

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Third National Bank in Nashville, et al., and William B. Camp, Comptroller of the Currency (Intervenor), U.S. District Court, M.D. Tennessee, 1968 Trade Cases ¶72,556, (Sept. 19, 1968)

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United States v. Third National Bank in Nashville, et al., and William B. Camp, Comptroller of the Currency (Intervenor).

1968 Trade Cases ¶72,556. U.S. District Court, M.D. Tennessee, Nashville Division. Civil Action No. 3849. Entered September 19, 1968. Case No. 1819 in the Antitrust Division of the Department of Justice.

Clayton Act

Bank Merger—Creation and Sale of New Banking Organization—Consent Decree.—In settlement of a bank merger case, a consent judgment required the acquiring bank to organize a viable new banking organization and, as soon as practicable after issuance of a charter, to sell all of the shares of the stock of the new bank to a purchaser approved by the government.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen.; Baddia J. Rashid, W. D. Kilgore, Jr., Charles L. Whittinghill, James L. Minicus and Charles F. B. McAlcer, Attys., Dept. of Justice.

For the defendants: Frank M. Farris, Jr. and Edwin F. Hunt.

Final Judgment

MILLER, D. J.: Plaintiff, United States of America, having filed its complaint herein on August 10, 1964, pursuant to [Section 4 of the Sherman Act](#), 15 U. S. C. 4, and [Section 15 of the Clayton Act](#), 15 U. S. C. 25, seeking to enjoin the merger of defendant banks on the ground that said merger constituted a violation of [Section 1 of the Sherman Act](#), 15 U. S. C. 1, and [Section 7 of the Clayton Act](#), 15 U. S. C. 18; defendants Third National Bank in Nashville and Nashville Bank and Trust Co. having appeared and filed answers to such complaint, denying the substantive allegations thereof; the Comptroller of the Currency having been permitted to intervene as a party hereto by Order of this Court dated February 28, 1966; this Court on December 16, 1966, after trial, having entered judgment for defendants, dismissing the complaint; plaintiff having appealed to the Supreme Court of the United States; the Supreme Court having on March 4, 1968, remanded this case to the District Court for further proceedings pursuant to its March 4, 1968, opinion; but such further proceedings having not yet taken place; plaintiff, defendant Third National Bank in Nashville, by its attorneys, having consented to the making and entry of this Final Judgment without this Final Judgment constituting any evidence or an admission by either party hereto with respect to any issue of fact or law herein, and this Court having considered the matter and being duly advised;

Now, Therefore, upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed, as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim under [Section 7 of the Clayton Act](#), 12 U. S. C. 18, upon which relief may be granted against Third National Bank in Nashville.

II

[Definitions]

As used in this Final Judgment:

- (A) "Third National" shall mean defendant Third National Bank in Nashville which is a merger of defendant Third National Bank in Nashville and defendant Nashville Bank and Trust Company;
- (B) "Nashville Bank" shall mean Nashville Bank and Trust Company;
- (C) "New Bank" shall mean the banking organization to be organized pursuant to Section IV hereunder.

III

[Applicability]

The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors, agents, servants, employees, successors and assigns, and upon all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[New Organization]

Third National is ordered and directed to take such steps as may be necessary to organize a viable new banking organization to be known as either "Nashville Bank and Trust Company" or "Nashville Bank and Trust Company, N. A." and with its principal office to be located at 315 Union Street in the City of Nashville, Tennessee, which location was acquired by Third National in aforesaid merger and formerly housed the principal banking operations of Nashville Bank prior to the merger; and to accomplish this objective in the shortest possible time, and in the furtherance thereof Third National shall:

[Charter]

(A) Promptly apply for and diligently prosecute an application to the appropriate governmental agency for a bank charter for New Bank with all usual powers, including trust powers, and, on behalf of New Bank, file for and diligently prosecute an application to the Federal Deposit Insurance Corporation for deposit insurance. Third National shall continue to exert its best efforts to establish New Bank and diligently pursue such establishment to consummation.

[Financing]

(B) Provide as to the initial capital of New Bank the minimum sum of \$4,000,000.00 of which \$2,000,000.00 shall be in cash and the balance shall be in the form of real estate and equipment consisting of the fee simple titles and leaseholds described and to be transferred as follows:

1. By deed of special warranty and other appropriate instruments, the fourteen story office building known as the Nashville Trust Building at 315 Union Street, and also the building known as the Nashville Bank and Trust Company Parking Garage at 225 Third Avenue, North, together with the furniture, fixtures and equipment located therein and the land on which both of the said buildings are located. A more complete description of said real estate and equipment is attached as Appendix A to this decree. Unless otherwise agreed upon the value of these buildings and equipment shall be established by two independent appraisers nominated by the Nashville Board of Realtors and approved by this Court.
2. By assignment of lease, and other appropriate instruments, the building, equipment and fixtures and entire leasehold estate on premises occupied by the Murfreesboro Road Branch, all as more particularly described in Appendix B to this decree. The value of this building, the lease and said equipment shall be established as provided in (1) above.
3. By deed of general warranty and other appropriate instruments, the land and building presently occupied by the Branch at 4045 Nolensville Road, together with all equipment and fixtures located therein. These assets are

more particularly described in Appendix C to this decree. The value of this land, building and equipment shall likewise be determined in the same manner as that provided in (1) and (2).

[Transfer of Accounts]

(C) Upon its organization being completed, transfer to New Bank all business, including but not limited to checking, time and savings accounts, loans and discounts and safe deposit vault accounts, but excepting accounts in the Trust Department, located at each of the three banking offices described in (B) above. The deposits of each of the banking offices shall be essentially as large as their deposit totals as of February 29, 1968. New Bank will assume all liabilities of the lessee pursuant to the lease on the Murfreesboro Road Branch and will agree to save and hold harmless Third National from any and all liabilities arising out of the accounts, deposits, leases or other items transferred pursuant to this paragraph. Loans and discounts and other assets transferred shall equal the deposit liabilities assumed by New Bank. Real estate and personalty taxes for the year 1968 attributable to the assets and capital transferred to the extent not separately assessed shall be allocated between Third National and New Bank according to book value as of February 29, 1968, and prorated as of the date of deed or other conveyance.

[Management and Personnel]

(D) Exercise its best efforts to obtain qualified management personnel and other employees to adequately staff the New Bank. This shall include at least one person who, among other things, would be capable of operating a Trust Department. Third National shall make available to any employee of Nashville Bank who shall have been employed by Nashville Bank and Third National for a continuous period of at least five years immediately prior to the date of entry of this Final Judgment and who shall become an employee of New Bank within a period of one year from the date of granting of its charter, the vested interest in the pension fund which any said employee has earned while an employee of Third National Bank under the terms and conditions of the Third National Retirement Plan.

[Directors]

(E) Provide for an initial Board of Directors of New Bank to consist of not less than five nor more than fifteen members, all of which shall be acceptable to the parties hereto. None shall be present directors of Third National except those who had served as directors of Nashville Bank prior to the merger.

[New Bank as Defendant]

(F) Cause New Bank to file an appearance in this action as a party defendant and agree to be bound by such orders and directions as the Court may enter.

[Post-Charter Assistance]

(G) For a period of three years from the date of grant of charter to New Bank, Third National is ordered and directed upon request of New Bank and under such terms and conditions as Third National services are available to its correspondents,

(1) To make available to New Bank a participation or participations in loans whose terms and conditions are mutually satisfactory;

(2) To handle lines of credit which are in excess of legal limits of New Bank on such terms and conditions as are mutually acceptable;

(3) To make available computer services, credit department services and investment advice.

[Sale of New Bank]

(H) As soon as practicable after issuance of a charter to New Bank, sell all of the shares of the stock of New Bank to purchaser, who shall be first approved by the Plaintiff under terms and conditions approved by the Plaintiff; in the event such shares of stock in New Bank are not sold within one year after issuance of a charter to New Bank Third National shall, within sixty (60) days thereafter, distribute all of the shares of stock of New Bank pro rata to the shareholders of Third National and the shares of stock of New Bank shall be fully negotiable and transferable by such shareholders.

[*Stock Acquisition Ban*]

(I) After such sale or distribution to its shareholders Third National is enjoined and restrained from acquiring or holding for its own account any shares of stock or other financial interest in New Bank, nor from the date of such sale or distribution shall it have as an officer or director any person who at the same time is an officer or director of New Bank.

V

[*Inspection and Compliance*]

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 written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant at its principal office, be permitted:

1. Access, during 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 matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers or employees of defendants, who may have counsel present, regarding any such matter.

Upon such written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be requested for the determining or securing enforcement of this Final Judgment. No information obtained by the means provided in this Section V 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 plaintiff, except in the course of court proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose stated in Section V of this Final Judgment and for the purpose of enabling any party 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, the modification of any provision thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.