UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

[FILED 4/25/95]

UNITED STATES OF AMERICA; Plaintiff

v. Civil No.: 95-5048

NAT, L.C. and D.R. PARTNERS
d/b/a DONREY MEDIA GROUP; Defendants

COMMUNITY PUBLISHERS, INC.; and
SHEARIN INC., d/b/a SHEARIN & COMPANY REALTORS; Plaintiffs
v.Civil No.: 95-5026

DONREY CORP. d/b/a DONREY MEDIA GROUP,
NAT, L.C.; THOMSON NEWSPAPERS, INC., and
THE NORTHWEST ARKANSAS TIMES; Defendants

REPLY OF THE UNITED STATES
IN SUPPORT OF ITS MOTION IN LIMINE

In light of the Court's recent ruling deferring resolution of the government's motion *in limine* until after hearing the evidence at trial, and cognizant of the amount of "paper" that has recently been filed in this case, the United States will not burden the Court with a lengthy reply to defendant NAT, L.C.'s 29-page response to that motion. We assume the Court does not require (or wish) at this stage a point-by-point reply to defendant's response. Although the United States disagrees with many of the specific contentions made in that response, in the interest of simplicity and brevity we will only address two basic points.

First, defendant's response ignores the whole point of the motion in limine, in that the response rests on the irrelevant premise that the Stephens family is in effect **"promising"** not to raise prices or reduce quality. Indeed, the response never addresses (and seems tacitly to concede) the main point of the government's *in limine* motion -- that the proper, relevant question is whether the Stephens **could** do so. In an approach similar to that pursued in defendants' summary judgment motion, defendants do not directly respond to the core arguments raised in the *in limine* motion; instead, they attempt to focus attention on tangential issues that are relatively insignificant for this case -- such as the reportability of the transaction under the Hart-Scott-Rodino Act.[1/]

Second, as this Court recognized in its March 22 Order denying defendants' initial motion to dismiss, corporate form cannot be used to flout the antitrust laws. The interpretation defendants advance in their response to the *in limine* motion would completely eliminate the phrase "directly *or indirectly* acquire" from § 7 of the Clayton Act. Indeed, under defendants' interpretation of the statute any combination of a corporation's shareholders (who alone are minority holders, but together exercise control) could acquire, through a combination of minority holdings, a controlling share of their direct competitor. Under defendants' interpretation for example, the descendants of Henry Ford could, together, purchase sufficient shares to control General Motors, Inc., while simultaneously controlling Ford Motor Company.

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[1] Defendants claim that the government has conceded the acquisition does not fall within the reporting requirements of the Hart-Scott-Rodino Act. Response at 15. The government has not made any such concession, and that issue has not yet been pursued or resolved. In fact, however, a transaction that is purposefully structured to avoid premerger notification requirements is subject to penalties under the Act. "Whether a particular structure may be deemed a device for avoidance will be determined by considering the business justification for the chosen form of transaction." Axin, Fogg, Stoll, and Prager, Acquisitions Under The Hart-Scott-Rodino Antitrust Improvements Act § 1.03[1][c] (rev. ed. 1993).

Respectfully submitted,

/S/_____
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Date: _____