

File

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
BIRMINGHAM DIVISION

|                              |   |                               |
|------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA,    | ) |                               |
|                              | ) |                               |
| Plaintiff,                   | ) | Civil Action No. CV85 C 0211S |
|                              | ) |                               |
| v.                           | ) | INJUNCTIVE RELIEF             |
|                              | ) | ANTITRUST                     |
| CONSOLIDATED THEATRES, INC., | ) | Filed: January 22, 1985       |
|                              | ) |                               |
| Defendant.                   | ) |                               |

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendant named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted against the defendant under Section 4 of the Sherman Act, 15 U.S.C. §4, in order to prevent and restrain the defendant from violating Section 1 of the Sherman Act, 15 U.S.C. §1.

2. The defendant maintains offices, transacts business, and is found within the Northern District of Alabama.

II.

DEFENDANT

3. Defendant Consolidated Theatres, Inc. (hereinafter "Consolidated") is a corporation organized and existing under

the laws of the State of North Carolina and has its principal place of business in Charlotte, North Carolina. Consolidated is an exhibitor of motion pictures and owns and operates theatres in Birmingham, Huntsville, and Tuscaloosa, Alabama, among other places.

### III.

#### CO-CONSPIRATORS

4. Various other corporations and individuals, not made defendants in this Complaint, participated as co-conspirators in the violation alleged and performed acts and made statements in furtherance thereof.

### IV.

#### DEFINITIONS

5. As used herein, the term:

- (a) "Booking agent" means a person who, acting as the agent for another person, obtains licenses for the exhibition of motion pictures by that other person;
- (b) "Distributor" means any person who grants a license to an exhibitor authorizing the exhibitor to exhibit a motion picture in a theatre;
- (c) "Exhibitor" means any person who owns, operates, or controls a theatre;
- (d) "License" means the grant by a distributor to an exhibitor of the right to exhibit a motion picture in a theatre;

(e) "Person" means any individual, partnership, corporation, association, or other business or legal entity; and

(f) "Theatre" means any facility for the public exhibition of motion pictures.

V.

TRADE AND COMMERCE

6. The motion picture industry encompasses three activities: production, distribution, and exhibition. Producers make motion pictures and enter into agreements with distributors to have their films distributed nationally to theatres that are owned or operated by exhibitors. Some distributors also produce motion pictures or, in other instances, finance the work of independent producers.

7. Distributors license motion pictures for exhibition on a picture-by-picture, theatre-by-theatre basis in each local market. Where two or more exhibitors operate theatres in a market, a distributor may license its films by competitive bidding or by negotiating with competing theatres.

8. Exhibitors are awarded motion picture license agreements based on the offers they submit to a distributor in response to competitive bid solicitations or during negotiations. The offers that exhibitors submit for licenses include, among other things, terms for film rental (generally a percentage of the gross or net box office receipts), specific play dates, and length of play time (including the conditions

under which the film will be held over). The offers may also include a guarantee, which is a minimum film rental payment that the exhibitor promises to pay the distributor regardless of the financial success of the film, or an advance, which is an advance payment to be applied against the film rental actually earned under the percentage rental terms in the license.

9. When a distributor receives competitive bids or competitively negotiated offers on a motion picture, it awards the license to the theatre making the best offer. In deciding which is the best offer, the distributor takes into account not only the licensing terms offered by the competing exhibitors but also the overall grossing potential of their theatres, which is determined by theatre size, quality, and location. In local markets where there are no agreements among exhibitors to restrain competition, competing exhibitors know that to obtain a particular motion picture license they must offer the distributor a better deal than is offered by their competitors.

10. The metropolitan areas of Birmingham, Huntsville, and Tuscaloosa, Alabama, each constitute a separate local market for the exhibition of motion pictures. In each of these markets, the defendant and co-conspirators own or operate all of the first-run theatres.

11. The prints of the motion pictures exhibited by the defendant and co-conspirators in their theatres in Birmingham, Huntsville, and Tuscaloosa, Alabama, during the period covered by this Complaint were manufactured outside the State of

Alabama and were transported across state lines in a continuous and uninterrupted flow for exhibition in the aforementioned theatres. Also during the period covered by this Complaint, the defendant and co-conspirators made film rental payments across state lines to distributors located outside of Alabama for films exhibited in Birmingham, Huntsville, and Tuscaloosa that were substantially in excess of \$2,000,000.

12. The activities of the defendant and its co-conspirators, as alleged herein, were within the flow of, and substantially affected, interstate commerce.

## VI.

### VIOLATION ALLEGED

13. Beginning in the Fall of 1983 and continuing into July 1984, the exact dates being unknown to plaintiff, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The combination and conspiracy may recur unless the relief sought by this Complaint is granted.

14. The aforesaid combination and conspiracy consisted of an agreement among the defendant and co-conspirators, known in the trade as a split agreement, to eliminate competition for film licenses being offered by distributors for Birmingham, Huntsville, and Tuscaloosa, Alabama. The substantial terms of this agreement were that the defendant and co-conspirators would:

- (a) Split or allocate among themselves the rights to negotiate for motion picture licenses;
- (b) Refrain from competitive bidding or competitive negotiations for motion picture licenses;
- (c) Appoint the defendant as the booking agent for all first-run theatres in Huntsville, Alabama, with the responsibility for booking motion pictures at the theatres in Huntsville to which they had been split or allocated; and
- (d) Appoint one of the co-conspirators as the booking agent for all first-run theatres in Birmingham and Tuscaloosa, Alabama, with the responsibility for booking motion pictures at the theatres in those two cities to which they had been split or allocated.

15. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do, including:

- (a) Refraining from submitting bids for motion picture licenses;
- (b) Submitting offers only for the exhibition of motion pictures at the theatres to which they had been split or allocated;
- (c) Refraining from dealing with distributors with respect to motion pictures split or allocated to other participants in the conspiracy;

- (d) Refraining from competing against each other for the licensing of motion pictures;
- (e) Appointing the defendant as the booking agent for all first-run theatres in Huntsville, Alabama;
- (f) Appointing one of the co-conspirators as the booking agent for all first-run theatres in Birmingham and Tuscaloosa, Alabama; and
- (g) Communicating with each other for the purpose of splitting or allocating motion pictures and trading or exchanging among themselves the negotiating rights to motion pictures that had already been split or allocated.

VII.

EFFECTS

16. The aforesaid combination and conspiracy had the following effects, among others:

- (a) Competition among the defendant and co-conspirators for the licensing of motion pictures was restrained, suppressed, and eliminated; and
- (b) Distributors, producers, and consumers were denied the benefits of free and open competition among the defendant and co-conspirators for the licensing of motion pictures.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators were engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, directors, managers, agents, employees, representatives, subsidiaries, successors, and assigns be enjoined from renewing the aforesaid combination and conspiracy.

3. That the defendant, its officers, directors, managers, agents, employees, representatives, subsidiaries, successors, and assigns be enjoined from entering into, adhering to, or maintaining in any motion picture exhibition market in the United States any contract, combination, or conspiracy to split or allocate among exhibitors the rights to negotiate for licenses to motion pictures being offered by distributors for exhibition.

4. That the defendant be required to take such further action as the Court may deem necessary and appropriate to dissipate the effects of the aforesaid combination and conspiracy and to restore full and free competition in the distribution and licensing of motion pictures.

5. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.



6. That the plaintiff recover the costs of this action.

Dated:

---

J. PAUL MCGRATH  
Assistant Attorney General

---

FRED E. HAYNES

---

JOSEPH H. WIDMAR

---

DOROTHY E. HANSBERRY

Attorneys, Department of Justice  
Antitrust Division  
Washington, D. C. 20530  
Telephone: 202/724-6337

---

JOHN W. CLARK

---

FRANK N. BENTKOVER

Attorneys, Department of Justice

---

FRANK W. DONALDSON  
United States Attorney  
Northern District of Alabama