UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. CENTRAL STATES THEATRE CORPORATION, *et al.*, Defendants.	Civil Action No. 0117
UNITED STATES OF AMERICA, Plaintiff, v. STUDEBAKER CORPORATION, Defendant.	Civil Action No. 01863
UNITED STATES OF AMERICA, Plaintiff, v. CHAMPION PAPERS, INC., Defendant.	Civil Action No. 02270
UNITED STATES OF AMERICA, Plaintiff, v. ED. PHILLIPS & SONS COMPANY, Defendant.	Civil Action No. 73-0-144

MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States respectfully submits this memorandum in support of its motion to terminate four legacy antitrust judgments in cases brought by the United States. The Court entered these judgments between 1961 and 1973; thus, they are between forty-five and fifty-eight years old. After examining each judgment—and after soliciting public comments on each proposed termination—the United States has concluded that termination of these judgments is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or firm defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of

[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgments the United States seeks to terminate with the accompanying motion concern violations of these two laws.

courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, nearly all of these judgments likely have been rendered obsolete by changed circumstances.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

In brief, the process by which the United States has identified judgments it believes should be terminated is as follows:

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.

- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.

- The public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.

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[2] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[3] https://www.justice.gov/atr/JudgmentTermination.

- Having received no comments regarding the above-captioned judgments, the United States moves this Court to terminate them.

The United States followed this process for each judgment it seeks to terminate by this motion.[4]

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old should be terminated absent compelling circumstances. This section also describes the additional reasons that the United States believes each of the judgments should be terminated. Section IV concludes. Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of each judgment and the United States' reasons for seeking termination. Finally, Appendix C is a Proposed Order Terminating Final Judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Each judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. Even if the judgments did not explicitly state the Court retains jurisdiction, it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct. *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932).

[4] The United States followed this process to move several other district courts to terminate legacy antitrust judgments. *See United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments); *United States v. The Wachovia Corp. and Am. Credit Corp.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Dec. 17, 2018) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

Moreover, the Court's inherent authority to terminate a judgment it has issued is now encompassed in the Federal Rules of Civil Procedure. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)-(6); *accord Smith v. Board of Educ. of Palestine-Wheatley School Dist.*, 769 F.3d 566, 570-71 (8th Cir. 2014).

Given its jurisdiction and its authority, this Court may terminate each of the above-captioned judgments for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition.[5] Termination of these judgments is warranted.

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each the above-captioned cases because they no longer continue to serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests they no longer protect competition. Other reasons, however, also weigh in favor of terminating these judgments, including that many of the defendants likely no longer exist and terms of the judgment merely prohibit that which the antitrust laws already prohibit. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

[5] In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means that it is likely that the judgments no longer serve their original purpose of protecting competition.

A. The Judgments Presumptively Should Be Terminated Because of Their Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

The judgments in the above-captioned matters—all of which are over four decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. There are no affirmative reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating them.

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) most defendants likely no longer exist, and (2) the judgments largely prohibit that which the antitrust laws already prohibit. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional

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[6] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

reasons, and we identify those judgments that are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and the reasons to terminate it.

1. Most Defendants Likely No Longer Exist

The judgment in *Central States Theatre Corporation, et al.*, Civil Action No. 0107, was entered in 1961, and from a search of corporate records with the Nebraska Secretary of State's office, two of the three corporate defendants appear to no longer exist. The sole individual defendant appears to no longer be living. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate this judgment.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments in the following cases merely prohibit acts that are illegal under the antitrust laws, such as price fixing, customer or market allocation, refusals to sell, and acquisitions in which the effect may be substantially to lessen competition:

- *Central States Theatre Corporation, et al.*, Civil Action No. 0107 (prohibiting price fixing),
- *Studebaker Corporation*, Civil Action No. 01863 (prohibiting price fixing and customer/market allocation),
- *Champion Papers, Inc.*, Civil Action No. 02270 (prohibiting acquisitions substantially likely to lessen competition), and
- *Ed. Phillips & Sons Company*, Civil Action No. 73-0-144 (prohibiting price fixing and refusals to sell).

These terms amount to little more than an admonition that defendants shall not violate the law. To the extent these judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is reason to terminate them.

C. There Has Been No Public Opposition to Termination

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release

announcing its efforts to review and terminate legacy antitrust judgments, and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Alexandria, Virginia.[7] On May 4, 2018, the Antitrust Division described its Judgment Termination Initiative in a statement published in the Federal Register.[8] On June 29, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[9] The notice identified each case, linked to the judgment, and invited public comment. The Division received no comments concerning the judgments in any of the above-captioned cases.

[7] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments, (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[8] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

[9] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in Nebraska, District."

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgments in each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an order terminating them. *See* Appendix C, which is a proposed order terminating the judgments in the above-captioned cases.

Respectfully submitted,

Dated: March 21, 2019

Robert L. Homan #18580
Assistant U.S. Attorney | Civil Division Chief
United States Attorney's Office
District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Phone: 402-661-3736
Email: robert.homan@usdoj.gov

Barry L. Creech (DC Bar No. 421070)
Trial Attorney
Antitrust Division
United States Department of Justice
450 Fifth St., NW; Suite 4042
Washington, DC 20530
Phone: (202) 307-2110
Email: barry.creech@usdoj.gov

APPENDIX A

FINAL JUDGMENTS

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.
CENTRAL STATES THEATRE
CORPORATION, *et al.*

Civil Action No. 0117

Year Judgment Entered: 1961

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. CENTRAL STATES THEATRE CORPORATION; CENTER DRIVE-IN THEATRE COMPANY; and MIDWEST DRIVE-IN THEATRE COMPANY, Defendants, and FRANK D. RUBEL, Additional Defendant.	)	CIVIL ACTION NO. 0117 [Entered February 9, 1961]

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 30, 1956 and amendments thereto on January 16, 1957; issues having been tried and testimony having been taken; the Court, having filed a memorandum opinion on August 29, 1960, now pursuant thereto makes the following findings of fact and conclusions of law to wit:

FINDINGS OF FACT

I

The defendant, Central States Theatre Corporation, has not had and does not now have a license to do business in Nebraska, but through 1954 and 1955, and thereafter until the time of trial, that corporation, in the way of its managerial services to Omaha Drive-In Theatre, actually was transacting business within the State of Nebraska, which is coterminous with the District of Nebraska.

II

At all times hereinafter mentioned the defendant, Central States Theatre Corporation, actively participated in the management of the theatre known as 76th & West Dodge Drive-In Theatre,

owned by Omaha Drive-In Theatre Company, and the theatre known as Council Bluffs Drive-In Theatre, owned by Midway Drive-In Theatre Company and the managerial services performed by the defendant Frank D. Rubel in connection with those theatres are referable to his employment by Central States Theatre Corporation.

III

In participating in the meeting of February 4, 1955 at the Blackstone Hotel in Omaha, Nebraska and in the events which occurred thereafter incident to that meeting the defendant Frank D. Rubel was acting for the defendant Central States Theatre Corporation and such participation was an aspect of that company's transaction of business in Nebraska.

IV

At the aforesaid meeting of February 4, 1955, which was participated in by Frank D. Rubel for defendant, Central States Theatre Corporation, Bernard Dudgeon, local manager of Omaha Drive-In Theatre Company, operator of 76th & West Dodge Drive-In Theatre, J. Robert Hoff, President of defendant Midwest Drive-In Theatre Company, operator of Airport Drive-In Theatre, and Herman S. Gould, Secretary-Treasurer and managing officer of defendant Center Drive-In Theatre Company, operator of 84th & Center Drive-In Theatre, the participants agreed as follows:

(a) That they would undertake to join in a group advertisement of Drive-In Theatres containing both publicity advancing the claims of such theatres generally, and also individual advertising of each exhibitor concerning its own programs, with the understanding that all cooperating theatres would share ratably in paying the charge for the generalized part of the advertisement, and each theatre would pay the charge for its individual advertising, with the understanding that the total

expense of such advertisement to each theatre should not exceed $120 per week; and it was further agreed that advertising by an individual theatre of first-run pictures or stage attractions should be left entirely to the choice, both in respect of the manner of offering the publicity and on the score of cost, of the exhibiting theatre.

(b) That a fair minimum price for regular individual admissions would be sixty-five cents, with the exception of what were called "Buck Nights," and no exhibitor should conduct a "Buck Night" more frequently than once a week until after September 1st, and that they also agreed that their respective theatres would follow that program respecting admission prices.

(c) That a schedule of refreshment prices was suggested but that no agreement or undertaking was made that any such price schedule would by any operator be put into effect. However, it was generally agreed that the refreshment price schedule theretofore observed by each of the represented theatres was essentially conformable to that schedule, with the reservation of the fact that their respective practices in the quantities of items of refreshment individually sold varied considerably, and that their quoted prices varied accordingly.

(d) That the represented theatres had an economic interest in having all labor contracts in the enterprise within the Omaha area expire at a common date, and that, with a view to bringing about such a practice, no new labor contract should be agreed to for application to any

represented theatre which should extend beyond the end of the 1955 Drive-In Theatre season.

(e) That without formal motions, votes or record, the men attending the meeting agreed that (a) to the extent only that they had reached an agreement, supra, respecting wages to snack bar employees, and ramp boys, newspaper advertising in the Omaha World-Herald, minimum admission prices, with limitation upon the resort to "Buck Nights," and the achievement of a common expiration date of labor contracts; and (b) subject to verification of the details of the points on which they had agreed, their respective theatres would, in their 1955 season then about to open, follow the program thus agreed upon.

While no arrangement was made for any further meeting, the participants in the meeting left it with the impression that they would have such a further meeting at which it was desired that Mr. Ralph Blank or Mr. William Miskell and Mr. Solomon John Francis might be present. The collaboration in the contemplated program of Sky View Drive-In Theatre and Golden Spike Drive-In Theatre was desired, and as the Court believes and finds, was actively to be sought.

(f) The combination or conspiracy is to be regarded as persisting even though the parties to it failed actively to carry it forward to effect.

V

The contention of the defendants that it was further agreed at the meeting that if Ralph Blank and Solomon John Francis, or either of them, refused or failed to adhere to, and conform with the agreement made at the aforesaid meeting, such agreement would

not be regarded as effective at all, is rejected.

VI

Ralph Blank, for Sky View Drive-In Theatre Company, not only did not assent to, but took affirmative action against, the outlined program. Under date of July 8, 1955 he caused his attorney to transmit to the Assistant Attorney General of the United States in charge of the Antitrust Division a complaint about the competitive practices in relation to Sky View Drive-In Theatre, not only of the four theatres represented by the defendants hereto, but also of Golden Spike Drive-In Theatre, in which Solomon John Francis was and is interested. The Department of Justice was thus activated. Shortly a Grand Jury investigation was set on foot, and this litigation was started.

VII

None of the operators of any of the four theatres represented at the meeting of February 4, 1955 erected its admission price structures on the basis of the engagement entered into at that meeting. In reality, each operator pursued essentially the same price policy it followed through 1954. And this is equally applicable not only to the season of 1955 but to each subsequent season.

VIII

Since February 4, 1955 there has been no group advertising in the Omaha World-Herald - or any other newspaper - in behalf of the four theatres represented at the meeting on that date, or any of them. Nor have they, or any of them, observed or attempted to observe, any maximum prescription in reference to weekly advertising expenditures. The provisions reflected in Frank D. Rubel's memorandum in relation to advertising simply have not been observed. And no attempt has been made by or in behalf of any operator of one of those theatres to observe them, or any of them.

IX

The evidence does not warrant or support an informed finding either as to the wages paid by the operators of 76th & West Dodge Drive-In Theatre, the 84th & Center Drive-In Theatre, the Airport Drive-In Theatre, and Council Bluffs Drive-In Theatre, or any of them, in the 1955 season, or thereafter, to snack bar employees, or ramp boys, or as to their respective available menus and unit prices for refreshments. There is some evidence in the record upon both of these points, but not enough to establish a practice on either of them in or at any theatres, or theatre.

X

It is not shown that the labor contracts of any of the theatres have been altered or re-made, or otherwise affected by, or in consequence of, the engagements at the February 4, 1955 meeting. Nor is the status of such contracts, current as of the date of trial, intelligibly established.

XI

Actually, the several understandings, arrived at in the meeting of February 4, 1955, were never carried into practical effect. And that finding is not impaired by the circumstance that the admission price policy followed in 1955, and thereafter, by the four Drive-In Theatres involved, conformed essentially to the agreement of February 4, 1955 upon that feature. It conformed also to the practice respecting admission prices which those theatres had respectively observed through 1954. Even in the matter of admission prices, they took no action by which essential change was brought about.

XII

The Court does not declare or find that, after the meeting of February 4, 1955, the participants in that meeting entered into any supplemental agreement formally abandoning any practical introduction of the engagements they made at the meeting. On the

contrary, by their failure, through inaction, to re-assemble and re-affirm their adherence to the program agreed upon, and thus to get it under way, they suffered it to remain inoperative. In the event, it proved to be abortive.

CONCLUSIONS OF LAW

I

Under the plain language of Title 15, U.S.C., Section 22, the defendant, Central States Theatre Corporation, was properly made a defendant hereto and, once made a defendant, it was amenable under the same section of the Statute to service "in the district of which it is an inhabitant" and was subject to effective service of process in the Southern District of Iowa.

II

Defendant Frank D. Rubel was properly made a defendant herein and properly served herein.

III

It was not necessary that either the defendant Central States Theatre Corporation or the defendant Frank D. Rubel be served with process within this District.

IV

Interstate commerce is involved in the leasing of moving pictures for exhibition in the Omaha area Drive-In Theatres, their transportation to, withdrawal for exhibition from, and return to the Omaha offices of the several motion picture distributors, and their handling in successive transportation into and out from Omaha for numerous exhibitions, while they remain within the reach and control of the distributors' Omaha offices.

V

Among the Drive-In Theatres in the Omaha area, and especially among the four represented at the February 4, 1955 meeting, were two which were located in Iowa. Any movement of pictures from the

Omaha offices of distributors to either of those two theatres, or from either of those two theatres back to such Omaha offices, was openly and directly made in interstate commerce, even though the exhibitors came after the films and returned them to the distributors' office.

VI

If it were granted that the business operations of the Drive-In Theatres in question were wholly local that character would not be decisive in this litigation. Wholly local business restraints can produce the effects condemned by the Sherman Act.

VII

The vital aspects of the agreement reached at the February 4, 1955 meeting were the engagement respecting minimum admission prices, and the program incident to advertising in the Omaha World-Herald. The evidence does not support plaintiff's allegation of the making of an agreement respecting refreshment prices nor plaintiff's allegation that there was an agreement to threaten a boycott of any distributors providing pictures for exhibition in Drive-In Theatres at prices less than those agreed upon. The understandings regarding the weekly wages of snack bar employees, ramp boys and the expiration dates of labor contracts are of remote significance.

VIII

The agreement respecting minimum admission prices and advertising in the Omaha World-Herald was calculated and designed unduly and unreasonably to restrain trade and commerce in the motion picture industry. Its normal and natural effect, if carried into execution, would be to deny both to the potential patrons of Drive-In Theatres in the Omaha area the opportunity to observe moving pictures at Drive-In Theatres at admission prices arrived at in free, unrestrained competition between the exhibitors, and to the distributors in interstate commerce of motion pictures

the benefits of an open, free competitive market in the leasing for exhibition of their pictures, and finally to restrict and diminish the volume of newspaper advertisement, whereby publicity, designed to attract the attention of patrons, would be given to the exhibitors' respective programs. And a contract calculated to effect these results, without more, is by Title 15, U.S.C., Section 1, "declared to be illegal." The illegality is not obviated by the comparative "smallness" of the commerce thus to be affected. Obviously, too, a contract of that character constitutes those who engaged in its formulation a combination and conspiracy in restraint of trade and commerce.

IX

A price fixing contract or combination is illegal per se under the Sherman Act.

X

The activities after the meeting of February 4, 1955 of the participants in it, looking to its effective operation, were few, of brief duration, and narrowly limited in their reach. The admission price policies of those theatres during and since the 1955 season are attributable rather to inaction in persisting in the 1954 price structure than to conformity to the agreement of February 4, 1955. The failure of Solomon John Francis and Ralph Blank to join in the program resolved upon at the meeting very early disclosed both the almost certain practical inoperability of the program, and its probable peril.

XI

It is not necessary in a proceeding by the United States under Title 15, U.S.C., Section 4, to prevent and enjoin the violation of Title 15, U.S.C., Section 1, under an agreement made, or combination or conspiracy erected, in violation of the latter section, that the United States prove, or even plead, either that the contract was actually effective through post agreement

operations to, and did, accomplish its illegal purpose, or that the contracting parties possessed the power to accomplish such purpose, or that an overt act was done in furtherance of the contract. The contract or combination itself supports the proceeding.

XII

On the question as to whether or not injunctive relief should be granted the Court is convinced that it would not be prudent or proper to refuse to grant injunctive relief adequate in its reach to assure obedience by the defendants and each of them to Title 15, U.S.C., Section 1, and that such relief should be granted. As to all of the defendants, they remain in positions in which they are able to, and unless restrained, may be expected to, take active steps to set their program on foot. Their engagement of February 4, 1955 sufficiently reflects their will to do it, if and when they shall suppose they may proceed with impunity. Good reason appears, therefore, to exist for the entry of an injunctive order designed to prevent the further violation of Title 15, U.S.C., Section 1, and a judgment and decree to that end should be made and given herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

I

The provisions of this Final Judgment applicable to a defendant shall apply also to its or his officers, directors, agents, representatives, and to all persons acting or claiming to act on their behalf and to those persons who at the time of its dissolution were shareholders or stockholders of Midwest Drive-In Theatre Company.

II

Since February 4, 1955, the defendants have been parties to a combination and conspiracy in unreasonable restraint of interstate commerce in the exhibition of motion picture films in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful

restraints and monopolies," commonly known as the Sherman Act, as amended.

III

The defendants are each perpetually enjoined from entering into or taking any part in any agreement, understanding, or concert of action with each other or any other person engaged in the exhibition of motion picture films to fix, establish, or maintain prices to be charged for admission to their theatres or amounts to be expended for newspaper advertising for theatres.

IV

For the purpose of securing compliance with this Final Judgment and for no other purpose, any duly authorized representative of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, made to its or his principal office, and subject to any legally recognized privilege, be permitted:

(a) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of said defendant and without restraint or interference from it or him, to interview officers or employees of such defendant, who may have counsel present, regarding such matters; provided, however, that no information obtained by the means provided in this section shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the

United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

V

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

VI

The defendants are hereby ordered to pay all costs to be taxed in this case.

s/ John W. Delehant
United States District Judge

Dated: February 9, 1961

UNITED STATES v.
CENTRAL STATES THEATRE
CORPORATION, *et al.*

Civil Action No. 0117

Year Judgment Modified: 1961

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Central States Theatre Corp., Center Drive-In Theatre Co., and Midwest Drive-In Theatre Co., and Frank D. Rubel, additional defendant., U.S. District Court, D. Nebraska, 1961 Trade Cases ¶69,948, (Feb. 9, 1961)

United States v. Central States Theatre Corp., Center Drive-In Theatre Co., and Midwest Drive-In Theatre Co., and Frank D. Rubel, additional defendant.

1961 Trade Cases ¶69,948. U.S. District Court, D. Nebraska. Civil No. 0117. Dated February 9, 1961. Rulings in open court on form of decree.

Sherman and Clayton Acts

Justice Department enforcement—Injunctive relief—Terms of decree—Territorial scope—Visitorial powers.—The court refused to restrict the scope of its order to the territory in which the practices complained of had occurred, or to restrict the visitorial powers conferred on the Government (as to these, it noted that should the Government examinations or supervision be considered excessive, the respondent could obtain relief from the court if appropriate).

For the plaintiff: Earl A, Jinkinson, Francis C. Hoyt and Joseph E. Paige, Attorneys, Department of justice, Chicago, ill., and William C. Spire, U. S. Attorney, Omaha, Neb.

For the defendants: Yale C. Holland and Clarence E. Heaney of Kennedy, Holland, DeLacy & Svoboda; Yale Richards, for Midwest Drive-In Theatre Co., all of Omaha, Neb.

DELEHANT, District Judge (Retired, serving by assignment) [*In full text*]: I ask all of you to believe that I have considered very carefully, and repeatedly, and with thorough sympathy for the position of the defendants, the controversy which is urged before me this morning. It is correct to say, as has been said, that we have already had one rather informal hearing upon the form and content of the decree to be entered in this case, and that the Court indicated preliminary viewpoints touching those subjects, and recommitted the preparation of a decree to counsel for the Government. In accordance with that recommitment some weeks ago, a form of judgment was transmitted which I immediately studied and to which I was promptly alerted to the possibility of the tendering of objection. I know quite well that counsel have among themselves undertaken, and I am sure in good faith on both sides, to arrive at a practical working judgment or decree. I take it that the Government wants what, without cynicism, I shall characterize as all it may reasonably get in the way of a decree, and yet I have no thought that it is consciously arbitrary in its demands. I take it, also, that the defendants should be very pleased to reach a point where they might appropriately consider that there was an end to this litigation. To that end, the defendants probably, and I believe sincerely, would be willing to accept, though somewhat reluctantly, a decree with which, as Mr. Holland rather graphically puts it, they could live, and do that with the abandonment of an appeal. The Court may not tailor its decree to the desire that there be no appeal. Perhaps that is not an inappropriate desire, and yet, it is a consideration which the Court may not properly entertain on an occasion of this character. If there should be an appeal, it should be taken. If the Court now is in, or in the actual entry of this decree should fall into, error, then the Trial Court should be reversed. Reversals are an occupational hazard of the job that a Judge assumes when he accepts appointment to a position of this character, and he should not feel too delicate about them because they are as inevitable as death and taxes, and I know of no one who has avoided or evaded them. Certainly, I have not.

[*Territorial Restrictions*]

There are two principal features to which in the now tendered form of decree exception is taken, and a very respected and lawyer-like suggestion made that there should be modification. One of these has to do with the territorial latitude of the proposed decree. And it seems to lie in this, that whereas the proofs here deal with what the Court has found to be a violation of the Sherman Act occurring, within what the Government has been

pleased to characterize and define as the Omaha area, the decree applies to the operations of the several defendants wherever they may be conducted. Now it does appear that two of these theatres are conducted by people who, I believe, are entirely engaged in the management of those theatres within the so-called Omaha area. One other is, as Mr. Holland has suggested this morning, conducted by a corporation which has a theatre operation elsewhere in Nebraska, and as Mr. Holland says, another in Texas, although the record, if not silent on that point, is not very eloquent about it. I confess I am not definitely aware of the Texas operation of Mr. Gould's company. I don't say that there is nothing on the subject in the record for I have had no opportunity to search the record again upon that point. As to Central States it does rather clearly appear here that it is engaged in the management and operation, or both, of theatres in both Iowa and Nebraska other than and beyond those located within the so-called Omaha area. So, the proposed decree contemplates injunctive action binding upon the defendants, or some of them, and potentially of course upon all of them, without limitation to the Omaha territory within which the proofs were completely tendered. I have not believed and do not believe that that is a real objection to the decree as submitted. It is, indeed, a matter which the Court might consider in territorially limiting the scope of the decree, but I do not believe that it is a mandatory limitation, and I consider that in this instance it is entirely appropriate that the decree in its operation be not limited thus territorially to the so-called Omaha area.

To that extent, therefore, I overrule the objections which, although not formally made here, are tendered very competently informally before the Court.

[*Visitorial Rights*]

The second, and I think equally urged point, possibly the more seriously urged point, has to do with the so-called visitation clause which is IV of the proposed decree. It has, of course, to be read in association with the shorter paragraph appearing as V because the reservation of the jurisdiction of the Court over the case is for protective purposes on all hands. It is there as much to protect the defendants against unwarranted oppression as it is to protect the Government against potential frustration of the decree I refer now to paragraph V.

I have repeatedly examined section IV, and while I am not without sympathy with the position which the defendants take, I do not feel disposed to acquiece in it. I do not consider that the visitorial rights therein outlined are calculated to be oppressive. I assume, in entering any decree that the Government will not administer it after the fashion of a witch hunt. If it does, then although it is the Government that is acting, the Government is not above the power of the Court to intercept it in its action; and if demands be made by the Government in furtherance of the visitorial authority or if an effort be made without formal demand oppressively to intrude into the affairs of the defendants, the defendants are not without resources. They may, with very considerable punctuality, apply to this Court for interceptive orders, and if they have ground for them, they will get them. They do not have to submit to Governmental tyranny. I believe that a reasonable right of observation of the affairs of a defendant which has encountered adverse results in litigation of this character is not intolerable and is actually to he expected, and I proceed upon the assumption that the Government of the United States in the enjoyment of the rights thus granted is not going to be irresponsible.

Therefore, I allow paragraph IV to remain. And broadly, I deny the objections to the form of judgment submitted and grant the motion for the entry of judgment hut with these modifications, which I shall acknowledge as being in the nature of the fruits of a "fly-speck" hunt and perhaps something reflecting no credit on the breadth of vision of the judge who offers them. They have to do pretty largely with grammatical conceptions in which I freely acknowledge I may be mistaken. I shall cite them and at the conclusion of the references, I shall inquire of counsel for the Government whether it desires to have me make the alterations in the form submitted or desires to the contrary to submit a completely new form.

(a) On page one, in the fourth line, strike out the word "and" and place a comma after the word "court."

(b) On page three, in the seventh line, strike out the word "to" and for it substitute the word "of."

(c) On page four, in the second line of the page, strike out the final letter of the word "theatres," so that the reference will be to "theatre season" instead of "theatres season."

(d) In subsection (e) and in the seventh line thereof substitute the word "resort" for the word "report" which I think involves the correction of a typographical error, and in the final line of subsection (e) strike out the last four words and rephrase them so that they will read, "was actively to be sought."

(e) On page six, add to the paragraph numbered IX the words "or theatre," so that the expression will be "at any theatres or theatre."

(f) On page eight, in line five of paragraph VIII insert between the word "deny" and the word "to" the word "both," and thereafter strike the word "both," which is now the first word in the seventh line of that paragraph.

(g) On page ten, in paragraph numbered XII, and in the tenth line thereof, strike the word "might," being the second from the last word, and substitute for it the word "may."

Those are all of the modifications that occur to me and they have nothing to do with any legal matter. They are purely constructional items.

I now inquire of counsel whether he would prefer to recast the instrument or to have me make the corrections in ink and use the form that is submitted.

Mr. Hoyt: I think corrections in ink would be satisfactory.

By the Court: Does counsel for the defendants have any objections to that?

I should be glad to do it, but before I would presume to do it, I wanted to out line what I had in mind, and I do it with a rather frank apology. Yet there are some phrases that I think could be made a little bit better.

Very well. The Court will be in recess subject to call.

UNITED STATES v.
STUDEBAKER CORPORATION

Civil Action No.: 01863

Year Judgment Entered: 1965

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Studebaker Corporation., U.S. District Court, D. Nebraska, 1965 Trade Cases ¶71,410, (May 7, 1965)

United States v. Studebaker Corporation.

1965 Trade Cases ¶71,410. U.S. District Court, D. Nebraska. Civil Action No. 01863. Entered May 7, 1965. Case No. 1765 in the Antitrust Division of the Department of Justice.

Sherman Act

Restraint of Trade-Price Fixing—Allocation of Markets—Consent Decree.—A manufacturing firm was barred under the terms of a consent judgment from fixing prices or allocating markets in its sales of motor oil additives. The firm was also prohibited from canceling any distributor because of the persons to whom, the territories in which, or the prices at which such distributor sells the products.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D, Kilgore, Jr., Harry G. Sklarsky, John L. Wilson, John E. Sarbaugh, Francis C. Hoyt, and Howard L. Fink.

For the defendant: Yale Holland and John R. Hupper.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 31, 1963, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A). "Studebaker" shall mean the defendant Studebaker Corporation, a Michigan corporation;

(B). "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;

(C). "Chemical Compounds Products" shall mean an* oil additive or fuel additive products now or hereafter marketed by Studebaker under the names STP, Top Oil, Diesel Blitz and Auto Blitz and any oil additive or fuel additive product similar in purpose to the additive products marketed under such names;

(D). "Distributor" shall mean any person purchasing chemical compounds products from Studebaker for resale.

III

The provisions of this final Judgment shall apply to Studebaker and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with Studebaker who receive actual notice of this Final Judgment by personal service or otherwise; *provided, however*, that this Final Judgment shall not apply to sales and activities outside the United States which do not affect interstate commerce or the foreign commerce of the United States, For purposes of this Final Judgment, Studebaker and its subsidiaries, officers, directors, agents, servants and employees, or any of them, shall be deemed to be one person.

IV

Studebaker is enjoined and restrained from:

(A) Entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person to

(1) Fix, establish, determine, suggest, stabilize or adhere to prices, terms or conditions for the sale of any chemical compounds products to any third person;

(2) Allocate, or divide, customers, territories or markets for sale of any chemical compounds products;

(3) Limit or restrict the persons to whom or the territory within which chemical compounds products may be sold;

(B) Selling or offering to sell any chemical compounds products to any person upon any condition or understanding which limits or restricts the persons to whom, the prices at which, or the territory within which such products may be sold;

(C) Cancelling or threatening to cancel or otherwise taking any disciplinary action against any distributor because of the persons to whom, the territories in which or the prices at which such distributor has sold, sells or intends to sell any chemical compounds products.

V

Nothing in this Final Judgment shall prohibit Studebaker at any time after two years from the date of entry of this Final Judgment from exercising any legal rights it may have to "fair trade", or authorizing others to "fair trade", chemical compounds products under any federal or state legislation.

VI

Studebaker is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Terminate and cancel any provisions or terms of any contract, agreement or understanding with respect to any chemical compounds products that are contrary to or inconsistent with any of the provisions of this Final Judgment;

(B) Serve by mail upon each distributor of chemical compounds products a conformed copy of this Final Judgment; and

(C) Send to each distributor of chemical compounds products a letter, in a form substantially identical to Exhibit A attached hereto and made a part hereof.

VII

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted, subject to any legally recognized privilege and with the right of such defendant to have counsel present:

(A) Reasonable 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 defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII 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 the Plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Jurisdiction is retained by this Court for the purpose of enabling either of the parties 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, for the modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

EXHIBIT A

(To be sent to each distributor of chemical compounds products)

In accordance with the terms of a decree entered by the United States District Court for the District of Nebraska in Omaha, Nebraska, with the consent of the parties, terminating the Government's civil antitrust law suit against Studebaker Corporation, we are sending this notice to you and all other distributors of "chemical compounds products" (as defined in the decree) of the Chemical Compounds Division of Studebaker Industries, Inc., a wholly-owned subsidiary of Studebaker Corporation.

The decree provides, among other things, that:

(1) We cannot enter into any agreement with you preventing you from selling such products of the Chemical Compounds Division to any customer you choose, at any price you determine, or in any territory you wish; and

(2) We cannot condition any sale of such products of the Chemical Compounds Division to you upon any limitation or restriction of the customers to whom, the prices at which or the territories within which, such products are to be resold by you.

A copy of the Court's decree is enclosed. You will note particularly that it provides that it is not an admission of any violation of law.

Chemical Compounds Division of Studebaker Industries, Inc.

By:

President

UNITED STATES v.
CHAMPION PAPERS, INC.

Civil Action No.: 02270

Year Judgment Entered: 1968

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Champion Papers Inc., U.S. District Court, D. Nebraska, 1968 Trade Cases ¶72,560, (Aug. 28, 1968)

United States v. Champion Papers Inc.

1968 Trade Cases ¶72,560. U.S. District Court, D. Nebraska. Civil Action No. 02270. Entered August 28, 1968. Case No. 1852 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions and Mergers—Pulp and Paper Products—Divestiture of Wholesalers— Consent Decree.—A final consent judgment required a manufacturer of pulp and paper products to sell, within two years, 23 of 44 paper merchant houses that the government had charged were illegally acquired. Further, the firm would be required, within five years, to divest, as viable paper merchant establishments, one or more paper merchant houses which aggregately accounted for $7.5 million in the 12 months preceding divestiture. Unapproved acquisitions of fine paper merchants were barred for 10 years.

For the plaintiff: Robert A. Hammond III, Lewis Bernstein, W. D. Kilgore, Jr., and Robert J. Ludwig, Attys., Dept. of Justice.

For the defendant: Swarr, May, Royce, Smith, Andersen & Ross by Robert Berkshire; Arnold & Porter by William L. McGovern, for U. S. Plywood-Champion Papers Inc.

Final Judgment

ROBINSON, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 19, 1965, and defendant having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and the defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or any admission by any party hereto with respect to any such issue of fact or law.

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon 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 upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

II.

[*Definitions*] As used in this Final Judgment:

(A) "USP-CPI" means U. S. Plywood-Champion Papers Inc., successor to the defendant, Champion Papers Incorporated;

(B) "Fine paper merchant" means a corporation engaged in the United States in the business of distributing printing and writing papers at wholesale to commercial printers, but does not include a paper merchant distributing only an insignificant amount of fine paper.

(C) "Acquired merchant houses" means the merchant houses owned by USP-CPI on the date of this Final Judgment at the following locations:

Austin, Texas
Billings, Montana
Chicago, Illinois (723 S. Wells St.)
Chicago, Illinois (14 N. Peoria St.)
Corpus Christi, Texas
Des Moines, Iowa
Duluth, Minnesota
Fort Smith, Arkansas
Grand Island, Nebraska
Grand Rapids, Michigan
Great Falls, Montana
Harlingen, Texas
Indianapolis, Indiana
Lincoln, Nebraska
Lubbock, Texas
Missoula, Montana
Nashville, Tennessee
Oklahoma City, Oklahoma
Omaha, Nebraska
Pittsburgh, Pennsylvania
Portland, Oregon
Salt Lake City, Utah
Sioux City, Iowa

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to USP-CPI, its officers, directors, agents and employees, and to USP-CPI's subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees; and to all other persons in active concert or participation with USP-CPI who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Divestiture—Specified Houses*]

(A) USP-CPI is ordered and directed, within two (2) years from the date of entry of this Final Judgment, to divest said "acquired merchant houses" on such basis as would permit said "acquired merchant houses," to the extent possible, to be maintained as operating businesses in competition with other paper merchant houses.

(B) USP-CPI shall make known the availability of the "acquired merchant houses" for sale by ordinary and usual means for a sale of a business. USP-CPI shall furnish to *bona fide* prospective eligible purchasers all

necessary information, including business records, regarding the "acquired merchant houses," and shall permit them to have such access to and make such inspections of said "acquired merchant houses" as are reasonably necessary for the above purpose.

(C) Prior to the closing of any sale here under, USP-CPI shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division complete details of the proposed transaction. Within thirty (30) days of the receipt of these details, the Assistant Attorney General may request supplementary information concerning the transaction which shall also be furnished in writing. If plaintiff objects to the proposed sale, it shall notify USP-CPI in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to plaintiff's last request for such information made pursuant to this paragraph, or within thirty (30) days after the receipt of a statement from USP-CPI, if applicable, that it does not have some or all of the requested supplementary information. If no request for supplementary information is made, said notice of objection shall be given within thirty (30) days of receipt of the originally submitted details concerning the transaction. In the event of such notice of objection by the plaintiff, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(D) Following the entry of this Final Judgment and continuing until the divestiture of the "acquired merchant houses," and of the paper merchant houses to be divested pursuant to Section V hereof, USP-CPI shall

(1) Render bimonthly reports to the Assistant Attorney General in charge of the Antitrust Division outlining in detail the efforts made by it to accomplish said divestiture. The first such report shall be rendered within thirty (30) days after the entry of this Final Judgment; and

(2) Report promptly to the Assistant Attorney General in charge of the Antitrust Division the name of any person making inquiry whom USP-CPI does not believe to be a *bona fide* prospective eligible purchaser as contemplated by paragraph IV(B).

V.

[*Divestiture—Other Houses*]

In addition to the "acquired merchant houses" to be divested pursuant to Section IV hereof, within five (5) years from the date of entry of this Final Judgment, USP-CPI shall divest, as viable paper merchant establishments, subject to the prior approval of the plaintiff, one or more paper merchant houses, of USP-CPI's selection, which in the aggregate accounted for sales volume in the twelve (12) months preceding the date of divestiture of seven and one-half million ($7,500,000) dollars. Sales to the Federal Government shall not be included in determining the aforesaid aggregate sales volume.

VI.

[*Security for Purchase Price*]

The divestiture ordered and directed by this Final Judgment, when made, shall be made in good faith and shall be absolute and unqualified; *provided*, however, that USP-CPI may acquire and enforce any *bona fide* lien, mortgage, deed of trust or other form of security on all or any of the paper merchant houses divested given for the purpose of securing to USP-CPI payment of any unpaid portion of the purchase price thereof or performance of the sale transaction, and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law. In the event that USP-CPI, as a result of the enforcement of any *bona fide* lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested paper merchant houses, USP-CPI shall notify plaintiff in writing of any such repossession within thirty (30) days of such repossession. Within thirty (30) days of the date of such notification, USP-CPI shall, offer any such repossessed paper merchant house for sale in accordance with, all the terms of this Final Judgment; and USP-CPI shall, within two (2) years thereafter, effect divestiture of such repossessed house as a viable paper merchant house, subject to the prior approval of the plaintiff.

VII.

[*Future Acquisitions*]

USP-CPI is enjoined and restrained, for a period of ten (10) years from the effective date of this Final Judgment, from acquiring (1) the capital stock, or (2) any assets (except products purchased in the normal course of business) of a fine paper merchant, except as follows: if USP-CPI wishes to make any acquisition of the capital stock or assets of any fine paper merchant at any time prior to ten (10) years from the date of this Final Judgment, it shall submit to the plaintiff the facts relating to such proposed acquisition and the reasons therefor. If the plaintiff shall not object to the proposed acquisition within thirty (30) days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Pinal Judgment. In the event plaintiff shall object, USP-CPI may apply to this Court for permission to make such acquisition, which may be granted upon a showing by USP-CPI to the satisfaction of this Court that the acquisition may not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

VIII.

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognizable privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to USP-CPI made to its principal office, be permitted (1) reasonable access, during the office hours of USP-CPI, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USP-CPI relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of USP-CPI and without restraint or interference from USP-CPI, to interview officers or employees of USP-CPI, each of whom may have counsel present, regarding any such matters.

(B) USP-CPI, upon such written request of the Attorney General or 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. No information obtained by the means provided in this Section VIII 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 the plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining and securing compliance with this Final Judgment or as otherwise required by law.

IX.

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties 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, for the modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES v.
ED. PHILLIPS & SONS CO.

Civil Action No.: 73-0-144

Year Judgment Entered: 1973

UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. ED. PHILLIPS & SONS CO., Defendant.	CIVIL ACTION NO. 73-0-144 Filed: July 20, 1973 Entered: Aug. 24, 1973

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 22, 1973, and the plaintiff and said defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue,

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states claims upon which relief may be granted against said defendant under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity.

(B) "Defendant's distilled spirits and wines" means distilled spirits and wines distributed or sold by defendant.

III

The provisions of this Final Judgment shall apply to the defendant, its successors, assignees, and transferees, and its directors, officers, employees, and to all other persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any person to:

(A) Fix, establish, maintain or adhere to prices, markups or other terms or conditions for the sale of defendant's distilled spirits or wines to any third person;

(B) Prohibit such person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire.

V

Defendant is enjoined and restrained from directly or indirectly:

(A) Hindering, restricting, limiting or prohibiting, or attempting to hinder, restrict, limit or prohibit, any person from in any manner advertising or

offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire;

(B) Refusing to sell or threatening to refuse to sell distilled spirits or wines to any person because of the prices, markups or other terms or conditions at which such person has in any manner advertised, displayed, or offered to sell, or intends to advertise, display, or offer for sale defendant's distilled spirits or wines;

(C) Policing or otherwise investigating prices, markups or other terms or conditions at which any of defendant's distilled spirits or wines are in any manner offered for sale by any of defendant's customers.

VI

Within thirty (30) days after the date of entry of this Final Judgment, defendant shall mail a copy of this Final Judgment to each former customer who advertised defendant's distilled spirits or wines at prices below the suggested retail prices, and to each such former customer's successor, assignee or transferee, together with a written notice that defendant will sell distilled spirits or wines to such customer at the same prices, markups, terms or conditions as defendant sells to its other customers; and within sixty (60) days after the date of entry of this Final Judgment shall file with this Court and serve upon the plaintiff, a report of compliance with this section VI, which report shall include the name and address of each such person to whom this Final Judgment and written notice were sent.

VII

Within sixty (60) days after the date of entry of this Final Judgment, defendant shall mail to each of its customers a letter in the form attached to this Final Judgment; and shall file with this Court and serve upon the plaintiff, within one hundred and twenty (120) days after the date of entry of this Final Judgment, a report of compliance with this section.

VIII

The defendant is ordered to file with the plaintiff annually for a period of ten (10) years on the anniversary of the entry of this Final Judgment, a report setting forth the steps taken by it to advise its officers, directors, and employees of its and their obligations under this Final Judgment.

IX

For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, 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 defendant made to defendant's principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of defendant, who may have counsel present, regarding such matters.

Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division defendant shall submit such written reports with respect to any matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section IX 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 the plaintiff except in the course of legal 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.

X

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

ENTER this **24th** day of **August** , 1973.

/s/ ROBERT V. DENNEY
United States District Judge

ATTACHMENT TO FINAL JUDGMENT

Ed. Phillips & Sons Co.
10100 J Street
Omaha, Nebraska 68127

_____, 1973

Re: United States v. Ed. Phillips & Sons Co.,
Civil Action No. 73-0-144 (D. Nebraska)

Gentlemen:

A judgment has been entered in the captioned case. We are writing to inform you of Sections IV and V which provide as follows.

IV

Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any person to:

(A) Fix, establish, maintain or adhere to prices, markups or other terms or conditions for the sale of defendant's distilled spirits or wines to any third person;

(B) Prohibit such person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire.

V

Defendant is enjoined and restrained from directly or indirectly:

(A) Hindering, restricting, limiting or prohibiting, or attempting to hinder, restrict, limit or prohibit, any person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire;

(B) Refusing to sell or threatening to refuse to sell distilled spirits or wines to any person because of the prices, markups or other terms or conditions at which such person has in any manner advertised, displayed, or offered to sell, or intends to advertise, display, or offer for sale defendant's distilled spirits or wines;

(C) Policing or otherwise investigating prices, markups or other terms or conditions at which any of defendant's distilled spirits or wines are in any manner offered for sale by any of defendant's customers.

The plaintiff and defendant, by their respective attorneys, consented to entry of the judgment without trial or adjudication of any issue of fact or law, and without the judgment constituting evidence or admission by any party with respect to any such issue.

Very truly yours,

Maurice Gilmore
Vice President and
General Manager

DOJ-197309

APPENDIX B:

SUMMARY OF REASONS FOR TERMINATING EACH JUDGMENT

(Ordered by Year Judgment Entered)

UNITED STATES v.
CENTRAL STATES THEATRE
CORPORATION, *et al.*
Civil Action No. 0107

Year Judgment Entered: 1961
Year Judgment Modified: 1961 (slight modifications to decree)

Section of Judgment Retaining Jurisdiction: V

Description of Judgment: Defendants, three drive-in movie theater companies operating in the Omaha, Nebraska area, were enjoined from entering into agreements or understandings with other exhibitors of motion picture films to fix, establish, or maintain (1) prices to be charged for admission to their theaters or (2) amounts to be spent on newspaper advertising for their theaters.

Reasons Judgment Should Be Terminated:
- Judgment more than ten years old.
- Two of the three corporate defendants appear to no longer be in business from a search of corporate records with the Nebraska Secretary of State's office. The remaining corporate defendant still in business, Central States Theatre, was purchased by CEC Theatres in 2002 and no longer operates drive-in movie theaters. Finally, the sole individual defendant appears to no longer be living.
- Judgment terms largely prohibit acts the antitrust laws already prohibit (price fixing).

Public Comments: None.

UNITED STATES v.
STUDEBAKER CORPORATION
Civil Action No. 01863

Year Judgment Entered: 1965

Section of Judgment Retaining Jurisdiction: VIII

Description of Judgment: Defendant manufacturing company enjoined from, among other things, fixing prices or allocating markets in its sales of motor oil additives. The firm also was prohibited from cancelling any distributor because of the persons to whom, the territories in which, or the prices at which such distributor sells defendant's products. The original defendant, Studebaker Corporation, no longer is in business. However, its STP motor oil additives division has been sold several times and currently is owned by Armored AutoGroup.

Reasons Judgment Should Be Terminated:
- Judgment more than ten years old.
- Judgment terms largely prohibit acts the antitrust laws already prohibit (price fixing and customer/market allocation).

Public Comments: None.

UNITED STATES v.
CHAMPION PAPERS, INC.
Civil Action No. 02270

Year Judgment Entered: 1968

Section of Judgment Retaining Jurisdiction: IX

Description of Judgment: Defendant, a manufacturer of pulp and paper products, was required to sell within two years 23 of 44 paper merchant houses that it had been charged with acquiring in violation of Section 7 of the Clayton Act. In addition, defendant was required within five years to divest one or more paper merchant houses that aggregately accounted for $7.5 million in sales in the twelve months preceding the divestiture. Finally, for a period of ten years, defendant was required to get approval from the Antitrust Division before acquiring any fine paper merchant.

Reasons Judgment Should Be Terminated:

- Judgment more than ten years old.
- Required divestitures were made. The ten-year period applicable to future acquisitions has expired.
- Judgment terms largely prohibit acts the antitrust laws already prohibit (merger or acquisition likely to substantially lessen competition). The Department of Justice or the Federal Trade Commission can review any acquisition covered by the judgment that raises antitrust concerns. These agencies' ability to review transactions is facilitated by the Hart–Scott–Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a, which requires companies notify the Department of Justice and the Federal Trade Commission when proposed transactions meet certain thresholds.

Public Comments: None.

UNITED STATES v.
ED. PHILLIPS & SONS COMPANY
Civil Action No.: 73-0-144

Year Judgment Entered: 1973

Section of Judgment Retaining Jurisdiction: X

Description of Judgment: Defendant, a Nebraska liquor wholesaler, was enjoined from (1) fixing prices or markups for the sale of its liquor products to any third party or (2) prohibiting or interfering with any third party's advertising or offering to sell defendant's liquor products at any price they may choose. In addition, defendant was prohibited from refusing to sell its liquor products to any third party because of their pricing, markups, advertising, or other conditions of sale.

Reasons Judgment Should Be Terminated:
- Judgment more than ten years old.
- Judgment terms largely prohibit acts the antitrust laws already prohibit (price fixing and refusals to sell).

Public Comments: None.

APPENDIX C:

PROPOSED ORDER TERMINATING FINAL JUDGMENTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. CENTRAL STATES THEATRE CORPORATION, *et al.*, Defendants.	Civil Action No. 0117
UNITED STATES OF AMERICA, Plaintiff, v. STUDEBAKER CORPORATION, Defendant.	Civil Action No. 01863
UNITED STATES OF AMERICA, Plaintiff, v. CHAMPION PAPERS, INC., Defendant.	Civil Action No. 02270
UNITED STATES OF AMERICA, Plaintiff, v. ED. PHILLIPS & SONS COMPANY, Defendant.	Civil Action No. 73-0-144

[PROPOSED] ORDER TERMINATING FINAL JUDGMENTS

The Court having received the motion of plaintiff United States of America for termination of the final judgments entered in the above-captioned cases, and the Court

having considered all papers filed in connection with this motion, and the Court finding that it is appropriate to terminate these final judgments, it is

ORDERED, ADJUDGED, AND DECREED:

That said final judgments are hereby terminated.

Dated: _____

_____

United States District Court Judge
District of Nebraska