

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BELL RESOURCES LTD.,

a corporation,

WEEKS PETROLEUM LTD.,

a corporation, and

M. R. H. HOLMES a COURT,

Defendants.

COMPLAINT

Civil Action No. 85-CIV-6202

Filed: August 9, 1985

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of a civil penalty and injunctive relief against the defendants named herein, and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust

Improvements Act of 1976 ("Hart-Scott-Rodino Act"), to recover a civil penalty for a violation of the Hart-Scott-Rodino Act and to enjoin further such violations by defendants.

2. This Court has jurisdiction over defendants and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g), and 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Each of the defendants transacts business and is found in the Southern District of New York. Venue is properly based in this district under 28 U.S.C. §§ 1391(c), 1391(d), and 1395(a), and 15 U.S.C. § 22.

II.

THE DEFENDANTS

4. Weeks Petroleum Ltd. ("Weeks") is made a defendant herein. Weeks is a Bermuda corporation with offices at 115 East 57th Street, New York, New York 10022.

5. Bell Resources Ltd. ("Bell") is made a defendant herein. Bell is a Western Australia corporation with its principal office and place of business at Collins Tower, 21st Floor, 35 Collins Street, Melbourne, Victoria, Australia. Bell owns 93.6 percent of the voting securities of Weeks and controls Weeks.

6. M. R. H. Holmes a Court ("Holmes a Court") is made a defendant herein. Holmes a Court is an Australian citizen with his principal place of business at A.M.P. Building, 28th Floor,

140 St. George's Terrace, Perth, Western Australia 6000, Australia. Holmes a Court is Chairman of the Board of Directors of Bell.

III.

ASARCO INCORPORATED

7. Asarco Incorporated ("Asarco") is a New Jersey corporation with its principal executive office at 180 Maiden Lane, New York, New York.

IV.

VIOLATION ALLEGED

8. Section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a), prohibits certain acquisitions of voting securities or assets until a notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired.

9. Asarco and defendants Bell and Weeks at all times pertinent to this proceeding have been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12.

10. Asarco and defendants Bell and Weeks presently have, and in 1984 had, assets above the threshold established by Section (a) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(a); Bell and Weeks each have total assets in excess of \$10 million, and Asarco has total assets in excess of \$100 million.

11. During the period from September 27, 1984 through November 20, 1984, defendant Weeks directly or indirectly acquired voting securities of Asarco pursuant to the authorization and direction of defendants Bell and Holmes a Court.

12. On or about November 21, 1984, defendant Weeks, acting pursuant to the authorization and direction of defendants Bell and Holmes a Court, directly or indirectly acquired additional voting securities of Asarco. As a result of that acquisition, defendant Weeks held an aggregate total amount of voting securities of Asarco in excess of \$15 million.

13. Defendant Weeks, acting pursuant to the authorization and direction of defendants Bell and Holmes a Court, continued to acquire additional voting securities of Asarco in the period from November 21, 1984 through February 28, 1985.

14. The transaction described in paragraph 12, by which defendant Weeks acquired an aggregate total amount of voting securities of Asarco in excess of \$15 million, and the transactions described in paragraph 13, were subject to the notification and waiting period requirements of the Hart-Scott-Rodino Act and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq. The Act and regulations required Bell, as the ultimate parent entity of Weeks, or Weeks, as an entity included within Bell and authorized by Bell to file on Bell's behalf, to file the notification and to

observe a waiting period before acquiring an aggregate total amount of voting securities of Asarco in excess of \$15 million.

15. Defendants Bell and Weeks did not comply with the reporting and waiting period requirements of the Act before making the acquisitions described in paragraphs 12 and 13, above.

16. On March 8, 1985, defendant Weeks filed on behalf of defendant Bell a notification and report form under the Hart-Scott-Rodino Act, stating an intention to acquire at least 25 percent of the voting securities of Asarco. The Hart-Scott-Rodino Act waiting period relating to that filing expired on April 7, 1985.

17. Section (c) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(c), exempts certain classes of acquisitions from the reporting and waiting period requirements; one class of exempted acquisitions are acquisitions of voting securities made solely for the purpose of investment, if the securities acquired or held do not exceed 10 percent of the outstanding voting securities of the issuer.

18. The acquisitions described in paragraphs 12 and 13, above, were not made solely for the purpose of investment, and therefore did not qualify for the exemption from the reporting and waiting period requirements provided by Section (c) of the Act, 15 U.S.C. § 18a(c), and by the regulations promulgated thereunder, 16 C.F.R. § 800 et seq.

19. Defendants Weeks and Bell were in violation of the Hart-Scott-Rodino Act during the period from November 21, 1984 through at least April 7, 1985.

20. Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

21. Section (g)(2) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(2), provides that the court may grant equitable relief against any person, or any officer, director, partner, agent, or employee thereof, who fails substantially to comply with the requirements of the Act.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants' purchases of Asarco stock during the period from November 21, 1984 through April 7, 1985 were in violation of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that defendants were in violation of that Act throughout that period;

2. That defendant Bell or defendant Weeks be ordered to pay to the United States the maximum civil penalty provided by Section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1);

3. That an injunction be issued restraining each of the defendants from further violations of the Hart-Scott-Rodino Act;

4. That the plaintiff have such other and further relief as the Court may deem just and proper; and

5. That the Court award plaintiff its costs of this suit.



CHARLES F. RULE
Acting Assistant Attorney General

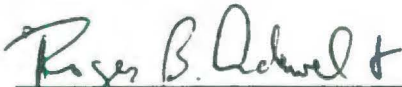
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