

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Chicago Title and Trust Company, and Kansas City Title Insurance Company., U.S. District Court, N.D. Illinois, 1966 Trade Cases ¶71,745, (May 23, 1966)

[Click to open document in a browser](#)

United States v. Chicago Title and Trust Company, and Kansas City Title Insurance Company.

1966 Trade Cases ¶71,745. U.S. District Court, N.D. Illinois, Eastern Division. No. 63 C 2025, Entered May 23, 1966. Case No. 1717 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Acquisitions Prohibited—Title Insurance—Consent Judgment.—A title insurance company was prohibited by a consent judgment from acquiring, for a period of five years, any title insurance company qualified and engaged in business in Missouri, Wisconsin, or Illinois. For an additional period of five years as to such states and for a period of ten years as to all other states, the company was prohibited from acquiring any title insurance company, except with the permission of the government or the court if the acquisition is objected to by the government.

Acquiring Competitors—Relief—Divestiture—Consent Judgment.—A title insurance company was required, within 18 months, to divest itself of all stock in three title insurance companies and the title plants of two other abstract companies, and, if the company failed to dispose of the stock of the three companies within that period, it would be required, within one year, to divest itself of the stock of a co-defendant title insurance company, in lieu thereof.

Acquiring Competitors—Relief—Exclusive Contracts—Consent Judgment.—A title insurance company which was required to divest itself of stock and assets in other such companies also was required to cancel all exclusive contracts with abstracters in Illinois within 30 days after entry of the judgment.

Department of Justice Enforcement—Injunctive Relief—Applicability of Consent Judgment—Purchasers of Divested Property.—A consent judgment, which required a title insurance company to dispose of stock and assets in other such companies, did not apply to any person who acquired any of the assets disposed of pursuant to the judgment.

For the plaintiff: D. F. Turner, Assistant Attorney General, Antitrust Division, and Gordon B. Spivack, W. D. Kilgore, Jr., John E. Sarbaugh, Ralph M. McCareins, Leon E. Lindenbaum, and Leonard A. Tokus, Attorneys, Department of Justice.

For the defendant: Bell, Boyd, Lloyd, John T. Loughlin.

Final Judgment

ROBSON, District Judge: Plaintiff, United States of America, having filed its complaint herein on November 9, 1962, defendant, Chicago Title and Trust Company, having appeared and filed its answer to such complaint denying the substantive allegations thereof, and asserting that [Section 7 of the Clayton Act](#) was inapplicable due to the McCarran-Ferguson Act, 15 U. S. C. Section 1011, the plaintiff having moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for a partial summary judgment striking the McCarran-Ferguson Act defense, the Court having heard the arguments and considered the brief of counsel, having filed on June 10, 1965, a memorandum opinion [[1965 TRADE CASES ¶ 71,472](#)] granting the motion of the plaintiff and on June 23, 1965 having filed an order striking the McCarran-Ferguson Act defense; and

Plaintiff and defendant having each consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein other than the adjudication as to the McCarran-Ferguson Act defense, and without this Final Judgment constituting any evidence or an admission by either party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

©2018 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, except that as to the McCarran-Ferguson Act defense, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I.

[*Clayton Act, Sec. 7*]

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. Section 18), commonly known as the Clayton Act, as amended.

II.

[*Definitions*]

As used in this Final Judgment:

- (A) "Chicago Title" shall mean defendant Chicago Title and Trust Company, a corporation organized and existing under the laws of the State of Illinois, with its principal offices at Chicago, Illinois;
- (B) "TIC" shall mean Title Insurance Corporation of St. Louis, a corporation organized and existing under the laws of the State of Missouri, with its principal offices at St. Louis, Missouri;
- (C) "KCT" shall mean Kansas City Title Insurance Company, a corporation organized and existing under the laws of the State of Missouri, with its principal offices at Kansas City, Missouri;
- (D) "Capital Abstract Company" shall mean the wholly owned subsidiary of KCT, Capital Abstract and Title Co., a Kansas corporation, located in Topeka, Kansas;
- (E) "Memphis Title Company" shall mean the subsidiary of KCT, Memphis Title Company, a Tennessee corporation, located in Memphis, Tennessee;
- (F) "Title insurance company" shall mean any corporation, association or other legal entity which is qualified, licensed and engaged in issuing its policies insuring titles to real estate;
- (G) "Person" shall mean any individual, partnership, corporation, association or any other legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall also apply to its officers, directors, and employees, and to its subsidiaries, successors and assigns, and to all other persons in active concert or participation with defendant who have received actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons who acquire any of the assets disposed of pursuant to this Final Judgment.

IV.

[*Future Acquisitions*]

For a period of five (5) years from the date of this Final Judgment, defendant Chicago Title is enjoined and restrained from acquiring directly or indirectly, whether by way of acquisition of assets or capital stock, any title insurance company which at the time of acquisition is qualified and engaged in the title insurance business in the States of Missouri, Wisconsin or Illinois.

For an additional period of five (5) years as to said three States and for a period of ten (10) years from the date of this Final Judgment: with respect to all States other than Missouri, Wisconsin and Illinois, defendant Chicago Title is enjoined and restrained from acquiring directly or indirectly, whether by way of acquisition of assets

©2018 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

or capital stock, any title insurance company which at the time of acquisition is qualified and engaged in the title insurance business in any of said States. Provided, however, that if at any time defendant Chicago Title desires to make any acquisition which would be otherwise prohibited by the foregoing sentence, such defendant may submit a full disclosure of the facts with respect to such proposed acquisition and the reason therefor to the plaintiff for consideration. If the plaintiff shall not object to the proposed acquisition within thirty (30) days, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event that the plaintiff shall object, defendant may apply to this Court for permission to make such acquisition, which may be granted upon a showing by the defendant to the satisfaction of this Court that such acquisition does not violate [Section 7 of the Clayton Act](#).

V.

[*Divestiture*]

Chicago Title is ordered and directed within eighteen (18) months from the date of entry of this Final Judgment to sell or otherwise divest itself of the following:

- (A) All of the stock of the Capital Abstract and Title Company of Topeka, Kansas;
- (B) All of its stock in the Memphis Title Company of Memphis, Tennessee;
- (C) All of the shares of stock of TIC;
- (D) All of the Missouri Abstract Company title plant owned by KCT in Kansas City, Missouri, covering the property in West Jackson County, Missouri;
- (E) All of the Citizens and Securities Abstract Companies title plant owned by a subsidiary of Chicago Title in Milwaukee, Wisconsin, covering the property located in Milwaukee County, Wisconsin;

The purchaser of TIC shall, if such purchaser desires, be accorded an option to purchase the stock and assets described in (A), (B), (D) and (E) of Section V. The purchaser or purchasers of the properties described in (D) and (E) of Section V shall be accorded an option, if so desired, to bring any plant purchased up to date on reasonable terms.

At the request of the purchaser of TIC, Chicago Title shall enter into a contract with such purchaser providing that for a term of ten (10) years and upon payment of the charges hereinafter set forth Chicago Title shall furnish to said purchaser a complete report containing all relevant material consisting of minutes or copies or abstracts of recorded instruments or a chain of title, tax searches, special assessment searches, judgment searches, chancery searches, miscellaneous searches (which include estates of minors, incompetents, decedents, etc.) and copies or abstracts of any other recorded title evidence from its Cook County title plant concerning any tract or parcel of Cook County, Illinois real estate with respect to which the purchaser of TIC or TIC has an order for and desires to issue its own title insurance policy. The charges for such title evidence shall be a reasonable amount and if the parties are unable to agree on the charges either party may apply to the Court for a determination of reasonable charges.

If defendant Chicago Title has not sold or otherwise divested itself of the stock of TIC, the stock of Capital Abstract and Title Company and the stock of Memphis Title Company at the expiration of the said eighteen (18) month period, then in lieu of the divestiture provided in V hereof defendant Chicago Title is ordered and directed to sell or otherwise divest itself of the stock of KCT within one (1) year.

VI.

[*Sale Conditions*]

The divestitures ordered and directed by Section V of this Final Judgment shall be made in good faith and shall be absolute and unqualified. None of the properties so ordered to be disposed of shall be directly or indirectly sold or disposed of to any person who, at the time of disposition, is an officer, director, or employee of defendant, or is acting for or under the control of defendant, or in which defendant owns any stock or financial interest;

provided, however, that nothing herein shall prevent sale to officers, directors or employees of the corporations to> be divested hereunder if at the time of sale such persons have terminated any employment with defendant; provided further that if any property is not sold or disposed of entirely for cash, nothing herein contained shall be deemed to prohibit defendant from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security on said property for the purpose of securing to defendant full payment of the price at which said property is disposed of or sold; and provided further that if, after bona fide disposal pursuant to Section V, defendant by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security regains ownership or control of any of the property disposed of, defendant shall, subject to the provisions of this Final Judgment, dispose of any such property thus regained within eighteen (18) months from the time of reacquisition.

No divestiture of any of the said companies or plants shall be made except upon notice to the plaintiff. If the plaintiff shall not object within thirty (30) days such divestiture shall be deemed approved. If the plaintiff shall object, defendant may apply to this Court for approval.

VII.

[Agency Contracts]

Chicago Title is further ordered and directed within a reasonable time after the divestiture of TIC to effect termination of the agency contracts of all KCT agents in Wisconsin. Each termination may be separately negotiated. Chicago Title may assist in arranging new representation for each affected agent prior to the final termination of the agency contract and agrees to use its best efforts to persuade each such cancelled agent to represent TIC if desired by TIC. In the event of the alternate divestiture provided in the last paragraph of Section V above, the provisions of this section shall not be applicable.

VIII.

[Exclusive Contracts]

Chicago Title is further ordered and directed to cancel all exclusive contracts with abstracters in Illinois within thirty (30) days after the entry of this order.

IX.

[Inspection and Compliance]

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

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment; and

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said 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 provided for in this Section 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 United States, except in the course of a legal proceeding to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X.

[*Jurisdiction Retained*]

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.