close of the period for public comment.

This procedure is designed to provide notice to all potentially interested persons, informing them that a motion to terminate the Partial Final Judgment and the Final Judgment is pending and providing them an opportunity to comment thereon. Starwood and Hilton have agreed to follow this procedure, including publication of the appropriate notice. The parties therefore submit herewith to the Court a separate order establishing this procedure. The United States reserves the right to withdraw its consent to the motions at any time prior to entry of an order terminating the Partial Final Judgment and the Final Judgment.

VI. CONCLUSION

For the foregoing reasons, the United States tentatively consents to termination of the Partial Final Judgment and the Final Judgment.

Dated: October 17, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2007, I caused a copy of the foregoing Memorandum in Response to Defendant Hilton and Starwood Hotels' Motion to Terminate the Partial Final Judgment and the Final Judgment to be served on the defendant and successors in interest to the Partial Final Judgment and the Final Judgment that still have active operations in the United States at the addresses given below:

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Appendix 1

United States v. Greater Portland Convention Assn., Inc., Hilton Hotels Corp., ITT Sheraton Corp. of America, and Cosmopolitan Investment, Inc.

No. 70-310.

U.S. District Court for the District of Oregon.

1971 U.S. Dist. LEXIS 10616; 1971 Trade Cas. (CCH) P73,731

November 29, 1971, Entered.

OPINIONBY: [*1]

GOODWIN

OPINION:

Partial Final Judgment

GOODWIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 12, 1970, and the consenting defendants having appeared by their respective attorneys and having filed their respective answers to such complaint denying the substantive allegations thereof; and plaintiff and consenting defendants, by their respective attorneys, having separately consented to the making and entry of this Partial Final Judgment pursuant to the Stipulation filed here on October 26, 1971 without trial or adjudication of or finding on any issue of fact or law herein, and no testimony having been taken herein and without this Partial Final Judgment constituting any evidence against or admission by any party to said Stipulation with respect to any such issue and upon consent of the parties hereto,

It Is Hereby Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter herein and of the consenting defendants. The complaint states a claim upon which relief may be granted against the consenting defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce [*2] against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended *(15 U.S.C. § 1)*.

II.

As used in this Partial Final Judgment:

A. The term "consenting defendants" means the defendants Greater Portland Convention Association, Inc. (hereinafter GPCA), Hilton Hotels Corporation, ITT Sheraton Corporation of America, and Cosmopolitan Investment, Inc.;

B. The term "each hotel defendant" means each of the consenting defendants Hilton Hotels Corporation, ITT Sheraton Corporation of America, and Cosmopolitan Investment, Inc., and any hotel owned, operated or managed by each said consenting defendant;

C. The term "person" means any individual, partnership, firm, association, corporation or other business or legal entity;

D. The term "hotel" means any company, firm, or other business entity that provides lodging for the public;

E. The term "purchase" means purchase, lease or rental;

F. The term "hotel supplies" means any goods, wares, merchandise or services (excluding services provided by a hotel's own employees) obtained by a hotel;

G. The term "hotel supplier" means any person who sells or otherwise provides hotel supplies to hotels, and any agent [*3] or employee of such person;

H. The term "convention bureau" means any person who raises money by solicitation or collection of contributions or dues, for use in:

(1) Promoting assemblies, conventions, conferences, meetings or similar events;

(2) Obtaining hotel patronage; or

(3) Obtaining other direct commercial benefits for hotels.

I. The term "Portland hotel supplier" means any hotel supplier located within a fifty (50) mile radius of Portland, Oregon, who has within two years prior to the date of the filing of this Partial Final Judgment sold hotel supplies to any hotel in Portland, Oregon, owned, operated or managed by any of the hotel defendants;

J. The term "contribution list" means any document which in any manner indicates, with respect to any hotel supplier:

(1) Whether it has or has not paid dues or contributions to;

(2) Whether it belongs or does not belong to;

(3) The amount of contributions or dues it has been assessed by; or

(4) The amount of contributions or dues it has failed to pay to any convention bureau.

III

The provisions of this Partial Final Judgment applicable to any consenting defendant shall apply to such consenting defendant, its [*4] subsidiaries, successors, assigns, and to their respective officers, directors, agents and employees, and to all persons in active concert or participation with any of them who receive actual notice of this Partial Final Judgment by personal service or otherwise; provided, however, that this Partial Final Judgment shall not apply to transactions or activity outside the United States.

IV

Each consenting defendant is enjoined and restrained from:

A. Directly or indirectly in any manner entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other hotel or with any convention bureau to:

(1) Give or promise to give preferential treatment in purchasing hotel supplies to any hotel supplier;

(2) Curtail or terminate, or threaten to curtail or terminate, the purchase of hotel supplies from any hotel supplier;

B. Engaging in any other agreement, understanding, combination, conspiracy or concert of action having similar purpose or effect.

V

Each hotel defendant is enjoined and restrained from:

A. Circulating any contribution list among its employees;

B. Utilizing the information [*5] contained in any contribution list in making any decision concerning the purchase of hotel supplies;

C. Disclosing to any convention bureau the amount of hotel supplies it has purchased from any hotel supplier;

D. Soliciting, demanding, urging, requesting or otherwise seeking from any person known by said defendant to be a hotel supplier any payment of money by contributions, dues or otherwise to any convention bureau;

E. Giving or promising to give to any hotel supplier preferential treatment in the purchase of hotel supplies by reason of that hotel supplier's payment of money by contributions, dues or otherwise to any convention bureau;

F. Curtailing or terminating, or threatening to curtail or terminate, its respective purchases from any hotel supplier by reason of that hotel supplier's refusal or failure to pay money by contributions, dues or otherwise to any convention bureau;

G. Contributing to, participating in, becoming a member of, or maintaining a membership in any convention bureau which to the knowledge of said hotel defendant seeks to have any hotel:

(1) Give or promise to give any hotel supplier preferential treatment in the purchase of hotel supplies by reason [*6] of that hotel supplier's payment of money by contributions, dues or otherwise to any convention bureau; or

(2) Curtail or terminate, or threaten to curtail or terminate, its respective purchases from any hotel supplier by reason of that hotel supplier's refusal or failure to pay money by contributions, dues or otherwise to any convention bureau;

or which convention bureau itself represents that hotels will follow the practices set forth in subparagraphs (1) and (2) hereof.

VI

Defendant GPCA is enjoined and restrained from:

A. Circulating, distributing or otherwise making available, directly or indirectly, any contribution list to any hotel, its directors, officers, agents or employees; provided, however, that defendant GPCA may distribute contribution lists to any individual who also is an officer or director of GPCA for use solely in his capacity as an officer or director of GPCA.

B. Fixing, establishing, assessing or otherwise setting or suggesting an amount of money to be paid by dues, contributions or otherwise, by any hotel supplier to GPCA based on that hotel supplier's sales to any hotel.

VII

Each hotel defendant is ordered and directed:

A. Within thirty [*7] (30) days after the entry of this Partial Final Judgment, to furnish a conformed copy of this Partial Final Judgment to each of its hotel general managers, hotel managers and officers who have responsibilities for hotel operations, together with a letter setting forth the remedial provisions of this Partial Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto not reproduced and made a part hereof;

B. For a period of five (5) years from the entry of this Partial Final Judgment, to furnish each of its successor hotel general managers, hotel managers and officers who have responsibilities for hotel operations a conformed copy of this Partial Final Judgment; together with a letter setting forth the remedial provisions of this Partial Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

C. To maintain such records as will show the name, title and address of each individual to whom this Partial Final Judgment and attached letter have been furnished as described in subsections A and B of this Section VII, together with the date thereof;

D. To advise and inform each individual [*8] to whom this Partial Final Judgment has been furnished as described in subsections A and B of this Section VII that violation by him of the terms of this Partial Final Judgment could result in a conviction for contempt of

court and could subject him to imprisonment, a fine or both;

E. Within thirty (30) days of the entry of this Partial Final Judgment, to furnish each of its respective purchasing agents with a letter summarizing the remedial provisions of this Partial Final Judgment, which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

F. For a period of five (5) years after the filing of this Partial Final Judgment, furnish each new purchasing agent with a letter setting forth the remedial provisions of this Partial Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

G. Within thirty (30) days of the entry of this Partial Final Judgment, to send to each of its respective Portland hotel suppliers a letter summarizing the primary remedial provisions of this Partial Final Judgment, which letter shall be signed by the president of said hotel defendant, and [*9] shall be substantially identical to Exhibit B which is attached hereto not reproduced and made a part hereof;

H. Within thirty (30) days after the entry of this Partial Final Judgment, to destroy all GPCA contribution lists within their possession, control or custody;

I. Within sixty (60) days after the entry of this Partial Final Judgment, to file with this Court and to serve upon the plaintiff affidavits concerning the fact and manner of compliance with subsections A, D, E, G and H of this Section VII.

VIII

Defendant GPCA is ordered and directed:

A. Within thirty (30) days after the entry of this Partial Final Judgment, to furnish a conformed copy of this Partial Final Judgment to each of its officers, directors, agents and employees and to each of its hotel and motel members, except that GPCA need not furnish a copy of said Partial Final Judgment to hotel defendants, their officers, agents or employees.

B. For a period of five (5) years from the entry of this Partial Final Judgment, to furnish to each of its successor officers, directors, agents and employees and to new hotel or motel members a conformed copy of this Partial Final Judgment.

C. Maintain such records [*10] as will show the name, title and address of each person to whom this Partial Final Judgment has been furnished, as described in subsections A and B of this Section VIII, together with the date thereof;

D. Within sixty (60) days after the entry of this Partial Final Judgment, to file with this Court and to serve upon the plaintiff affidavits concerning the fact and manner of compliance with subsections A and C of this Section VIII.

IX

A. For the purpose of determining or securing compliance with this Partial Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to any consenting defendant made to its principal office, be permitted:

(1) Access, during the office hours of said consenting defendant, and in the presence of counsel if said consenting defendant chooses, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said consenting defendant relating [*11] to any of the matters contained in this Partial Final Judgment; and

(2) Subject to the reasonable convenience of said consenting defendant and without

restraint or interference from it, to interview the officers and employees of said consenting defendant, who may have counsel present, regarding any such matters;

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, each of the consenting defendants shall submit such reports in writing, to the Department of Justice with respect to any of the matters contained in this Partial Final Judgment as from time to time may be requested;

C. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Partial Final Judgment, or as otherwise required by law.

X

Jurisdiction is retained for the purpose of enabling any of the parties to this Partial [*12] Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Partial Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Appendix 2

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, v. GREATER PORTLAND CONVENTION ASSOCIATION, INC., et al., Defendants.	CIVIL NO. 70-310

FINAL JUDGMENT AS TO DEFENDANT WESTERN INTERNATIONAL HOTELS COMPANY

Plaintiff, United States of America, having filed its complaint herein on May 12, 1970, and the consenting defendant having appeared by its attorneys and having filed its respective answer to such complaint denying the substantive allegations thereof; and plaintiff and consenting defendant, by their respective attorneys, having separately consented to the making and entry of this Final Judgment pursuant to the Stipulation filed herein on July 26, 1973 without trial or adjudication of or finding on any issue of fact or law herein, and no testimony having been taken herein and without this Final Judgment constituting any evidence against or admission by either party to said Stipulation with respect to any such

issue and upon consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the consenting defendant. The complaint states a claim upon which relief may be granted against the consenting defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended (15 U.S.C. § 1).

II

As used in this Final Judgment:

A. The term "consenting defendant" means defendant Western International Hotels Company;

B. The term "person" means any individual, partnership, firm, association, corporation or other business or legal entity;

C. The term "hotel" means any company, firm, or other business entity that provides lodging for the public;

D. The term "purchase" means purchase, lease or rental;

E. The term "hotel supplies" means any goods, wares, merchandise or services (excluding services provided by a hotel's own employees) obtained by a hotel;

F. The term "hotel supplier" means any person who sells or otherwise provides hotel supplies to the hotels, and any agent or employee of such person;

G. The term "convention bureau" means any person who raises money by solicitation or collection of contributions or dues, for use in:

(1) Promoting assemblies, conventions, conferences, meetings or similar events;

(2) Obtaining hotel patronage; or

(3) Obtaining other direct commercial benefits for hotels.

H. The term "Portland hotel supplier" means any hotel supplier located within a fifty (50) mile radius of Portland, Oregon, who has within two years prior to November 30, 1971 sold hotel supplies to any hotel in Portland, Oregon, owned, operated or managed by the consenting defendant;

I. The term "contribution list" means any document which in any manner indicates, with respect to any hotel supplier:

(1) Whether it has or has not paid dues or contributions to any convention bureau;

(2) Whether it belongs or does not belong to any convention bureau;

(3) The amount of contributions or dues it has been assessed by any convention bureau; or

(4) The amount of contributions or dues it has failed to pay to any convention bureau.

J. The term "GPCA" means the Greater Portland Convention Association, and any subsidiary or successor organization or entity.

III

The provisions of this Final Judgment shall apply to the consenting defendant, its subsidiaries, successors, assigns, and to their respective officers, directors, agents and employees, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply

to transactions or activity outside the United States.

IV

The consenting defendant is enjoined and restrained from:

A. Directly or indirectly in any manner entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other hotel or with any convention bureau to:

(1) Give or promise to give preferential treatment in purchasing hotel supplies to any hotel supplier;

(2) Curtail or terminate, or threaten to curtail or terminate, the purchase of hotel supplies from any hotel supplier;

B. Engaging in any other agreement, understanding, combination, conspiracy or concert of action having similar purpose or effect.

V

The consenting defendant is enjoined and restrained from:

A. Circulating any contribution list among its employees;

B. Utilizing the information contained in any contribution list in making any decision concerning the purchase of hotel supplies;

C. Disclosing to any convention bureau the amount of hotel supplies it has purchased from any hotel supplier;

D. Soliciting, demanding, urging, requesting or otherwise seeking from any person known by said defendant to be a hotel supplier any payment of money by contributions, dues or otherwise to any convention bureau;

E. Giving or promising to give to any hotel supplier preferential treatment in the purchase of hotel supplies by reason of that hotel supplier's payment of money by contributions, dues or otherwise to any convention bureau;

F. Curtailing or terminating, or threatening to curtail or terminate, its respective purchases from any hotel supplier by reason of that hotel supplier's refusal or failure to pay money by contributions, dues or otherwise to any convention bureau;

G. Contributing to, participating in, becoming a member of, or maintaining a membership in any convention bureau which to the knowledge of the consenting defendant seeks to have any hotel:

(1) Give or promise to give any hotel supplier preferential treatment in the purchase of hotel supplies by reason of that hotel supplier's payment of money by contributions, dues or otherwise to any convention bureau; or

(2) Curtail or terminate, or threaten to curtail or terminate, its respective purchases from any hotel supplier by reason of that hotel supplier's refusal or failure to pay money by contributions, dues or otherwise to any convention bureau;

or which convention bureau itself represents that hotels will follow the practices set forth in subparagraphs (1) and (2) hereof.

VI

The consenting defendant is ordered and directed:

A. Within thirty (30) days after the entry of this

Final Judgment, to furnish a conformed copy of this Final Judgment to each of its hotel general managers, hotel managers and officers who have responsibilities for hotel operations, together with a letter setting forth the remedial provisions of this Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

B. For a period of five (5) years from the entry of this Final Judgment, to furnish each of its successor hotel general managers, hotel managers and officers who have responsibilities for hotel operations a conformed copy of this Final Judgment, together with a letter setting forth the remedial provisions of this Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

C. To maintain such records as will show the name, title and address of each individual to whom this Final Judgment and attached letter have been furnished, as described in subsections A and B of this Section VI, together with the date thereof;

D. To advise and inform each individual to whom this Final Judgment has been furnished as described in subsections A and B of this Section VI that violation by him of the terms of this Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment, a fine or both;

E. Within thirty (30) days of the entry of this Final Judgment, to furnish each of its purchasing agents with a letter summarizing the remedial provisions of this Final Judgment, which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

F. For a period of five (5) years after the filing

of this Final Judgment, furnish each new purchasing agent with a letter setting forth the remedial provisions of this Final Judgment which letter shall be substantially identical to Exhibit A which is attached hereto and made a part hereof;

G. Within thirty (30) days of the entry of this Final Judgment, to send to each of its Portland hotel suppliers a letter summarizing the primary remedial provisions of this Final Judgment, which letter shall be signed by the president of the consenting defendant, and shall be substantially identical to Exhibit B which is attached hereto and made a part hereof;

H. Within thirty (30) days after the entry of this Final Judgment, to destroy all GPCA contribution lists within its possession, control or custody;

I. Within sixty (60) days after the entry of this Final Judgment, to file with this Court and to serve upon the plaintiff affidavits concerning the fact and manner of compliance with subsections A, D, E, G and H of this Section VI.

VII

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the consenting defendant made to its principal office, be permitted:

(1) Access, during the office hours of the consenting defendant, and in the presence of counsel if the consenting defendant chooses, to all books, ledgers,

accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the consenting defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the consenting defendant and without restraint or interference from it, to interview the officers and employees of the consenting defendant, who may have counsel present, regarding any such matters;

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, the consenting defendant shall submit such reports in writing, to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be requested;

C. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the

construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated this _____ day of _____, 1973.

UNITED STATES DISTRICT JUDGE

Presented by:

Attorney for Plaintiff

EXHIBIT A

Dear _____

In accordance with the terms of a Judgment entered by the United States District Court in Portland, Oregon, with the consent of the parties, a copy of which is attached, we are sending this notice to each of our hotel general managers, hotel managers, officers having responsibilities for hotel operations and purchasing agents.

This Judgment deals with our purchasing policies, particularly as those policies might be affected by a supplier's support of a convention bureau. By a convention bureau we mean any organization that raises money for use in the:

(a) promotion of conventions or similar events;

(b) obtaining of hotel patronage; or

(c) obtaining of other direct commercial benefits for hotels.

Pursuant to the provisions of this Judgment, it shall be our company's firm policy to absolutely refrain from:

1. Joining or agreeing with others to either (a) boycott or curtail purchases from any hotel supplier, or (b) give preference in the purchase of hotel supplies to any hotel supplier.

2. Circulating among our employees lists or other documents identifying members of, or contributors to, a convention bureau or using information contained in such lists in making purchasing decisions.

3. Disclosing to any convention bureau the amount of supplies purchased by us from any hotel supplier.

4. Soliciting or otherwise seeking from hotel suppliers contributions or dues to any convention bureau.

5. Giving or promising to give preference to any hotel supplier by reason of its payment of contributions or dues to any convention bureau.

6. Curtailing or terminating, or threatening to curtail or terminate, purchases from a hotel supplier because of its failure to pay contributions or dues to a convention bureau.

7. Being a member of, or otherwise supporting, any convention bureau which to our knowledge seeks to have its hotel members pursue preferential or discriminatory purchasing practices as described in items 5 or 6 or which represents that its hotel members pursue such practices.

It is the intention of Western International Hotels Company to abide by both the spirit and the letter of this Judgment. You should understand that violation of this Judgment by you could result in a conviction for contempt of court and subject you to imprisonment, fine or both.

EXHIBIT B

Dear _____

The Government in an antitrust suit has charged us with trying to pressure our hotel suppliers into contributing to the Greater Portland Convention Association.

We have never approved such activities. However, we have consented to the entry of a Judgment in the United States District Court in Portland, which formally enjoins us from engaging in such activities. Pursuant to the terms of the decree, we wish you to know that whether or not a hotel supplier contributes to GPCA, or any similar convention organization, will in no way affect our purchases from that hotel supplier. Our employees, including our hotel managers and purchasing agents, are prohibited by injunction from seeking contributions from hotel suppliers for GPCA and from giving any preference to hotel suppliers who do contribute.

It is our intention to abide by both the letter and the spirit of this Judgment. If any of our employees including our hotel managers should seek contributions from you for GPCA, or any similar organization, we would appreciate it if you would so inform the undersigned.

CERTIFIED COPY (Rev. April 1958) D. C. Form No. 80

United States of America

DISTRICT OF Oregon } ss:

I, Robert M. Christ, Clerk of the United States District Court for the District of Oregon, do hereby certify that the annexed and foregoing is a true and full copy of the original Final Judgment as to Defendant Western International Hotels Company, Civ. 70-310

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Portland, Oregon this 14th day of September, A. D. 19 73

ROBERT M. CHRIST
Clerk.

By Camile S. Hickman
Camile S. Hickman Deputy Clerk.

FPI ATLANTA—7-6-62—20M—3449

Appendix 3

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, APRIL 27, 1984

AT
202-633-2016

The Department of Justice today issued a policy statement concerning the enforcement and review of outstanding judgments in government civil antitrust cases.

The statement advises that, effective May 1, 1984, the Antitrust Division will lodge in its litigating sections and field offices direct responsibility for both the enforcement of the approximately 1500 existing judgments -- which include consent decrees and also the injunction's resulting from trials -- and the review of those judgments for possible modification or termination.

The statement further advises that the Antitrust Division expects defendants and others bound by outstanding judgments to comply with their terms scrupulously.

The Division will periodically conduct inquiries to determine judgment compliance, and will initiate criminal or civil contempt proceedings to deal with violations. The Division encourages persons with knowledge of possible judgment violations to contact its Office of Operations, Room 3214, Main Building, Department of Justice, Washington, D.C. 20530. Such communications will be accorded confidential treatment.

(MORE)

The statement also confirms that the Antitrust Division will continue its program of considering for possible modification or termination judgments that may have become anticompetitive or for other reasons may no longer be in the public interest. Defendants who believe that their judgments ought to be modified or terminated should contact the Division's Office of Operations and furnish the type of information that the Division needs in order to evaluate such requests, as spelled out in the policy statement.

J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, explained that the transfer of judgment responsibility to the Division's litigating sections and field offices will complete a process of decentralizing the Division's judgment activity which began in late 1982 when the Division's Judgment Enforcement Section was dissolved and judgment responsibility was divided on an interim basis among other sections.

McGrath emphasized that the Division is committed to enforcing compliance by judgment defendants, and others bound to outstanding judgments, with the terms of those judgments. When the Division obtains evidence of a violation, he said, it will in appropriate cases bring criminal contempt proceedings. McGrath noted that in 1983 a criminal contempt proceeding was brought against H.P. Hood, Inc., for violating the terms of a 1981 consent decree. Hood did not dispute the charges and was fined in excess of $100,000.

(MORE)

McGrath further emphasized that it continues to be the Division's policy to review for possible termination or modification existing judgments that, with the passage of time and as a result of changed legal or factual circumstances, have now become anticompetitive or for other reasons may no longer be in the public interest.

McGrath said this program, initiated in 1981, has proven successful in identifying judgments that unduly restrict legitimate competitive activity and are no longer justified.

Since 1981 some 400 outstanding judgments have been reviewed for possible termination or modification. Seventeen have been terminated or modified and five others are the subject of pending judicial proceedings looking towards termination.

A copy of the policy statement is attached.

# # # #

Statement of Policy by the Antitrust Division Regarding Enforcement and Review of Permanent Injunctions Entered in Government Antitrust Cases

Effective May 1, 1984, the Antitrust Division will lodge in its litigating sections and field offices direct responsibility for the enforcement of permanent injunctions (hereinafter referred to as "judgments") entered in antitrust actions brought by the Department of Justice, and for the review of such judgments for possible modification or termination.

The Antitrust Division expects defendants and others bound by outstanding judgments to comply with their terms scrupulously. The Division will periodically conduct inquiries to determine judgment compliance, and will initiate criminal or civil contempt proceedings to deal with violations. Persons who have reason to believe that judgment violations may have occurred are encouraged to contact the Division's Office of Operations, Room 3214, Main Building, Department of Justice, Washington, D.C. 20530. Such communications will be accorded confidential treatment.

The Division recognizes that, with the passage of time and as a result of changed legal or factual circumstances, existing judgments may become anticompetitive or for other reasons no longer be in the public interest. The Division seeks to identify such outdated judgments, and in appropriate cases will consent to court applications by defendants to modify or terminate them, particularly where the judgments in question unnecessarily or unduly restrict otherwise legitimate competitive activity. Judgment defendants who believe that their judgments ought to be terminated or modified should so inform the Division, through the Office of Operations, and provide to the Division:

(1) a detailed explanation as to (a) why the judgment in question should be vacated or modified, including information as to changes of circumstances or law that make the judgment inequitable or obsolete, and (b) the actual anticompetitive or other harmful effect of the judgment;

(2) a statement of the changes, if any, in its method of operations or doing business that the defendant contemplates in the event the judgment is modified or vacated; and

(3) a commitment to pay the costs of publication of public notice of the termination or modification proceedings in the trade and business press, as the Division may determine to be appropriate.

Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, APRIL 13, 1999
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

DEPARTMENT OF JUSTICE ANNOUNCES NEW PROTOCOL TO EXPEDITE REVIEW PROCESS FOR TERMINATING OR MODIFYING OLDER ANTITRUST DECREES

WASHINGTON, D.C. -- The Department of Justice's Antitrust Division today announced a new protocol designed to expedite the review process for parties seeking to terminate or modify outstanding consent decrees. The protocol is effective immediately.

The new protocol is a voluntary procedure which can be utilized by parties seeking to modify or terminate consent decrees that do not contain an automatic termination provision. Most consent decrees entered into before 1980 do not contain such provisions.

A consent decree cannot be terminated or modified except by court order. Prior to making a recommendation to the court, the Division must determine the probable effects of termination or modification on the market at issue in order to make an informed representation to the court that the requested order is in the public interest.

In the past, when the Division has agreed to support termination or modification, it has taken on average about two years between the party's initial request and the filing of the motion. The new protocol is designed to enable parties to expedite the Antitrust Division's review by getting needed information to the Division more quickly.

The new protocol differs from the present decree review process in three ways. First, the party seeking termination or modification will provide its request with the specific information that the Division would normally gather in the course of its review. Having the requesting party provide this material when it makes its request, rather than having the Division later request the information, is expected to reduce the time needed for the Division to act on the request. **(Please see Attachment)**

Second, the requesting party will contact other defendants bound by the decree and inform them of its intentions. Early involvement by all defendants will further streamline the review process.

Third, at the time the Division opens its review, the requesting party will agree to publish, at its own expense, notice of its intent to seek termination or modification and invite interested parties to provide the Division with relevant information. In determining what notice is appropriate at this stage, the Division will consider the cost of notice to the requesting party. This notice will not replace the notice and comment period that occurs after the motion to terminate or modify is filed with the court. Rather, the intent is that the additional pre-filing publication will cause any interested parties to come forward earlier in the process so that their concerns may be considered and addressed prior to the filing of a motion. The Division will take into account both concerns that are brought to its attention and appropriate inferences that might be drawn if no substantial concerns are raised at that time.

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99-131

ATTACHMENT

INFORMATION TO BE PROVIDED WITH REQUESTS THAT THE ANTITRUST DIVISION SUPPORT TERMINATION OR MODIFICATION OF CONSENT DECREES

1. The identity of the party making the request, its representative for purposes of the request, and the decree that is subject to the request; also the date of the decree's entry and the specific action requested (*e.g.*, termination of the entire decree or a specific modification).

2. Confirmation that the party making the request has not been found in violation of the decree and is not aware of any ongoing decree violation or investigation by the FTC or the Antitrust Division into activities subject to the decree.

3. A statement of the reasons for the request, which may include any factors that the party making the request believes are relevant to the public interest, and which should include the following:

   A.
   Any legitimate business activities that may be prohibited or impeded by the decree.
   B.
   Any aspects of the decree that the party believes do not promote competition or the public interest.
   C.
   Any other burdens, costs or other adverse effects that the decree imposes on the party making the request or on others.
   D.
   Any changes in the factual circumstances relating to the decree, including changes in any relevant market covered by the decree.
   E.
   Any relevant changes in the law.
   F.
   An explanation of why, or to what extent, termination or modification of the decree would not undermine the purposes of the decree.

4. A description of how the party would change its manner of doing business if the decree were terminated or modified.

5. Copies, where applicable, of the party's most recent annual report, financial statement, and SEC Form 10-K.

6. Copies of the party's most recent business, marketing, or strategic plans for any product covered by the decree.

7. The identity (including the name of a contact person, with telephone number and address) of all significant competitors; the party's ten largest customers; and, if appropriate, the party's ten largest suppliers, for each product or service affected by the decree.

8. The identity of any intellectual property at issue in the decree and any licenses pertaining to that intellectual property, together with the expiration or termination date of the intellectual property and any licenses to it.

Appendix 5

Department of Justice

FOR RELEASE AT 4 P.M.
THURSDAY, SEPTEMBER 9, 1982

REMOVING THE JUDICIAL FETTERS: THE ANTITRUST DIVISION'S JUDGMENT REVIEW PROJECT

Remarks by

JEFFREY I. ZUCKERMAN
Special Assistant to the
Assistant Attorney General
Antitrust Division

Before the

Council on Antitrust and Trade Regulation
of the Federal Bar Association

Hyatt Regency Hotel
Crystal City, Virginia

September 9, 1982

It is my pleasure to be here today to discuss with you the Antitrust Division's Judgment Review Project--our systematic review of the over 1300 judgments that have been entered in Government civil antitrust actions since 1890 and which remain in effect today.

The basic mission of the Antitrust Division is to preserve and promote "free and unfettered competition as the rule of trade." 1/ Success in this mission should yield, in the eloquent words of the Supreme Court, "the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." 2/

We try to eliminate fetters upon competition in whatever form we find them. For example, if competitors agree to restrain competition by fixing prices or restricting output, we prosecute the firms under the Sherman Act. Where a proposed rule or administrative action by a regulatory agency would unnecessarily constrain competition, we seek to persuade the agency not to issue the rule or take the action. When Congress is considering legislation that would unnecessarily reduce competition, we argue against enactment of the proposal.

1/ Northern Pac. Ry. v. United States, 356 U.S. 1, 4 (1958).

2/ Id.

To the extent that injunctions entered in antitrust actions go beyond enjoining behavior which is per se illegal, they restrain competition to some degree. A key goal of the Judgment Review Project is to identify injunctions that are today unnecessarily restraining competition, and to secure their modification or termination, as appropriate.

There are essentially two reasons why an antitrust decree may contain provisions whose effects today are unreasonably anticompetitive. First, decree provisions that were perfectly sensible and desirable when entered can be unreasonable today if they have been successful in promoting competition where there previously was none. When rival firms agree to restrain competition among themselves, there are usually elements of their agreed upon behavior that would not be unlawful if undertaken independently by one or more of the firms. Where the Department of Justice is able to secure injunctive relief against the parties to such an unlawful agreement, we often seek to bar the continuation of all the practices that were part of the conspiracy, including those which would be unobjectionable if independently pursued. The purposes of enjoining otherwise legitimate behavior are (1) to make it impossible for the parties to continue their conspiracy through a tacit agreement to conduct their business as in the past, and (2) to force them into thinking and acting independently.

Prohibiting lawful competitive behavior may, of course, preclude the realization of certain benefits that flow from "free and unfettered competition," but this welfare loss is outweighed by the gain achieved from ending the collusion. With time, however, if the collusion ends, no further benefit remains to be gained from the injunctive restraints upon otherwise legitimate competitive behavior, but the losses continue. Accordingly, relaxation of the restraints then becomes appropriate and the Division will seek their termination.

Similarly, when a single firm unlawfully monopolizes a market, its behavior will include predatory practices as well as reasonable and lawful conduct. The Department has often sought to enjoin both the predatory practices and some of the otherwise lawful conduct in a deliberate effort to weaken the monopolist and thus encourage new entry. With time, if entry occurs, there remains no reason to restrain the former monopolist from engaging in legitimate competitive behavior. And if no entry occurs, then the restraints are not serving their intended purpose, but operate only to make the defendant an inefficient monopolist--which is even worse than an efficient one.

A decree may also unreasonably restrain competition today if its provisions were a mistake from the outset. Our understanding of industrial organization and the dynamics of competition has improved markedly in recent decades. Many

older decrees reflect economic theories that we now realize were mistaken. The Supreme Court itself has recognized the errors inherent in some past antitrust theories. Probably the best known example is the Court's action in GTE Sylvania, 3/ replacing the per se ban on exclusive territories articulated in Schwinn 4/ with a rule of reason approach. Similarly, Fortner II 5/ reflected a far better analysis--howbeit not perfect--of the competitive effects of tie-ins than had previously been displayed in Supreme Court opinions, including the Court's opinion eight years earlier in the same case. 6/

Notwithstanding these very salutary developments in judicial interpretation of the antitrust laws, decrees entered on the basis of misguided and now universally rejected theories remain in effect. These decrees bar firms from engaging in behavior that, if engaged in by their competitors, would be subject to rule of reason analysis and, more often than not, be found reasonable and lawful. It seems obvious to me that decrees restraining perfectly reasonable competitive behavior for no good reason should be terminated.

3/ Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977).

4/ United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

5/ United States Steel Corp. v. Fortner Enterprises, Inc., 429 U.S. 610 (1977).

6/ Fortner Enterprises, Inc. v. United States Steel Corp., 394 U.S. 495 (1969).

Elimination of these judicial fetters upon competition is not the only goal of our Judgment Review Project. We also expect that as a result of the Project, the Division will be better able to enforce decrees which do promote competition. The universe of decrees requiring enforcement attention is not, however, defined simply as those decrees that do not affirmatively restrain competition. For example, there are decrees to which no one is subject because all the parties are dead individuals, or defunct firms that have no successors. There are also decrees that have expired by their terms, such as those which mandated the divestiture of certain assets and nothing more. Obviously, these judgments do not restrain competition, but neither do they merit any enforcement attention. We are noting these decrees as we encounter them in our review, and putting them into our institutional dead letter file.

There are also decrees that add nothing to the general antitrust laws; they only enjoin conduct which would, and should, constitute a per se violation of the antitrust laws. In days gone by, these types of decrees served certain very useful functions. The maximum penalty for violation of the Sherman Act, then a misdemeanor, was a $50,000 fine and imprisonment for one year. 7/ But if a person subject to an injunction against, for example, horizontal price fixing

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7/ 15 U.S.C. § 1 (1970) (amended 1974).

violated the decree, it would have been subject to much greater penalties through criminal contempt proceedings. In 1974, however, as part of the Antitrust Procedures and Penalties Act, 8/ Congress amended the Sherman Act to make its violation a felony, to allow the imposition upon corporate violators of fines up to $1,000,000, and to authorize fines up to $100,000 and imprisonment up to three years for individuals. It is unlikely, barring special circumstances, that a court today would impose any greater penalty for violation of a fifty-year-old injunction against horizontal price fixing than it would impose in a criminal proceeding under the Sherman Act.

Perpetual injunctions against per se unlawful behavior, through their visitation clauses, also once provided the Antitrust Division with a means to obtain information that might not otherwise have been available. Enactment in 1962 of the Antitrust Civil Process Act, 9/ which authorized us to issue civil investigative demands, and the subsequent improvement of this investigative tool by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 10/ reduced the need for perpetual visitation rights.

8/ Pub. L. No. 93-528, § 3, 88 Stat. 1706, 1708 (1974).

9/ Pub. L. No. 87-664, 76 Stat. 548 (1962).

10/ Pub. L. No. 94-435, §§ 101-106, 90 Stat. 1383 (1976).

Recognizing that, as a general rule, perpetual decrees against per se unlawful behavior eventually cease to have any deterrent effect beyond that of the antitrust laws in general, the Antitrust Division, some 3 1/2 years ago, adopted a policy of generally limiting consent decrees to a term of ten years. As part of our current review, we are identifying the earlier "per se decrees"--decrees that enjoin only behavior which is, and should be, per se unlawful.

We are not at this time planning to seek the termination of all these decrees, because this would be, in many cases, an unnecessary use of our resources. If, however, a party to such a decree wishes to move its termination, and has some plausible and legitimate reason, we would be inclined to consent to the motion. There will, however, be exceptions to this policy. For example, through our review we are identifying certain firms and industries that seem to have a proclivity toward price fixing. We would be inclined to oppose the termination of per se decrees against such firms or in such industries, particularly if the structure of the market remains conducive to cartel behavior. If the parties were to engage in price fixing again, we would consider bringing a criminal contempt proceeding and asking the court to impose stiffer penalties than those permitted under the Sherman Act, so as to root out the parties' recidivist tendencies.

Once the decrees that unnecessarily restrain competition are terminated, and those that have expired or which otherwise have no competitive effect are identified, the remainder should be decrees that affirmatively promote competition. We intend to monitor closely compliance with those judgments, and to enforce them vigorously. We intend also to keep a close watch on the recidivist firms and industries that we identify. Our review has already prompted a few enforcement investigations, and we expect that more will follow. We are also about to implement a new computerized system for monitoring judgment compliance, which will strengthen our enforcement capabilities.

While I am on the subject of our enforcement intentions, I should also warn defendants against unilaterally deciding that a particular decree provision is anticompetitive and then proceeding to violate it on the assumption that we would not care. If we were to discover such patently contumacious behavior, we would consider bringing a criminal contempt action, even if we agreed that the decree should be terminated. I probably need not remind any of you that a court order remains in effect until the court terminates it. We urge that any party which is being restrained from competing by an injunction in a Government antitrust action write to us and call the situation to our attention. We are anxious to remove unreasonable injunctive restraints, and we are prepared to review decrees quickly where appropriate and necessary. We cannot, however, countenance contempt of court.

Finally, I would like to say a word about the procedures we are employing in connection with judgment modifications and terminations. In most cases, the motion to modify or terminate is made by the defendant(s). At the same time as the motion is filed, the parties file a stipulation in which the defendant agrees to publish notice of its motion in two consecutive issues of the national edition of The Wall Street Journal and in two consecutive issues of the trade journal(s) most likely to be read by persons interested in the market(s) affected by the judgment. The notice (1) summarizes the complaint and the judgment; (2) explains where copies of all the relevant papers can be inspected (in most cases, at the offices of the Antitrust Division and of the clerk of the court where the motion was filed); (3) states that copies of the papers can be obtained from the Antitrust Division, upon request and payment of the copying fees prescribed by Justice Department regulations; and (4) invites all interested persons to send comments concerning the proposed modification or termination to the Antitrust Division during the next sixty days.

The stipulation also contains the Division's consent to modification or termination of the decree, but provides that the court will not rule upon the motion for at least seventy days after the last publication of notice, and reserves the Division's right to withdraw our consent at any time until the decree is modified or terminated. The Division also

files a memorandum with the court explaining why we have consented to the motion, and issues a press release similar to the notice published by the defendant(s). Thereafter, we file with the court copies of all comments that we receive. If the comments persuade us that our consent was in error, we will withdraw it. Otherwise, we may or may not file a response to the comments, depending upon their nature.

The essential thrust of our Judgment Review Project is to make the Division's judgment enforcement consistent with, and an integral part of, our basic mission of promoting "free and unfettered competition as the rule of trade." The enforcement of decrees that unnecessarily restrain competition violates this mission and is patently undesirable. By terminating such decrees, and separating the wheat from the chaff among the others, we will be able to concentrate our efforts upon enforcing those decrees that truly promote competition.

Thank you very much.

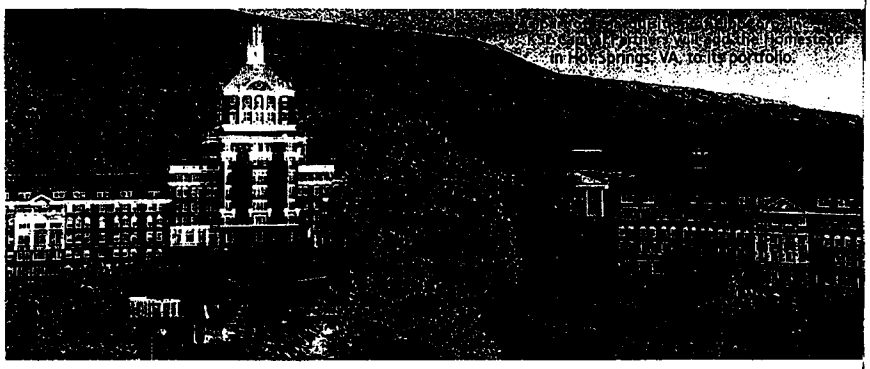
KSL Capital picking up two major hotel assets in ClubCorp deal

continued from page 6

company's strategy. "We have known and admired ClubCorp for years," he said, noting that KSL will acquire— in addition to destination resorts— country clubs as well as golf, business and sports clubs as part of the deal. "We have been working on the acquisition for the last six months and it is a unique opportunity for us to grow our organization and add to our portfolio."

Resnick noted that two resorts in particular stand out amongst ClubCorp's properties: the Barton Creek Resort & Spa in Austin, TX, and the Homestead in Hot Springs, VA (A third undisclosed property will also be included in the deal). "Both properties are very strong regionally and also have national appeal," he said, adding that although both resorts are in good condition, KSL will make sure any necessary improvements are made. "Both Barton Creek and the Homestead are in excellent shape, but this also is a chance to further enhance their appeal and broaden their business."

Already, the Homestead— which is a historic property in the Allegheny Mountains— is undergoing an extensive renovation of its 409 guestrooms and 78 suites. Resnick also noted that there are plans to add more amenities to the resort over time, including an expanded luxury spa and improved fitness and public areas. The property also offers three golf courses. "The Homestead is a terrific asset," said Resnick.



KSL Capital Partners will add the Homestead in Hot Springs, VA, to its portfolio.

The Barton Creek Resort & Spa— which features 900 guestrooms, two golf courses and a luxury spa— will be handled in a similar manner. "We will be doing a guestroom renovation as well as upgrades to the club and amenities," said Resnick. "Since both resorts are in such good condition, we're really just going to focus on refining and expanding."

He added that a possible expansion of the number of rooms at the two resorts is something KSL is considering for down the line.

As for the assortment of clubs KSL will acquire as part of the deal with ClubCorp, Resnick also isn't ruling them out as possible sites for future hotel properties. "With the clubs, maybe we will consider adding hotels. The opportunity certainly exists in the resort-type areas," he said, naming the Mission Hills Country Club in Rancho Mirage, CA, and the Firestone Country Club in Akron, OH, as two possible examples. "With more than 100 different clubs, there are significant opportunities to expand."

In fact, Resnick explained that the plans for the golf and country clubs joining KSL's portfolio are not that different from plans for some of the other resorts it has invested in. "In the U.S., there has been an increased focus placed on health, wellness and fitness. It is a nationwide trend. People want more family activities," Resnick said.

Consequently, initiatives to offer improved fitness and wellness offerings are also taking place at KSL's La Costa Resort & Spa in Carlsbad, CA; the La Quinta Resort & Club in La Quinta, CA; and the recently acquired Rancho Las Palmas Resort & Spa in Rancho Mirage, CA.

Overall, Resnick explained that the ClubCorp acquisition will help KSL Capital continue to reach its target guest. "Each property we have is unique individually, but there is a commonality between most of them and that is they cater to a similar base of affluent consumers. That is the market we target. And [across the properties] there are many cross-selling synergies," he said, adding that the ClubCorp properties will operate much the way they have been run prior to the acquisition. HB

NOTICE OF INTENTION TO SEEK MODIFICATION OF PARTIAL FINAL JUDGMENT IN *UNITED STATES v. GREATER PORTLAND CONVENTION ASSOCIATION, INC., ET AL.*

PLEASE TAKE NOTICE that Hilton Hotels Corporation ("Hilton"), a party defendant in the Partial Final Judgment entered in United States v. Greater Portland Convention Association, Inc., et al., Civil No. 70-310, on November 29, 1971 (the "Partial Final Judgment"), has filed a request with the Antitrust Division of the United States Department of Justice ("Antitrust Division") to modify the Partial Final Judgment. Hilton is publishing this notice of its intention to seek modification of the Partial Final Judgment so that any interested persons can submit comments to the Antitrust Division respecting the proposed modification.

The Partial Final Judgment settled the United States' complaint alleging violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, with respect to certain defendants: Greater Portland Convention Association, Inc.; Hilton Hotels Corporation; ITT Sheraton Corporation of America; and Cosmopolitan Investment, Inc. The Partial Final Judgment prohibits defendants and their subsidiaries, successors and assigns from, *inter alia*, (1) agreeing with any other hotel to give or promise to give preferential treatment for the purchase of hotel supplies to hotel suppliers, or (2) giving or promising to give preferential treatment for the purchase of hotel supplies to any hotel suppliers on the basis of payments, contributions, or dues paid by suppliers to any convention bureau. While the latter prohibition, contained in § V of the Partial Final Judgment, will remain unaffected by the proposed modification, Hilton's proposed modification will add the following language to the former prohibition, found in § IV of the Partial Final Judgment:

Provided, however, that nothing in this Section shall be construed to prohibit any hotel defendant from:

1. Developing hotel supply purchasing programs for its owned, managed and franchised hotels; or
2. Participating in *bona fide* group purchasing organizations or programs notwithstanding the fact that such organizations or programs may include one or more other hotels.

Hilton is seeking these modifications to ensure that § IV of the Partial Final Judgment would not be interpreted so as to prohibit the hotel defendants from engaging in these specified activities.

Hilton understands that in the course of evaluating the request the Antitrust Division will also consider whether the Partial Final Judgment should be terminated in its entirety.

Interested persons are invited to submit comments regarding both the proposed modification and a potential termination of the Partial Final Judgment to the Antitrust Division. Such comments must be received by the Antitrust Division within thirty (30) days from the date of this publication. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, Liberty Place Building, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530.

Former Holiday Inn officially reborn as Lexington condo hotel

continued from page 2

All the while, the pride he felt for the project and his reborn hotel was quite evident.

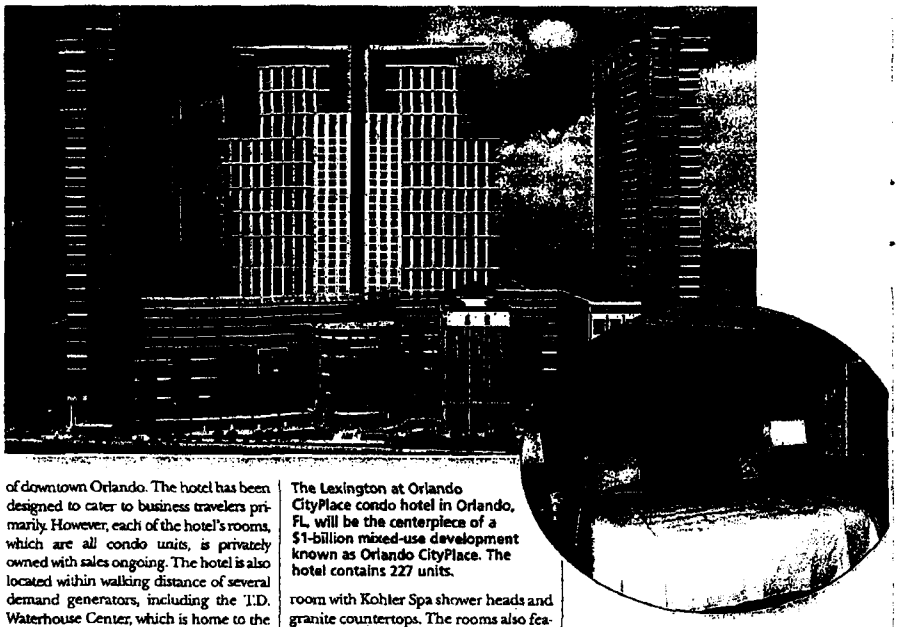
In the end, such pride and the energy he put into the hotel seemed to render the gregarious Greer speechless at his own grand opening ceremony. Consequently, Kalivretenos did most of the speaking, but, ultimately, let the hotel, which now looks nothing as it did before, speak for itself.

"[Greer] and I are thrilled to finally unveil this magnificent addition to Downtown Orlando," Kalivretenos stated. "This first step in creating Orlando CityPlace demonstrates our commitment to helping revitalize the great Parramore neighborhood.

"[Greer] has a favorite saying that he's the dumb old tile guy and I'm the dumb old dirt guy. Together we've changed this project," he continued. "And now we're going to have, when it's all complete, three of the tallest buildings in Orlando with condominiums, retail, a spa and more. In five to six years, a whole bunch of new buildings will be here."

For now, though, there is just the Lexington along with its attached restaurant, District Five, which has a completed interior and work still progressing on the exterior. The hotel's signage is also yet to be installed because of some previous permitting issues. Other than that, everything else seems to be in place despite the fact that the hotel— which Greer temporarily operated as an Americas Best Value Inn Hotel (another Vantage brand) last year— only went through its major renovations earlier this year.

The hotel site is located along Colonial Drive overlooking Interstate 4 and the rest of downtown Orlando. The hotel has been designed to cater to business travelers primarily. However, each of the hotel's rooms, which are all condo units, is privately owned with sales ongoing. The hotel is also located within walking distance of several demand generators, including the T.D. Waterhouse Center, which is home to the National Basketball Association's Orlando Magic; and the Bob Carr Performing Arts Centre, which recently opened.



The Lexington at Orlando CityPlace condo hotel in Orlando, FL, will be the centerpiece of a $1-billion mixed-use development known as Orlando CityPlace. The hotel contains 227 units.

Each guestroom at the 14-story Lexington features a 42-inch plasma-screen television, a wet bar with granite countertops and wood cabinetry; a refrigerator, a microwave oven and a guest bathroom with Kohler Spa shower heads and granite countertops. The rooms also feature plush signature beds that were designed exclusively for Lexington Collection hotels. The beds also include large, leather headboards.

French doors that open up to "Juliet" balconies are also found in each guestroom. The balconies are accented with stone balustrades. The décor of the rooms is contemporary and includes an L-shaped sectional sofa that opens up into an extra bed.

Food and beverage options include the District Five restaurant, which is named for the city district the hotel resides within; Satchmo's, the piano bar and lounge; and Ella's, which is used for breakfast and private functions. Greer noted that Ella's originally was going to be a business center, but he thought that that wasn't necessary.

Other hotel amenities and features at the hotel now include 4,400 square feet of flexible function space, a four-story concierge level with a private lounge, valet parking and wireless Internet access throughout the property. In 2007, the hotel will open its new swimming pool and sun deck as well as its adjacent seven-story spa and fitness center.

Expressing his pride and support for the Lexington and Orlando CityPlace project at the grand opening was Orlando Mayor Buddy Dyer, who explained, "It's been a banner year for Orlando from the new medical school opening to the new performing arts center to the renovation of the Citrus Bowl to the opening of the Lexington at Orlando CityPlace. We have a downtown that's second to none in the country with $3 billion worth of projects going on. Developments like the Lexington help shape our downtown. Tonight we're celebrating this four-star, 227-room condo hotel. And eventually there will be upscale residential towers, world-class shopping, conference space and a culinary arts school at Orlando CityPlace. So I want to personally congratulate [Kalivretenos] and [Greer]."

Orlando CityPlace will also feature entertainment venues, various dining options along a "restaurant row", folkloric exhibits and an international fashion pavilion.

Also on hand for the grand opening was Orlando City Commissioner Daisy Lynum of District Five, who added, "[Greer] and [Kalivretenos] have been real givers in this process. This is a premier facility. I'm excited. It's truly an uptown facility.

"[Greer] and [Kalivretenos] will be the faces you never see that will reap great benefits from this," she continued. "They are also hiring local residents and have a vision for this community. It will eventually compare to the Grand Bohemian [hotel] downtown."

Of course, with the new Lexington at Orlando CityPlace being the flagship for Lexington Collection and a product of one of Vantage's executives, several Vantage luminaries attended the grand opening, including Roger Bloss, Vantage's president and CEO; Steve Belmonte, Lexington Collection's president and CEO; Bernie Moyle, Vantage's CFO and COO; Louis Fisher, the group president of the real estate and renovations division; and Craig Leitch, vp of the SSAP division. HB

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Hilton is seeking these modifications to ensure that § IV of the Partial Final Judgment would not be interpreted so as to prohibit the hotel defendants from engaging in these specified activities.

Hilton understands that in the course of evaluating the request the Antitrust Division will also consider whether the Partial Final Judgment should be terminated in its entirety.

Interested persons are invited to submit comments regarding both the proposed modification and a potential termination of the Partial Final Judgment to the Antitrust Division. Such comments must be received by the Antitrust Division by December 7, 2006. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, Liberty Place Building, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530.

LEGAL NOTICES

GLOBAL ◈ NATIONAL ◈ REGIONAL

◈ PUBLIC NOTICES ◈

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◈ PUBLIC NOTICES ◈

NOTICE OF MEETING

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE No. 440 of 2006
IN THE MATTER OF ASHMORE ENERGY INTERNATIONAL LIMITED
and
IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

NOTICE IS HEREBY GIVEN that by an order of the Grand Court of the Cayman Islands ("the Court") dated 31 October 2006 made in the above matter the Court has directed a meeting of the Shareholders (as such are defined in the Scheme of Arrangement hereinafter referred to) to be convened for the purpose of considering and, if thought fit, approving (with or without modification) the

◈ PUBLIC NOTICES ◈

NOTICE OF FORFEITURE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

United States vs. Casimir Strzalka
(Criminal No.: 04-46)

Notice is hereby given that on February 21, 2006, in the case of the United States v. Casimir Strzalka, Criminal No. 04-46, the United States District Court for the Eastern District of Pennsylvania entered a Preliminary Order of Forfeiture, forfeiting the following property to the United States of America:

a) the real property known as 2927 E. Thompson Street, Philadelphia, Pennsylvania, described further in Deed Book 5048 starting at page 1780 of the Philadelphia Recorder of Deeds, and/or the proceeds from the sale thereof.

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Monday, November 6, 2006

Volume, last, net change and open interest for all contracts with volume of at least 50. Volume figures are unofficial. Open interest reflects previous trading day. p-Put c-Call. The totals for call and put volume are midday figures

CHICAGO

STRIKE	VOL	LAST	NET CHG	OPEN INT
DJ INDUS AVG(DJX)				
Dec 108 c	219	13.10	1.10	6,423
Dec 108 p	200	0.05	-0.05	10,284
Jan 110 p	150	0.30	-0.05	510
Dec 111 c	118	9.80	0.30	128
Dec 111 p	50	0.10	-0.05	1,358
Dec 114 p	265	0.20	-0.15	3,646
Nov 115 c	179	6.20	1.40	12,323
Nov 115 p	89	0.05	-0.05	5,362
Dec 115 p	54	0.25	-0.20	9,971
Nov 116 c	90	4.90	0.80	3,013
Nov 116 p	476	0.05	-0.05	3,923
Nov 118 p	390	0.10	-0.20	5,684
Nov 119 p	929	0.23	-0.35	5,363
Dec 119 p	364	0.85	-0.45	2,787
Nov 120 c	419	1.50	0.70	13,835
Dec 120 c	540	2.50	0.70	18,982
Dec 120 p	402	1.10	-0.60	11,353
Jan 120 p	87	1.60	-0.50	72
Jan 121 p	122	2	-0.50	264
Nov 122 c	980	0.40	0.25	3,446
Nov 122 p	795	1.25	-1.00	2,742
Dec 122 c	289	1.25	0.40	9,768
Dec 124 p	60	3.50	-0.60	6,748
Jan 127 c	6,200	0.30	0.02	1
Call Vol. 14,896		Open Int. 343,504		
Put Vol. 16,799		Open Int. 334,091		
DJ TRANP AVG(DTX)				
Call Vol. 0		Open Int. 943		
Put Vol. 1		Open Int. 58		
NASDAQ-100(NDX)				
Nov 1425 p	105	0.10	-0.05	3,246
Dec 1450 p	311	0.60	-0.35	7,457
Jan 1450 p	510	2.50	-2.00	233
Nov 1525 p	93	0.20	0.18	11,821
Dec 1525 p	112	1.77	-1.33	4,166
Nov 1550 p	298	0.20	-0.10	59,494
Jan 1550 p	792	7.10	-3.72	161
Nov 1575 p	78	0.25	-0.37	68,186
Dec 1575 p	585	3.27	-3.23	7,386
Nov 1600 p	364	0.50	-0.50	40,478
Dec 1600 p	732	5.20	-3.10	10,684
Nov 1615 p	245	0.60	-1.43	759
Nov 1625 c	148	111.60	28.70	1,897
Nov 1625 p	705	0.90	-0.95	25,150
Dec 1625 c	145	123.30	24.30	2,051
Dec 1625 p	180	6.80	-4.90	4,172
Jan 1625 p	54	15.09	-7.11	137
Dec 1650 p	396	10.90	-5.50	7,034
Nov 1675 c	279	65	23.50	3,218
Nov 1675 p	965	3.60	-4.61	7,395
Nov 1700 c	518	41.50	17.50	5,462
Dec 1700 c	118	61.30	15.40	6,228
Dec 1700 p	466	21.40	-10.60	6,870
Jan 1700 c	100	79.70	15.50	1,289
Jan 1700 p	105	32.15	-15.05	270
Nov 1710 c	221	32.20	13.80	4,823
Nov 1710 p	226	10.60	-10.40	680
Nov 1715 c	336	31.50	14.80	2,371
Nov 1715 p	201	11.60	-12.20	1,648
Nov 1725 c	419	22.60	10.60	6,511
Nov 1725 p	584	15.70	-13.86	3,939
Dec 1725 c	181	44	11.60	9,220
Dec 1725 p	476	31.80	-14.40	8,570
Jan 1725 c	52	56	5.50	662
Jan 1725 p	63	41.50	-17.83	190
Nov 1735 c	573	17.50	8.50	2,521
Nov 1735 p	693	19.40	-15.90	1,821
Nov 1750 p	218	29	-19.10	3,263
Jan 1750 p	377	52	-14.70	822

Underlying Indexes

	HIGH	LOW	C
DJ Indus (DJX)	121.18	119.85	1
DJ Trans (DTX)	470.95	461.58	4
DJ Util (DUX)	446.66	440.32	4
S&P 100 (OEX)	643.48	635.49	6
S&P 500 (SPX)	1381.40	1364.27	13
CB-Tech (TXX)	645.37	636.43	6
MS Multinti (NFT)	752.69	743.18	7
GSTI Comp (GTC)	203.83	200.55	2
Nasdaq 100 (NDX)	1736.54	1712.03	17
NYSE (NYA)	8828.31	8716.72	88
Russell 2000 (RUT)	764.85	752.72	7
Lps S&P 100 (OEX)	128.70	127.10	1
Lps S&P 500 (SPX)	138.14	136.43	1
Volatility (VIX)	11.41	10.99	
S&P Midcap (MID)	787.52	776.32	7
Major Mkt (XMI)	1223.44	1209.32	12
Eurotop 100 (AEUR)	309.25	307.35	3
HK Fltg (HKO)	374.36	374.36	3
IW Internet (IIX)	194.66	191.04	1
AM-Mexico (MXY)	212.28	207.10	2
Institut'l-A.M. (XII)	665.90	657.66	6
Japan (JPN)			1
MS Cyclical (CYC)	856.18	844.78	8
MS Consume (CMR)	672.12	665.66	6
MS Hi Tech (MSH)	556.17	546.10	5
MS Internet (MOX)	15.47	15.20	
Pharmaceutical (DRG)	354.02	350.08	3
Biotech (BTK)	766.97	756.13	7
Gold/Silver (.XAU)	140.66	137.46	1
Utility Indax (.UTY)	479.13	472.92	4
Value Line (VAY)	2141.46	2110.97	21
Bank (BKX)	113.53	112.62	1
Semicond (.SOXX)	458.30	447.76	4
Street.com (DOT)	242.29	238.49	2
Oil Service (.OSX)	198.87	193.69	1
PSE Tech (PSE)	860.47	848.04	8

STRIKE	VOL	LAST	NET CHG	OPEN INT
Nov 1760 c	354	7.70	4.00	1,241
Nov 1765 c	60	8.30	5.55	105
Nov 1775 p	55	42	-28.50	385
Nov 1785 c	789	3.10	1.90	2,370
Nov 1825 c	698	0.70	0.45	37,006
Dec 1850 c	918	4.54	2.39	4,334
Jan 1850 c	430	13.40	4.10	485
Dec 1875 c	361	2.10	1.00	2,337
Jan 1875 c	52	9.40	1.90	357
Dec 1900 c	205	1	0.60	5,702
Dec 1925 c	100	0.65	-0.10	4,146
Jan 1975 c	153	1.40	0.40	409
Call Vol. 24,738		Open Int. 333,451		
Put Vol. 19,924		Open Int. 355,773		
RUSSELL 2000(RUT)				
Jan 500 p	200	0.10	--	--
Jan 540 p	250	0.15	--	--
Jan 570 p	56	0.70	--	--
Feb 630 p	186	3.30	-0.60	8
Nov 660 p	224	0.05	-0.05	4,550
Jan 660 p	662	2.55	-1.55	240
Jan 670 p	320	3.30	-1.40	659
Dec 680 p	381	1	-0.91	4,684
Dec 690 p	376	1.74	-1.26	8,101
Nov 700 p	133	0.16	-0.20	3,911
Dec 700 p	74	2.40	-1.90	8,610
Dec 710 p	101	3.38	-2.32	14,560
Nov 720 p	317	0.65	-1.11	6,791
Dec 720 p	73	4.56	-3.84	11,477
Nov 730 c	52	30.70	4.30	1,488
Nov 730 p	479	1.05	-2.32	5,236
Dec 730 p	211	6.40	-3.30	3,373

STRIKE	VOL	LAST	NET CHG
Nov 740 c	86	27.10	8.65
Nov 740 p	279	2.51	-3.49
Nov 750 c	196	18.60	6.20
Nov 750 p	740	4.51	-5.09
Dec 750 c	52	28.50	8.60
Dec 750 p	327	11.70	-5.90
Jan 750 p	63	19.80	-10.40
Nov 760 c	208	11.60	4.20
Nov 760 p	472	7.80	-5.40
Dec 760 c	55	22.10	4.10
Dec 760 p	55	15	-5.80
Nov 770 c	323	6.63	2.93
Nov 770 p	93	12.30	-8.43
Dec 770 c	196	15.53	3.03
Nov 780 c	660	3	1.25
Dec 780 c	195	11.70	2.40
Dec 780 p	53	24.90	-9.70
Nov 790 c	813	1.10	0.45
Nov 790 p	104	30.30	-9.00
Nov 800 c	341	0.55	0.22
Nov 800 p	50	38.70	-7.90
Dec 800 c	104	5.20	2.00
Jan 800 c	86	9.80	1.00
Nov 810 c	370	0.29	0.14
Dec 810 c	184	2.90	1.05
Jan 810 c	50	7.10	1.82
Nov 820 c	53	0.10	0.05
Nov 820 p	75	54.80	-15.60
Call Vol. 4,365		Open Int.	
Put Vol. 8,547		Open Int.	
S & P 100(OEX)			
Nov 560 p	190	0.05	--

Volume & Open Interest Summaries

Listed Options

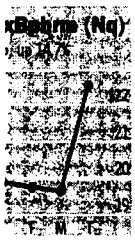
AMERICAN				**CHICAGO BOARD**		
Call Vol:	371,441	Open Int:	117,256,764	Call Vol:	1,271,578	Open Int:	124,008,849
Put Vol:	334,806	Open Int:	98,595,157	Put Vol:	960,066	Open Int:	106,514,369
BOSTON				**INTL SECURITIES**		
Call Vol:	195,041	Open Int:		Call Vol:	1,386,426	Open Int:	113,818,800
Put Vol:	143,096	Open Int:		Put Vol:	921,098	Open Int:	96,789,572

Leaps Long-Term Options

BOSTON				**CHICAGO BOARD**		
Call Vol:	97,261	Open Int:	0	Call Vol:	56,452	Open Int:	25,252,124
Put Vol:	69,049	Open Int:	0	Put Vol:	32,925	Open Int:	20,325,425
				INTL SECURITIES		
				Call Vol:	101,374	Open Int:	25,124,257
				Put Vol:	51,915	Open Int:	20,369,501

CORECARD Tues., November 7, 2006 4 p.m. ET

Gainers... And Losers



LOSE	CHG	% CHG	ISSUE (EXCH)	VOLUME	CLOSE	CHG	% CHG
6.77	+1.26	+22.9	TechOlympic (N)	13,148,200	7.00	-3.79	-35.1
11.61	+2.15	+22.7	IntgtBioPharm (A)	384,700	6.55	-2.44	-27.1
23.68	+4.34	+22.4	Homebanc (N)	3,051,000	3.90	-0.93	-19.3
10.98	+1.94	+21.5	AnthracitCap (N)	2,427,700	11.50	-2.50	-17.9
4.75	+0.83	+21.2	EFJ (Nq)	1,576,287	5.62	-1.06	-15.9
3.80	+0.66	+21.0	Headwaters (N)	4,483,800	21.47	-3.78	-15.0
22.85	+2.97	+14.9	Nestor (Nq)	124,329	1.82	-0.28	-13.3
22.55	+2.89	+14.7	SM& A (Nq)	45,519	5.60	-0.82	-12.8
15.22	+1.90	+14.3	SykesEnt (Nq)	1,666,510	17.55	-2.52	-12.6
7.56	+0.92	+13.9	ReprosThera (Nq)	1,258,443	6.51	-0.92	-12.4
4.21	+0.51	+13.8	MimaxTch ADS (Nq)	2,760,865	5.11	-0.72	-12.3
4.60	+0.53	+13.0	Inmotrac (Nq)	12,576	2.89	-0.40	-12.2
13.48	+1.52	+12.7	AudioCodes (Nq)	1,795,860	9.23	-1.27	-12.1
29.93	+3.18	+11.9	Emcore (Nq)	3,848,015	4.74	-0.58	-10.9
23.13	+2.38	+11.5	NortelNtwks (N)	79,776,800	2.13	-0.26	-10.9
5.37	+0.55	+11.4	CRM Hldg (Nq)	151,756	7.80	-0.95	-10.9
15.73	+1.59	+11.2	Cardiotech (A)	121,700	1.98	-0.22	-10.0
6.08	+0.61	+11.2	NtrlHlthTrnd (Nq)	61,625	2.48	-0.26	-9.5
2.51	+0.25	+11.1	Bookham (Nq)	1,968,616	3.30	-0.33	-9.1
2.55	+0.25	+10.9	TowerSemi (Nq)	313,246	1.82	-0.18	-9.0

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	CLOSE	CHG
	42.83	+0.29
	2.13	-0.26
	24.84	+0.16
	2.50	+0.04
	5.47	+0.16
	138.61	+0.53
	28.95	+0.11
	4.09	+0.07
	5.53	+0.18
	20.80	-0.02
	76.20	+0.50
	21.92	-0.91

Diaries

	NYSE	NASDAQ	AMEX
Issues traded	3,429	3,197	1,102
Advances	1,862	1,632	552
Declines	1,422	1,442	469
Unchanged	145	123	81
New highs	306	138	89
New lows	9	22	18
zAdv vol (000s)	845,436	1,417,952	24,892
zDecl vol (000s)	692,686	640,187	22,366
zTotal vol (000s)	1,577,706	2,079,438	49,227
Closing Tick	+525	+239	+36
Closing Arms[1] (trin)	1.07	.51	1.06
zBlock trades	n.a.	p11,833	n.a.

e Leaders

DIF*	CLOSE	CHG
316.0	6.51	-0.92
523.2	23.55	-1.90
118.6	7.00	-3.79
559.3	25.25	+0.06
527.6	20.50	+0.01
509.0	5.62	-1.06
450.3	31.90	+1.80
445.9	22.55	+2.89
225.2	7.23	-0.17
182.7	28.87	-0.13
140.0	6.55	-2.44
052.9	12.93	+0.54
050.3	10.98	+1.94

average volume
a-has traded fewer

Breakdown of Trading

BY MARKET	NYSE	NASDAQ	AMEX
New York	1,577,705,900	...	6,886,300
Chicago	40,577,600	12,115,865	6,228,501
CBOE	...	...	363,300
NYSE Arca	249,391,100	459,640,007	125,445,600
Nasdaq MktCntr	801,590,430	982,260,415	162,046,941
NASD ADF	...	543,483,606	...
Phila	4,626,300	...	197,000
Amex	...	219,400	49,227,091
Boston	232,800	1,129,600	...
National	5,037,200	80,589,396	1,109,400
Composite†	2,679,161,330	2,079,438,389	351,504,133

NYSE first crossing 1,300 shares, value n.a.
Second (basket) 80,758,701 shares, value 3,025,467,383
[1]A comparison of the number of advancing and declining issues with the volume of shares rising and falling. An Arms of less than 1 indicates buying demand; above 1 indicates selling pressure. p-previous day. z-primary market NYSE & Amex only. †Includes ISE trading (not shown)

pshot 11/07/06 4 p.m. - 6:30 p.m. ET

age Gainers ...And Losers

LAST	CHG	% CHG	ISSUE (EXCH)	VOL (000s)	LAST	CHG	% CHG
10.15	+2.22	+28.0	TrueReignApprl (Nq)	533.0	16.42	-4.84	-22.8
27.90	+3.28	+13.3	Youbet.com (NCM)	20.6	3.55	-0.64	-15.3
8.96	+0.87	+10.8	AcmePacket (Nq)	110.5	16.40	-2.54	-13.4
19.50	+1.78	+10.0	WebsitePros (Nq)	5.8	10.04	-1.06	-9.5
5.84	+0.52	+9.8	AspenTch (Nq)	91.9	9.33	-0.82	-8.1
13.10	+1.00	+8.3	iShrMSTaiwn (N)	10.4	12.90	-0.75	-5.5
23.54	+1.68	+7.7	NovstrFnl (N)	14.6	29.52	-1.02	-3.3
3.33	+0.20	+6.4	DaystarTch (NCM)	9.1	5.44	-0.17	-3.0
13.70	+0.73	+5.6	SpanBrcstg A (Nq)	31.4	4.39	-0.13	-2.9
36.41	+1.80	+5.2	OSI Sys (Nq)	21.2	19.64	-0.58	-2.9

ssues

LAST	CHG	% CHG	ISSUE (EXCH)	VOL (000s)	LAST	CHG	% CHG

LEGAL NOTICES

GLOBAL ◈ NATIONAL ◈ REGIONAL

◈ PUBLIC NOTICES ◈

NOTICE OF INTENTION TO SEEK MODIFICATION OF PARTIAL FINAL JUDGMENT IN *UNITED STATES v. GREATER PORTLAND CONVENTION ASSOCIATION, INC., ET AL.*

PLEASE TAKE NOTICE that Hilton Hotels Corporation ("Hilton"), a party defendant in the Partial Final Judgment entered in United States v. Greater Portland Convention Association, Inc., et al., Civil No. 70-310, on November 29, 1971 (the "Partial Final Judgment"), has filed a request with the Antitrust Division of the United States Department of Justice ("Antitrust Division") to modify the Partial Final Judgment. Hilton is publishing this notice of its intention to seek modification of the Partial Final Judgment so that any interested persons can submit comments to the Antitrust Division respecting the proposed modification.

The Partial Final Judgment settled the United States' complaint alleging violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, with respect to certain defendants: Greater Portland Convention Association, Inc.; Hilton Hotels Corporation; ITT Sheraton Corporation of America; and Cosmopolitan Investment, Inc. The Partial Final Judgment prohibits defendants and their subsidiaries, successors and assigns from, *inter alia,* (1) agreeing with any other hotel to give or promise to give preferential treatment for the purchase of hotel supplies to hotel suppliers, or (2) giving or promising to give preferential treatment for the purchase of hotel supplies to any hotel suppliers on the basis of payments, contributions, or dues paid by suppliers to any convention bureau. While the latter prohibition, contained in § V of the Partial Final Judgment, will remain unaffected by the proposed modification, Hilton's proposed modification will add the following language to the former prohibition, found in § IV of the Partial Final Judgment:

Provided, however, that nothing in this Section shall be construed to prohibit any hotel defendant from:

1. Developing hotel supply purchasing programs for its owned, managed and franchised hotels; or
2. Participating in *bona fide* group purchasing organizations or programs notwithstanding the fact that such organizations or programs may include one or more other hotels.

Hilton is seeking these modifications to ensure that § IV of the Partial Final Judgment would not be interpreted so as to prohibit the hotel defendants from engaging in these specified activities.

Hilton understands that in the course of evaluating the request the Antitrust Division will also consider whether the Partial Final Judgment should be terminated in its entirety.

Interested persons are invited to submit comments regarding both the proposed modification and a potential termination of the Partial Final Judgment to the Antitrust Division. Such comments must be received by the Antitrust Division within thirty (30) days from the date of this publication. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, Liberty Place Building, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530.