

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Loew's Inc., et al., U.S. District Court, S.D. New York, 1950-1951 Trade Cases ¶62,765, (Jan. 4, 1951)

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United States v. Loew's Inc., et al.

1950-1951 Trade Cases ¶62,765. U.S. District Court, S.D. New York. Equity No. 87-273. Filed January 4, 1951. Appeals from a judgment of the District Court for the Southern District of New York. Modified and affirmed.

Sherman Antitrust Act

Consent Decree—Motion Picture Industry—Common Ownership and Joint Management; Divorcement of Distribution and Exhibition Businesses.—A substitute decree consented to by certain members of the motion picture distribution and exhibition industry prohibits price-fixing, block-booking, and uniform clearance agreements with other members of the industry, prohibits agreements for the joint management or common ownership of competing theatres, requires the defendants to dispose of all their interests in certain theatres and to effect a reorganization so that distribution and exhibition businesses will be lodged in separate and independent companies, and prohibits certain individuals from holding stock in both such companies and to elect between the two.

Substituting a decree for prior decrees entered by the District Court on December 31, 1946, and February 8, 1950, [1946-1947 Trade Cases ¶ 57,526](#); and ¶ 62,573 in this volume.

For the plaintiff: Peyton Ford, Acting Attorney General; Wm. Amory Underhill, Acting Assistant Attorney General; Philip Marcus and Sigmund Timberg, Special Assistants to the Attorney General; Maurice Silverman and Harold Lasser, Trial Attorneys.

For the defendants: Joseph M. Proskauer and Robert W. Perkins, for Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corp., and Warner Bros. Circuit Management Corp.; Stanleigh P. Friedman, for Harry M. Warner, Albert Warner, and Jack Warner.

Before Augustus N. Hand, Circuit Judge, and Henry W. Goddard and Alfred C. Coxe, District Judges.

Consent Judgment as to the Warner Defendants

[*In full text*]

The Warner defendants having consented to the entry of this judgment without admission by them in respect to any issues or matters in this cause open on remand, and the Court having considered the matter,

Now, THEREFORE, upon consent of the parties hereto with respect to the issues as to which action was suspended or reserved by the Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

I.

[*Substituted for Earlier Decrees*]

This judgment is rendered and entered in lieu of and in substitution for the decrees of this Court dated December 31, 1946, as amended, and February 8, 1950. This judgment shall be of no further force and effect and this cause shall be restored to the docket without prejudice to either party if the proposed reorganization of the Warner defendants shall not have been approved by the stockholders of Warner Bros. Pictures, Inc. within ninety (90) days from the entry of this judgment. Upon such approval by the stockholders this cause shall be severed and terminated against the Warner defendants as of the date of this judgment.

II.

[*Complaint Dismissed as to Producers*]

The Complaint is dismissed as to all claims made against the Warner defendants based upon their acts as producers of motion pictures, whether as individuals or in conjunction with others.

III.

[Price Fixing and Clearance Agreements, Block Booking Prohibited]

The defendant Warner Bros. Pictures Distributing Corporation, its subsidiaries in which it has more than a fifty per cent interest, its successors, its officers, agents, servants and employees are each hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.
2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.
3. From granting any clearance between theatres not in substantial competition.
4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this judgment, the burden shall be upon the distributor to sustain the legality thereof.
5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant * or with theatres in new circuits which may be formed as a result of divorcement, provided for in judgments entered in this cause. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.
6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal," covering the exhibition of features in a number of theatres usually comprising a circuit.
7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.
8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

IV.

[Joint Management and Ownership Restrictions]

The defendants Warner Bros. Pictures Inc. and Warner Bros. Circuit Management Corporation, their theatre subsidiaries in which they have more than a fifty per cent interest, their successors, their officers, agents, servants and employees are each hereby enjoined:

1. From performing or enforcing agreements referred to in paragraphs 5 and 6 of the foregoing Section III hereof to which it may be a party.

2. From making pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company which may be formed as a result of divorcement provided for in judgments entered in this cause.

6. From acquiring a beneficial interest in any theatre provided that:

(a) Until the divorcement and divestiture ^{**} provisions of this judgment have been carried out, beneficial interests in theatres may be acquired

(i) As a substantially equivalent replacement for and in the immediate neighborhood of wholly owned theatres ^{***} held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes;

(ii) In renewing leases covering any wholly owned theatre held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease;

(iii) As a substantially equivalent replacement for any wholly owned theatre held or acquired in conformity with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if Warner or its exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition.

(b) After the divorcement and divestiture provisions of this judgment have been carried out, Warner's exhibitor successor may acquire a beneficial interest in any theatre only in the situations covered by paragraphs (i) and (ii) of the preceding subsection (a) unless Warner's exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that the acquisition will not unduly restrain competition.

7. From operating, booking or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

8. From making any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre.

9. From acquiring in conjunction with any actual or potential independent exhibitor any beneficial interest in motion picture theatres.

V.

[*Divorcement Requirements*]

1. Warner or its successor shall dispose of all its interest in the following theatres in the following towns:

ANSONIA, CONN.

One theatre; purchaser to have choice of theatres if Ansonia is designated as herein provided. ¹

APPLETON, WIS.

One theatre if by the end of one year from the date of this judgment an independent ² theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. ³ If the parties

disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

BRISTOL, CONN.

One theatre.

CHESTER, PA.

One theatre.

CLIFTON FORGE, VA.

One theatre.

CLINTON, MASS.

One theatre.

COSHOCTON, OHIO

One theatre, if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run in Coshocton, except that there may be shown at the Pastime Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.

DANBURY, CONN.

Empress or Palace, or Capitol. If Capitol is sold defendant or its successor must file with the Attorney General and the Court a statement of intention by the purchaser to operate said theatre on a first run basis.

DONORA, PA.

Harris or Princess.

DOVER, N. J.

One theatre.

ELMIRA, N. Y.

One theatre, if at any time during a period of 3 years from the date of this judgment three Warner theatres play feature films first run at a time when there is not more than one other theatre operating first run in Elmira.

FAIRMONT, W. VA.

One theatre if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

GETTYSBURG, PA.

One theatre; purchaser to have choice of theatres if Gettysburg is designated as provided in footnote 1.

One theatre.

GREENSBURG, PA.

One theatre.

HAGERSTOWN, MD.

One theatre.

HOBOKEN, N. J.

One theatre.

IRVINGTON, N. J.

One theatre.

LAWRENCE, MASS.

One theatre.

LEXINGTON, VA.

One theatre.

MANCHESTER, CONN.

One theatre.

MARTINSBURG, W. Va.

Apollo or Central and Strand or State.

MEDINA, N. Y.

One theatre.

MILLVILLE, N. J.

One theatre.

MILWAUKEE, WIS.

Warner or the Alhambra if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

MONTCLAIR, N. J.

Clandge or Wellmont or Montclair.

NEWARK, N. J.

Stanley or Mayfair and Central or Tivoli or Savoy; the Ritz shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in the footnote hereto,⁴ if during a period of three years from the date of this judgment an independent operator of a theatre in the Springfield Avenue zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportunity to procure films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent

operator of its election, which shall be made within 30 days after the Court's ruling; Capital or Globe if by the end of one year from the date of this judgment an independent theatre is not regularly playing second run downtown Newark, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing second run downtown Newark. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

NEW BRITAIN, CONN.

Strand or Embassy or Capitol, but if Capitol is selected defendant shall divest one other theatre if by the end of a year from the disposition of the Capitol an independent theatre is not regularly playing first run or if thereafter (during a period of five years from the date of the disposition of the Capitol) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

PASSAIC, N. J.

Montauk or Capitol or Central or Playhouse. If the Playhouse⁵ is disposed of in lieu of one of the other three theatres, then one of the other three theatres shall be disposed of if by the end of a year from the date of the disposition of the Playhouse no independent theatre is regularly playing on a first run basis or if thereafter (during five years from the date of the disposition of the Playhouse) for the greater part of any year there is not an independent theatre playing on a first run basis. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

PATERSON, N. J.

One theatre.

PHILADELPHIA, PA.

Midway or Allegheny; Colonial or Orpheum or Vernon; REXY⁶ and Alhambra or Plaza or Broadway or Savoia, and one theatre shall be divested in addition to the two hereinabove required to be divested in this zone, which shall be the Broadway or the Savoia or another theatre operated on a first neighborhood run basis, if by the end of one year from the disposition of the REXY an independent theatre is not regularly playing on a first neighborhood run, or if thereafter (during a period of five years from the date of disposition of the REXY) for the greater part of any year an independent theatre is not regularly playing on a first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant. Colony or Fernrock⁷ and Diamond or Keystone;⁷ the Oxford or the Liberty shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" for "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator or operators of two theatres in the Frankford and Mayfair zones (formerly known as Frankford zone), having theatres suitable for second neighborhood run operation, is or are not afforded a reasonable opportunity to procure films for such theatres on a second neighborhood run basis if he or they so desire. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator or operators of its election, which shall be made within 30 days after the Court's ruling; the Forum shall at the option of the defendant or its

successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "Forum availability" for "first neighborhood run exhibition"), if during a period of three years from the date of this judgment an independent operator of a theatre in the Frankford zone, having a theatre suitable for playing on the same availability as the Forum, is not afforded a reasonable opportunity to procure films for such theatre on such availability if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; Wishart or Richmond, if an independent theatre in the Kensington zone is not regularly playing third neighborhood run by the end of a year from the date of this judgment or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre in the Kensington zone is not regularly playing third neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

The Terminal if at any time for a period of 3 years after Warner begins operating the theatre pursuant to the provisions of paragraph 8 of this section V it is operated on a regular policy of exhibiting feature films earlier than seventeen to twenty-one days after first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

The Wynne if at any time for a period of 3 years from the date of this judgment it is operated on a regular policy of exhibiting feature films earlier than third neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

PITTSBURGH, PA.

Strand or Center; Sheridan or Regent or Enright or Cameraphone. If Cameraphone is disposed of in lieu of one of the other three theatres, then one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an independent operator of a theatre in the East Liberty zone, having a theatre suitable for first neighborhood run operation, is not afforded reasonable opportunity to procure feature films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant choose the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; and one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" or "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator of a theatre in the East Liberty zone having a theatre suitable for second neighborhood run operation is not afforded a reasonable opportunity to procure feature films for such theatre on a second neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the

defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling.

The Schenley shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an independent operator of a theatre in the Oakland zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportunity to procure films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling.

PLEASANTVILLE, N. J.

One theatre, purchaser to have choice of theatres if Pleasantville is designated as provided in footnote 1.

PORTSMOUTH, OHIO

Columbia or LaRoy.

PUNXSUTAWNEY, PA.

One theatre.

RACINE, WIS.

One theatre.

SALEM, ORE.

Elsinore or Capitol if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run in Salem, except that there may be shown at the Capitol Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.

SHARON, PA.

One theatre.

SHEBOYGAN, WIS.

Two theatres.

SIDNEY, OHIO

One theatre, purchaser to have choice of theatre if Sidney is designated as provided in footnote 1.

SILVER SPRING, MD.

If at any time during a period of three years from the date of this judgment the Flower Theatre in Silver Spring is subordinated in playing position to the Silver Theatre while the latter is operated by Warner the question of divestiture of one theatre shall be reopened.

STATE COLLEGE, PA.

Cathaum or State.

STAUNTON, VA.

One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

TARENTUM, PA.

One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

TITUSVILLE, PA.

One theatre.

TORRINGTON, CONN.

Warner or Palace.

TYRONE, PA.

One theatre.

WARREN, PA.

One theatre.

WASHINGTON, D. C.

Tivoli or Sheridan.

WASHINGTON, PA.

One theatre if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

WAYNESBORO, PA.

One theatre.

WELLSVILLE, N. Y.

One theatre.

WEST CHESTER, PA.

One theatre.

WILKINSBURG, PA.

Roland or State.

WILLIMANTIC, CONN.

One theatre.

WILMINGTON, DEL.

Warner or Queen or Arcadia or Grand.

YORK, PA.

One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

2. Warner or its successor shall within one year dispose of all of the interest of Warner in one half of the theatres presently required to be disposed of and within two years of all of the theatres presently required to be disposed of, under paragraph 1 of this Section V. All theatres which may in the future be required to be disposed of under paragraph 1 of this Section V shall be disposed of within six months after the time they are required to be divested. All such dispositions shall be made to parties not defendants in Eq. Cause No. 87-273 or owned or controlled by or affiliated with defendants therein, or their successors.

3. As to not to exceed 12 of the theatres presently required to be disposed under paragraph 1 of this Section V, in the event that Warner or its exhibitor successor is unable to sell on reasonable terms its interest therein, Warner or its exhibitor successor upon application to the Court in any such case, and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein; on condition, however, that no such lease or sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Warner or its exhibitor successor shall thereafter sell its interest in any such theatre so leased or subleased as soon thereafter as it can do so upon reasonable terms, and in any event prior to the expiration of such lease or sublease.

4. The Cadet, Elite and Poplar theatres in Philadelphia, Pa., shall be made available for a period of one year for sale or lease. Preference shall be given reasonable offers for motion picture theatre purposes, and until 30 days after making these properties so available for sale, no offer for non-motion picture purposes shall be accepted. After one year, these properties may be retained, sold or leased for any purpose; provided that if within a period of three years from the expiration of such year Warner desires to operate any of said theatres as a motion picture theatre, Warner shall notify the Attorney General of its intention so to do, and if within 14 days thereafter the Attorney General notifies Warner that such operation will unduly restrain competition in the exhibition of featured motion pictures in the same competitive area as such theatre, Warner may present the matter to the Court for its determination.

5. If Warner or its exhibitor successor should at any time after the expiration of the present leases or the renewals thereof make the Playhouse premises in Ridgewood, N. J., available as a whole for sale or lease, preference shall be given to reasonable offers for motion picture theatre purposes, and until 30 days after making these premises so available, no offer for non-motion picture theatre purposes shall be accepted.

6. If the existing decree entered in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Florence B. Bigelow, et al., against RKO Radio Pictures Inc., et al., shall be modified or vacated, and if, after such modification or vacating, the competitive situation in outlying Chicago (outlying Chicago for the purposes hereof including the entire city of Chicago except the downtown portion of Chicago and also including Berwyn, Blue Island, Chicago Heights, Evanston, La Grange and Oak Park) shall be less favorable for the independent exhibitors in outlying Chicago (an independent exhibitor for the purposes hereof meaning an exhibitor who is not a defendant herein or owned or controlled by or affiliated with a defendant herein), and if such less favorable competitive situation shall be shown by the Attorney General to

the satisfaction of the Court in which this consent judgment is entered, then such Court may order such relief against, or with respect to the theatres of Warner or its exhibitor successor located in outlying Chicago as it may deem just or proper in order to create proper competitive conditions in outlying Chicago or in any particular section thereof.

7. This judgment shall not affect the rights and obligations of the parties under the consent orders entered in Eq. Cause No. 87-273 by stipulation between the plaintiff and the Warner defendants with respect to theatres held in conjunction with non-defendants.

8. Nothing in this judgment shall be construed to prohibit Warner until the divorcement required herein has been effectuated and thereafter its exhibitor successor from owning and operating one theatre in Bridgeport, Conn., and one theatre in Harrison, New Jersey, to be constructed in accordance with existing contractual commitments or amendments thereto, or to prohibit Warner from retaking and operating, in the future, the following theatres of Warner now under lease to others:

Aldine Theatre, Wilmington, Del.

Ritz Theatre, Reading, Pa.

Terminal Theatre, Philadelphia, Pa.

VI.

[Reorganization to Effect Divorcement]

A. The defendant, Warner Bros. Pictures, Inc., shall present to its stockholders not later than ninety (90) days after the entry of this judgment, a plan of reorganization to effect the divorcement of its theatre assets located in the United States from its production and distribution assets. Such plan shall provide that all of said theatre assets, together with other assets which are not production or distribution assets located in the United States, shall be transferred and assigned to one of the new companies, viz., the New Theatre Company, which shall succeed to and receive such assets, and all of said production and distribution assets, together with other assets which are not theatre assets located in the United States, shall be transferred and assigned to the other new company, viz., the New Picture Company, which shall succeed to and receive such assets, and the New Theatre Company shall distribute pro rata to the stockholders of Warner Bros. Pictures, Inc., in exchange for the assets so received by it, its common capital stock, and the New Picture Company shall distribute pro rata to the stockholders of Warner Bros. Pictures, Inc., in exchange for the assets so received by it, its common capital stock, and thereupon Warner Bros. Pictures, Inc. shall be dissolved.

B. The New Picture Company shall not engage in the exhibition business, and the New Theatre Company shall not engage in the distribution business, except that permission to the New Picture Company to engage in the exhibition business or to the New Theatre Company to engage in the distribution business may be granted by the Court upon notice to the Attorney General and upon a showing that any such engagement shall not unreasonably restrain competition in the distribution or exhibition of motion pictures.

C. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc. shall cause the New Picture Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections III, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to the New Picture Company), and thereafter the New Picture Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

D. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc. shall cause the New Theatre Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections IV, V, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to the New Theatre Company), and thereafter the New Theatre Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

VII.

[Independence of New Companies]

A. Within a period not to exceed twenty-seven months after the entry of this judgment the New Theatre Company and the New Picture Company shall be operated wholly independently of one another and shall have no common directors, officers, agents or employees. Each of them shall thereafter be enjoined from attempting to control or influence the business or operating policies of the other by any means whatsoever. The foregoing provisions shall not be construed to prohibit the directors, officers, agents or employees of the Warner defendants, who become affiliated with either one of said new companies and who receive stock in such companies in exchange for stock presently held by them in Warner Bros. Pictures, Inc., from so acquiring stock in the company with which they do not become affiliated and holding such stock for a sufficient period of time to permit them to sell such stock to persons not affiliated with the seller's company without undue hardship to the seller, provided that in any event such sale shall be made within a period not to exceed one year from the effective date of the reorganization of Warner Bros. Picture, Inc., and provided further that the provisions of this sentence as to the disposition of stock shall not apply to any agent or employee whose legal or beneficial interest in stock does not exceed one per cent (1%) of the total amount of stock outstanding in the company, and shall not apply to the persons who are subject to the provisions of Section VIII hereunder.

B. The by-laws of the New Theatre Company shall provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or a director until he has been approved by the Attorney General and the Court, and that in no event can an officer or a director be affiliated with any motion picture theatre circuit (other than the Warner defendants) which has been a defendant in an anti-trust suit brought by the Government, relating to the production, distribution or exhibition of motion pictures. The by-laws of the New Picture Company shall provide that a person who is a director, officer, agent, employee or substantial stockholder of another motion picture distribution company cannot be elected an officer or a director.

VIII.

[*Disposition of Stock Holdings*]

Harry M., Albert and Jack L. Warner represent that they now own approximately 18% of the outstanding common stock (excluding treasury stock) of Warner Bros. Pictures, Inc. and that certain members of their families, including their wives, now own approximately 6% of such stock. Within twenty-seven months from the date hereof, the said Warners and their families shall either:

A. Dispose of said holdings of the stock of (1) the New Picture Company or (2) the New Theatre Company, as they may elect, to a purchaser who is not a stockholder in the other company, a defendant herein or in an antitrust suit brought by the Government relating to the production, distribution, or exhibition of motion pictures against whom a judgment has been entered, or owned or controlled by or affiliated with such a defendant or a company resulting from divorcements provided for in judgments entered in Equity Cause No. 87-273, and the said Warners shall use their best efforts so to dispose of said stock; or

B. Deposit with a trustee designated by the Court said holdings of stock of the New Picture Company or the New Theatre Company, as they may elect, under a voting trust agreement whereby the trustee shall possess and be entitled to exercise all the voting rights of such shares, including the right to execute proxies and consents with respect thereto. Such voting trust agreement shall thereafter remain in force until the said Harry M. Warner, Albert Warner, Jack L. Warner, and their families shall have sold said holdings of stock of the New Picture Company or the New Theatre Company to a purchaser or purchasers as provided in subdivision A above, and upon such sale and transfer such voting trust agreement shall automatically terminate. Such trust shall be upon such other terms and conditions, including compensation to the trustee, as shall be prescribed by the Court. During the period of such voting trust, Harry M. Warner, Albert Warner, Jack L. Warner, and their families, shall be entitled to receive all dividends and other distributions made on account of the trustee shares, and proceeds from the sale thereof.

For the purpose of evidencing their consent to be bound by the terms of this Section VIII of this judgment, Harry M. Warner, Albert Warner and Jack L. Warner individually have consented to its entry. The obligations in this Section VIII with respect to the stock in the New Picture Company, or the stock in the New Theatre Company, as the case may be, shall be limited, so far as the families of the said Warners are concerned, to the stock received

in exchange for approximately 6% of stock of Warner Bros. Pictures, Inc. mentioned in this Section VIII as owned by certain members of the said families.

The stock disposed of in one company as provided in subdivision A above may not be voted if the holder, otherwise entitled to vote the same, be a person with a legal or beneficial stock interest, or be a corporation with a stock interest directly or through subsidiaries or affiliates, in the other company.

IX.

[*Interim Exhibition Business*]

A. Nothing contained in this judgment shall be construed to limit, in any way whatsoever, the right of the Warner defendants, during the period of 12 months from the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, to license or in any way to provide for the exhibition of any or all of the motion pictures which it may distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which Warner Bros. Pictures Inc. has or may acquire a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

B. After 12 months from the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, the provision of the preceding paragraph shall terminate and be of no effect; and from and after such date all licenses of motion pictures distributed by the New Picture Company or Warner Bros. Pictures Inc. for exhibition in any theatre, regardless of its owner or operator, shall be in all respects subject to the terms of this judgment.

X.

[*Compliance and Surveillance*]

A. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this judgment, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment.

B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

XI.

[*Jurisdiction Reserved to One-Judge Court*]

A. For the purpose of any application under this judgment, the plaintiff and the Warner defendants, hereby waive the necessity of convening a court of three judges pursuant to the expediting certificate filed herein on June 13, 1945; and agree that any application may be determined by any judge sitting in the United States District Court for the Southern District of New York.

Any application by either party under this judgment shall be upon reasonable notice to the other.

B. Jurisdiction of this cause is retained for the purpose of enabling any of the parties and their successors to this consent judgment, and no others, to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Footnotes

- * As used in this judgment, the term “defendant” or “defendants” means the defendants, or any of them, in Eq. Cause No. 87-273.
 - ** Divestiture under the terms of this paragraph 6 shall be deemed to mean the disposition of Warner's interest in the theatres referred to in paragraph 1 of Section V other than theatres which Warner or its exhibitor successor may in the future be required to dispose of thereunder (as distinguished from those presently required to be disposed of) and the theatres referred to in paragraph 3 of Section V.
 - *** As used in this judgment the word “theatre” means “motion picture theatre in the United States” and the phrase “wholly owned theatre” means a theatre in which Warner or its exhibitor successor, or Warner or its exhibitor successor together with persons who are solely investors, own a beneficial interest of 95% or more in the lease or fee thereof.
- 1 Within four months after the entry of this judgment, Warner shall designate two cities from among Ansonia, Conn., Gettysburg, Pa., Pleasantville, New Jersey, and Sidney, Ohio, in which the purchaser is to have his choice of theatre. No offer for the smaller theatre in each of such two cities shall be accepted until thirty days have elapsed after the properties have been offered for sale. The larger theatre in each of such two cities shall be sold if a reasonable offer therefor is made either during the thirty days or thereafter before the acceptance of a reasonable offer for the smaller theatre.
 - 2 As used herein, the term “independent” or “independently” refers to any theatre not affiliated with any of the defendants in Eq. Cause No. 87-273.
 - 3 As used in this judgment “first run” means first run of the eight distributor defendants in Eq. Cause No. 87-273.
 - 4 For a period of three years, defendant shall not license: (a) More than 60% of the feature films released by the major distributors for first neighborhood run exhibition in any fiscal year, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer; and b. More than 48 feature films from among the eighty pictures constituting the aggregate of the ten pictures released by each of the major distributors, respectively, for first neighborhood run exhibition in any fiscal year, which are allocated by the respective distributor to its highest selling bracket or brackets, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer
 - 5 Warner or its exhibitor successor shall file with the Court and the Attorney General a statement of intention by the purchaser of the Playhouse to operate the Playhouse on a first run basis.
 - 6 Warner or its exhibitor successor shall file with the Attorney General and the Court a statement of intention by the purchaser of the Remy to operate the Remy on a first neighborhood run basis.
 - 7 At the option of Warner, the Bromley may be chosen as one of the two theatres to be divested.
 - 7 At the option of Warner, the Bromley may be chosen as one of the two theatres to be divested.