

APPENDIX A:
FINAL JUDGMENTS



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association., U.S. District Court, D. Arizona, 1963 Trade Cases ¶70,614, (Jan. 22, 1963)

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United States v. Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association.

1963 Trade Cases ¶70,614. U.S. District Court, D. Arizona. Civil 3367-Phx. Entered January 22, 1963. Case No. 1538 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Selling Prices—Pharmaceutical Associations—Consent Judgment.— Three pharmaceutical associations were each prohibited by a consent judgment from combining or conspiring to establish and maintain uniform consumer prices for prescription drugs; entering into agreements to fix prices, terms or conditions for the sale of prescription drugs; formulating, issuing or distributing pricing schedules for prescription drugs; compelling any person to adhere to prescription pricing schedule, or policing drug prices.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Stanley E. Disney, and Anthony E. Desmond, Attorneys, Department of Justice.

For the defendants: Shimmel, Hill, Kleindienst & Bishop and Rouland W. Hill, Moeur & Jones and Anthony O. Jones, Hanson, Hanson and Cobb and Arthur B. Hanson, by Donald M. Meyers and Anthony O. Jones.

Final Judgment

LING, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 21, 1960, and the defendants, Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association and Tucson Pharmaceutical Association, having appeared by their attorneys, and the said plaintiff and defendants having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein.

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

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

The complaint states a claim against the defendants 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.

This Court has jurisdiction of the subject matter hereof and the parties hereto, and the parties have consented to the Final Judgment as hereinafter set forth.

II

[Definitions]

As used in this Final Judgment:

(a) "Legend drug" is a medication for treatment of humans, sold to fill a prescription written by a physician or other person duly licensed to prescribe for the treatment of human ailments, and federal law requires that when such legend drugs are dispensed in a pharmacy for human consumption, that such drugs be dispensed by a registered pharmacist and only upon a prescription. Legend drugs are referred to in the plain tiff's complaint as "prescription drugs."

(b) "Pharmacist" is an individual duly licensed by the Board of Pharmacy of the State of Arizona to prepare, compound and dispense physicians' prescriptions and to sell drugs, medicines and poisons at retail.

(c) A "prescription pricing schedule" is a document or list published and/or distributed through several different media and by numerous persons or organizations and is used as a guide or formula in pricing prescriptions by many pharmacists throughout the United States.

(d) A "prescription" is an order for drugs or medicines or combinations or mixtures thereof, written or signed by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease to man or animals and includes orders for drugs or medicines or combinations or mixtures thereof transmitted to pharmacists through word of mouth, telephone, telegraph or other means of communication by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the State of Arizona and intended for the treatment or prevention of disease in man or animals.

(e) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

III

[*Applicability*]

The provisions of this judgment shall apply to the defendants, their officers, directors, agents, members and employees, and other persons in active concert or participation with the defendants or who receive actual notice of this judgment by personal service or otherwise.

IV

[*Practices Prohibited*]

Defendants, Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association, are hereby enjoined and restrained from:

(a) Combining or conspiring to establish and maintain uniform consumer prices for legend drugs in the State of Arizona;

(b) Entering into, adhering to, maintaining or furthering any agreement, understanding, plan, or conspiracy (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of legend drugs, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule, or method for pricing legend drugs;

(c) Advocating, suggesting, urging, inducing, compelling", or in any other manner influencing or attempting to influence any person to use or adhere to any prescription pricing schedule or schedules, or any other lists, formula, guide, schedule or method for pricing legend drugs;

(d) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence or suggest the price at which any legend drug is or may be sold by any pharmacist.

[*Permissive Provisions*]

Nothing in subsections (b), (c) or (d) of this Section IV shall be construed to restrain any pharmacy owner or pharmacist member of the defendant Associations or any other associations from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or pharmacist in pharmacies owned or operated by said pharmacist or pharmacy owner.

At any time, any agency of the United States or of the State of Arizona may, upon grounds of undue hardship to it, and without having standing as a party herein, petition this Court for an order enabling defendant Associations to negotiate and enter into a contract for the sale of prescription drugs where the price of such prescription drugs will be paid for by the petitioning agency. Such petition may be in the form of a letter to the Court with copies to be served on both the plaintiff and defendants herein. The matter will then be set for hearing at which time the petitioning agency may produce witnesses and other evidence in support of its petition. Plaintiff and defendants will be permitted to be heard and make objections to any such proposed negotiation or contract. Permission by this Court to enter into any such contract shall not be considered an adjudication as to the legality or illegality of such contract under the antitrust laws, nor shall it be deemed to bar or estop the plaintiff from attacking the legality of any such contract under the antitrust laws generally.

V

[Compliance]

(a) Defendants Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association are ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of their members a conformed copy of this Final Judgment. Said defendants are further ordered and directed to thereupon file an affidavit with the clerk of this court that it has done so, which affidavit shall set forth the name and address of each person so served;

(b) Defendants Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association, are ordered and directed to furnish a copy of this Final Judgment upon each new member thereof at the time of acceptance of such membership and to obtain from each such member, and keep for ten years in their files, a receipt there for signed by each such new member.

VI

[Inspection]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives 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 the defendants, and subject to any legally recognized privilege, be permitted:

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

(b) Subject to the reasonable convenience of the defendants, and without restraint or interference from them, to interview officers and employees of the defendants (who may have counsel present) regarding such matters.

VII

[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 and directions as may be necessary or appropriate for the construction or carrying out of the Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Valley National Bank of Arizona, the Arizona Bank, and Arizona Bancorporation., U.S. District Court, D. Arizona, 1966 Trade Cases ¶71,901, (Nov. 23, 1966)

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

United States v. The Valley National Bank of Arizona, the Arizona Bank, and Arizona Bancorporation.

1966 Trade Cases ¶71,901. U.S. District Court, D. Arizona. Civil No. 4550-PHX. Entered November 23, 1966. Case No. 1729 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Banks—Multiple Interests—Consent Judgment.—Under the terms of a consent judgment, an Arizona bank was prohibited from having officers, directors or employees in common with a holding company allegedly controlled by it or with another bank controlled by the holding company. Additionally, the holding company and controlled bank were prohibited from having officers or directors who hold stock in the controlling bank. If the holding company divests itself of the controlled bank's stock, the provisions barring mutual employees between the holding company and the controlling bank shall have no effect. After ten years, the government may seek further relief or divestiture (1) if the percentage of the holding company's or controlled bank's stock held by persons who are also shareholders of the controlling bank exceeds 25%, or (2) if any person owns or controls 3% or more of the controlling bank and 3% of either the holding company or the controlled bank.

Acquiring Competitors—Banks—Prohibited Acquisitions—Consent Judgment.—Under the terms of a consent judgment, the Valley National Bank in Arizona was prohibited from acquiring any other Arizona bank for a period of at least 15 years and Bancorporation and Arizona Bank, both of Arizona, were barred from such acquisitions for a period of at least five years.

For the plaintiff: D. F. Turner, Assistant Attorney General, Antitrust Division. Donald F. Melchior, W. D. Kilgore, Jr., John M. Toohey, Charles F. B. McAleer, and Gordon Spivack, Attorneys, Department of Justice.

For the defendants: Victor H. Kramer for The Valley National Bank of Arizona and Arizona Bancorporation. Devens Gust, for The Valley National Bank or Arizona. George Read Carlock and Wallace L. Kaapcke, for the Arizona Bank. Mark Wilmer for Arizona Bancorporation.

Final Judgment

WALTER EARLY CRAIG, D. J.: Plaintiff, United States of America, having filed its Complaint in this action, defendants, The Valley National Bank of Arizona, The Arizona Bank, and Arizona Bancorporation, by their attorneys, having appeared and filed their answers to the Complaint, denying the substantive allegations thereof, the Trustees of the Profit Sharing Plan for Employees of The Valley National Bank and those officers, directors, and stockholders related to such officers and directors of The Valley National Bank of Arizona, The Arizona Bank and of Arizona Bancorporation who are referred to in this Final Judgment having entered their appearances herein and having agreed to be bound by the provisions of this Final Judgment, and Plaintiff, and defendants The Valley National Bank of Arizona, The Arizona Bank and Arizona Bancorporation, by their respective attorneys, having consented to the entry of this Final Judgment herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without any admission by any party with respect to any such issue and upon the consent of the parties hereto, the Court being advised and having considered the matter, it is hereby

Ordered, adjudged and decreed as follows:

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto under Section 4 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, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended. The Complaint states claims upon which relief may be granted under Section 1 of the Sherman Act and Section 7 of the Clayton Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Valley National Bank" shall mean The Valley National Bank of Arizona, a banking association organized under the laws of the United States;

(B) "Arizona Bank" shall mean The Arizona Bank, a banking association organized under the laws of the State of Arizona;

(C) "Bancorporation" shall mean Arizona Bancorporation, a corporation organized under the laws of the State of Delaware;

(D) "Bank" shall mean a commercial bank;

(E) "Bank in Arizona" shall mean any bank having an office in the State of Arizona;

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

(G) "Eligible purchaser" shall mean Bancorporation, Arizona Bank, or any other person except (1) any other bank in Arizona or any officer or director of such a bank, or (2) any person who owns or controls 25 per cent or more of the voting capital stock of any other bank in Arizona or any officer or director of such a person;

(H) "Officer" shall mean Chairman of the Board, Vice Chairman of the Board, President, Executive Vice President, Senior Vice President, Comptroller, Controller, Cashier, Auditor, or other officer who is a department head or member of any policymaking committee, or a Vice President as of the date of entry of this Final Judgment.

III

[*Applicability*]

(A) It appearing to this Court, pursuant to Section 5 of the Sherman Act, that the ends of justice require that certain individuals connected with or having an interest in the defendants be brought before this Court, the said individuals (as consenting individuals) hereby appear as additional parties waiving the necessity of being summoned and agree to be bound by the applicable provisions of this Final Judgment.

(B) The provisions of this Final Judgment applicable to any defendant shall also apply to each of its officers, agents, servants, employees, attorneys, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Relief*]

After ninety (90) days from the date of the entry of this Final Judgment, Bancorporation and Arizona Bank shall not have as an officer, director or employee any person who at the same time is an officer, director or employee

of Valley National Bank nor shall they hereafter newly employ or elect any person as an officer or director who is a stockholder of Valley National Bank.

V

After ninety (90) days from the date of the entry of this Final Judgment, Valley National Bank shall not have as an officer, director or employee any person who at the same time is an officer, director or employee of Bancorporation or Arizona Bank nor shall it hereafter newly employ or elect any person as an officer or director who is a stockholder of either Bancorporation or Arizona Bank.

VI

The Trustees of the Profit Sharing Plan for Employees of Valley National Bank shall, within three (3) years from the date of the entry of this Final Judgment, sell to an eligible purchaser or purchasers, pursuant to a plan approved by the Plaintiff, all capital stock of Bancorporation and Arizona Bank owned or controlled by said Profit Sharing Plan. Said Trustees, when acting in such capacity, are further enjoined from hereafter:

(A) Voting or attempting to vote any shares of the capital stock of Bancorporation or of Arizona Bank;

(B) Acquiring any shares of the capital stock of any bank in Arizona other than Valley National Bank except if such stock is received as a stock dividend or other distribution based upon other such shares then owned by said Trustees;

(C) Serving as a director or officer of (1) Bancorporation, or (2) any bank in Arizona other than Valley National Bank, or (3) any person who then owns or controls twenty-five (25) per cent or more of the capital stock of any bank in Arizona other than Valley National Bank.

VII

Defendants Bancorporation and Arizona Bank are each enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment

(i) from acquiring or holding, directly or indirectly, any of the capital stock (except shares Arizona Bank may acquire or hold in a fiduciary capacity) of any bank in Arizona other than capital stock of Arizona Bank; or

(ii) from acquiring any of the assets (other than real and personal property not including business and good will) of any bank in Arizona other than The Arizona Bank;

unless permission is first obtained from the Attorney General.

VIII

Defendant Valley National Bank is enjoined and restrained for a period of fifteen (15) years from the date of entry of this Final Judgment

(i) from acquiring or holding, directly or indirectly, any of the capital stock (except shares Valley National Bank may acquire or hold in a fiduciary capacity) of any bank in Arizona other than capital stock of Valley National Bank; or

(ii) from acquiring any of the assets (other than real or personal property not including business and good will) of any bank in Arizona.

IX

Each of the officers and directors of Valley National Bank, as of the date of this Final Judgment, and so long as he is such an officer, director, or stockholder in Valley National Bank, is enjoined and restrained from:

(A) Voting or attempting to vote any shares of capital stock of Bancorporation or of Arizona Bank; or

(B) Hereafter acquiring additional shares of the capital stock of Bancorporation or The Arizona Bank, or either of them, except by inheritance or by stock dividend or other distribution based upon such other stock then owned by him; and

(C) After five (5) years from the date of entry of this Final Judgment, owning or controlling any of the capital stock of Ban-corporation or Arizona Bank.

X

Each of the officers and directors of Ban-corporation or Arizona Bank, as of the date of this Final Judgment, and so long as he is such an officer, director or stockholder in Bancorporation or Arizona Bank, is enjoined and restrained from:

(A) Voting or attempting to vote any shares of the capital stock of Valley National Bank; or

(B) Hereafter acquiring additional shares of the capital stock of Valley National Bank, except by inheritance (or reversion under existing trusts for members of the family of Lloyd A. Bimson) or by stock dividend or other distribution based upon such other stock then owned by him; provided, however, that Lloyd A. Bimson, his wife and children shall dispose of any such stock they may inherit within three (3) months from the date of inheritance; or

(C) After five (5) years from the date of the entry of this Final Judgment, from owning or controlling any of the capital stock of Valley National Bank provided, however, that this subsection X(c) shall not apply to Lloyd A. Bimson with respect to the shares of stock owned by him on the date of entry of this Final Judgment, or permitted to be acquired by him under subparagraph (B) above other than by inheritance.

XI

[Inapplicability of Decree—Divestiture]

If Bancorporation shall divest itself of all of its stock ownership in Arizona Bank, then, so long as it does not acquire any such stock and does not have any officer, director or employee in common with Arizona Bank, the injunctions in this Final Judgment prohibiting officers, directors or employees of Valley National Bank and Bancorporation from serving as such with the other, or from owning, controlling or voting capital stock of the other, and prohibiting the Trustees described in paragraph VI from owning or voting stock of, and serving as a director or officer of Bancorporation, shall no longer have any force or effect.

XII

[Future Relief]

Ten years after the date of entry of this Final Judgment, Plaintiff, after sixty (60) days written notice to the defendants, shall have the right thereafter to petition the Court for further relief including divestiture by Bancorporation of all its stock in Arizona Bank, and such relief as may be appropriate shall be granted upon proof of any of the following:

(A) If the percentage of any class of Bancorporation's or Arizona Bank's outstanding capital stock which is then owned or controlled by persons who are also shareholders of Valley National Bank is in excess of 25 per cent; or

(B) If any person owns or controls three per cent or more of any class of the outstanding capital stock of Valley National Bank and three per cent or more of any class of the outstanding capital stock of Bancorporation or Arizona Bank provided, however, that stock held in the name of a nominee shall for the purposes of this subparagraph be considered to be owned or controlled by the person for whose account such stock is held and the defendants shall have the burden of proof thereof if they raise the issue under this proviso; or

(C) If five or more persons each own or control one per cent or more of any class of the outstanding capital stock of Valley National Bank and one per cent or more of any class of the outstanding capital stock of Bancorporation or Arizona Bank provided, however, that stock held in the name of a nominee shall for the purposes of this

subparagraph be considered to be owned or controlled by the person for whose account such stock is held and the defendants shall have the burden of proof thereof if they raise the issue under this proviso.

The entry of this Final Judgment shall not be deemed a bar (a) to any relief that the Court may grant pursuant to Plaintiffs petition, or (b) to the receipt of any evidence (including any evidence pertaining to the period of time prior to entry of this Final Judgment and prior to the filing of the Complaint herein) that may be offered by any party at the hearing on such petition. The defendants, or any of them, shall have the unrestricted right to contest Plaintiff's petition upon any ground except on the ground that such relief is barred by this Judgment.

XIII

[*Inspection and Compliance*]

Without limitation to Section XV herein, Valley National Bank, Arizona Bank and Bancorporation shall submit to the Department of Justice in each of the next ten years after the date of entry of this Final Judgment, as of a date near their respective regular annual meetings of shareholders, a statement of the number and names of shareholders of Valley National Bank which at that time also own shares in Bancorporation and Arizona Bank and the total number of shares of each such defendant so held. Valley National Bank, Arizona Bank and Bancorporation shall also submit a list as of the same dates, showing the number of shares in Valley National Bank, Bancorporation and Arizona Bank then held by (a) each person who then owns one per cent or more of any class of the capital stock of Valley National Bank and one percent or more of any class of the capital stock of Bancorporation or Arizona Bank, and (b) each person to whom Sections VI, IX and X of this Final Judgment are applicable.

XIV

[*Election of Interests*]

(A) Each and every person who is an officer and/or director of both (1) Bancorporation and/or Arizona Bank and (2) Valley National Bank, shall within ninety (90) days from the date of entry hereof, make and file with the Clerk of the Court an irrevocable selection of one of the two banking groups, if any, in which he chooses to hold office and shall at the same time resign any and all offices he may hold in the other banking group. Upon such election, the provisions of Sections IX and X above shall not apply to any stock such person may own in the banking group so selected but they shall apply with full force and effect to any offices and stock such person may own or hold in the banking group not so selected by him.

(B) For so long as he may be an officer, director or employee of or be the owner of any shares capital in (1) Arizona Bank, (2) Bancorporation or (3) any bank in Arizona except Valley National Bank, Lloyd A. Bimson, his wife, children and persons acting on his or their behalf are enjoined and restrained from voting any shares of stock which they may own in Valley National Bank; provided that on any matter for the adoption of which the vote of more than a majority of the shares of Valley National Bank is legally required, the management of Valley National Bank shall be authorized to vote such shares, and provided, further, that such ownership of stock by such persons in Valley National Bank, Bancorporation and/or Arizona Bank shall be counted by this Court in any proceeding brought by the Plaintiff under Section XII of the Final Judgment.

(C) Nothing in Sections VII and VIII shall prevent either Valley National Bank or Arizona Bank from acquiring assets from any bank in the ordinary course of business, or from acquiring capital stock of any bank in the regular course of securing or collecting a debt previously contracted in good faith or under circumstances where the stock is* transferred to the bank acting in a fiduciary capacity (including agency accounts), but in no event shall either bank purchase capital stock in the other bank in any capacity, fiduciary or otherwise, except on instructions of another person when for a fiduciary account the bank is required to follow such instructions, but the bank shall not vote the stock so purchased.

XV

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives 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 of the defendants, made to its principal office, be permitted (1) reasonable access during office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendants relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendants, and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding any such matters; and, upon such request, defendants 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 XV shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Department or of the Executive Branch of 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.

XVI

[Jurisdiction Retained]

Jurisdiction is retained 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 of any of the provisions thereof, or for the enforcement of compliance therewith and the punishment of violations thereof.



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Valley National Bank of Arizona, The Arizona Bank, and Arizona Bancorporation., U.S. District Court, D. Arizona, 1983-1 Trade Cases ¶65,438, (May 15, 1970)

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United States v. The Valley National Bank of Arizona, The Arizona Bank, and Arizona Bancorporation.

1983-1 Trade Cases ¶65,438. U.S. District Court, D. Arizona, Civil Action No. 4550-PHX, Dated May 15, 1970
Case No. 1729, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Bank Shareholder Reporting Requirements: Modification of Consent Decree.— A 1966 consent decree was modified in 1970 to reduce a required yearly shareholder report over a six-year period to only the first and sixth years. Reporting requirements in relation to one bank were deleted.

Modifying (by consent) 1966 Trade Cases ¶71,901.

For plaintiff: William D. Kilgore, Jr. and Charles F. B. McAleer, Attys. Dept. of Justice. **For defendants:** Victor H. Kramer, for Valley National Bank of Arizona; Riyey, Carlock & Ralston, for the Arizona Bank.

Order

CRAIG, D. J.: With respect to Valley National Bank and Arizona Bank, Section XIII of the Final Judgment entered in this case on November 23, 1966, is hereby modified to read as follows:

Without limitation to Section XV herein, Valley National Bank and Arizona Bank shall submit to the Department of Justice in each of the years 1971 and 1976, as of a date near their respective regular annual meetings of shareholders, a statement of the number and names of shareholders of Valley National Bank which at that time also own shares in Arizona Bank and the total number of shares of each such defendant so held. Valley National Bank and Arizona Bank shall also submit a list as of the same dates, showing the number of shares in Valley National Bank and Arizona Bank then held by (a) each person who then owns one percent or more of any class of the capital stock of Valley National Bank and one percent or more of any class of the capital stock of Arizona Bank, and (b) each person to whom Sections VI, IX and X of this Final Judgment are applicable.



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Citizen Publishing Co., Star Publishing Co., Tucson Newspapers, Inc., Arden Publishing Co., and William A. Small, Jr., U.S. District Court, D. Arizona, 1970 Trade Cases ¶73,094, (Jan. 26, 1970)

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United States v. Citizen Publishing Co., Star Publishing Co., Tucson Newspapers, Inc., Arden Publishing Co., and William A. Small, Jr.

1970 Trade Cases ¶73,094. U.S. District Court, D. Arizona No. Civil-1969 Tuc. Judgment and decree filed January 31, 1968. Amended order filed January 26, 1970. Case No. 1843 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts Acquisition—Joint Operating Agreement—Newspapers—Divestiture—Revised Agreement—Litigated Judgment.—A Tucson, Arizona newspaper and an individual, found to have illegally acquired a nearby competitor and to have engaged in illegal joint operations with it were required by a litigated decree to divest themselves of the acquired paper within 21 months, either by the acquiring firm selling the assets of the acquired firm, or the individual disposing of all of his stock of the acquired firm, and to submit a revised operating plan. The divested newspaper is to continue publishing under ownership wholly free from any interests or control of the defendants, and the joint operating agreement was modified to eliminate price fixing, profit pooling and market allocations. Joint operations would be limited.

For the plaintiff: Charles D. Mahaffie, Jr., Gerald A. Connell, Antitrust Div., Dept. of Justice, Washington, D. C.

For the defendants: Pillsbury, Madison and Sutro, by Richard J. MacLaury, Charles 13. Renfrew and Harvey D. Hinman, San Francisco, Cal., Robertson and Fickett, by John L. Donahue, Jr., Tucson, Ariz., and Ryley, Carlock and Ralston, by George Read Carlock, Phoenix, Ariz.

Judgment and Decree

WALSH, D. J.: The Court having this day made and entered its Findings of Fact and Conclusions of Law herein, it is now Ordered, Adjudged, and Decreed:

1. The "Operating Agreement" entered into between Citizen Publishing Company and Star Publishing Company, which became effective on July 1, 1940, provides for price fixing, profit pooling, and market allocations by the parties to the Agreement; and such provisions of the "Operating Agreement" are illegal per se under Section 1 of the Sherman Act, 15 U. S. C, §1.
2. The acquisition of all of the stock of Star Publishing Company by defendant Arden Publishing Company and the subsequent acquisition and ownership by defendant Arden Publishing Company of all of the assets of Star Publishing Company were and are in violation of Section 7 of the Clayton Act, 15 U. S. C., § 18.
3. Defendants Arden Publishing Company and William A. Small, Jr., are directed to divest themselves of The Arizona Daily Star, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company.
4. Defendants, other than Star Publishing Company, shall within ninety (90) days from date of this judgment and decree lodge with the Court and serve upon plaintiff a plan which will provide for such divestiture and for the continuation of The Arizona Daily Star under ownership wholly free from any interests of or control by said defendants, or any of them. Such plan shall provide, as well, for the modification of the "Operating Agreement" so as to eliminate price fixing, market allocations, and profit pooling.
5. Defendants, and each of them, and each of their directors, officers, agents, and employees, and all persons acting for them, are hereby restrained and enjoined, effective upon divestiture, from in any manner or by any

means fixing prices, or pooling profits, or allocating markets in the business of publishing daily newspapers of general circulation in Pima County, Arizona.

6. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to apply to the Court at any time for such other orders and directions as may be necessary or appropriate in relation to the construction or carrying out of this judgment and decree, for the amendment or modification of any provisions hereof, or the enforcement of compliance therewith.

Amended Order for Modification of Operating Agreement and Decree of Divestiture

Preliminary Statement.

WALSH, D. J.: This cause came on for trial before this Court on April 5, 1966. The Court filed its findings of fact and conclusions of law, and entered its judgment and decree herein, on January 31, 1968.

The Court's judgment and decree ordered defendants Arden Publishing Company and William A. Small, Jr., to divest themselves of The Arizona Daily Star, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company.

The judgment and decree further ordered defendants, other than Star Publishing Company, to lodge with the Court and serve upon plaintiff a plan which would provide for such divestiture and for the continuation of The Arizona Daily Star under ownership wholly free from any interests of or control by said defendants, or any of them. The Court further ordered that such plan should provide, as well, for the modification of the "Operating Agreement" so as to eliminate those provisions found to constitute price fixing, market allocations, and profit pooling.

Enforcement of the aforesaid judgment and decree was stayed by this Court, pending an appeal by defendants to the Supreme Court. On March 10, 1969, the Supreme Court affirmed said judgment and decree, and remanded the case for further proceedings.

Thereafter, pursuant to the judgment and decree of this Court, defendants submitted successive plans for modification of the operating agreement. They also submitted a tentative plan for divestiture, and a proposed form of "Order for Modification of Operating Agreement and Decree of Divestiture." Plaintiff opposed certain aspects of defendants' plans for modification of the operating agreement; it also filed a plan for divestiture and a proposed form of order and decree.

On October 28-29, 1969, this Court held a hearing, at which it heard testimony and received documentary evidence on the proposals for modification of the operating agreement. The Court received in evidence a Third Revised Operating Plan submitted by defendants. This plan eliminated all traces of price fixing, profit pooling, and market allocation. During the hearing, certain changes were made in the plan, dealing with matters apart from elimination of the per se restraints.

After the hearing, the parties submitted briefs on the proposed modification of the operating agreement. Defendants also filed, on December 10, 1969, updated copies of their Third Revised Operating Plan and proposed order and decree, which incorporated the above-noted changes made at the hearing. Thereafter, this Court heard argument by plaintiff and defendants on modification of the operating agreement and on divestiture.

Now, Therefore, after consideration of such argument and of the aforesaid testimony and documentary evidence, and of all prior proceedings—all being considered in light of the decision of the Supreme Court herein, it is hereby further

Ordered, Adjudged, and Decreed:

I. Definitions.

As used in this order and decree:

A. "Arden" means defendant Arden Publishing Company, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, and the publisher of a newspaper of general circulation known as "The Arizona Daily Star" (hereinafter "Star").

B. "Citizen Publishing" means defendant Citizen Publishing Company, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, and the publisher of a newspaper of general circulation known as "The Tucson Daily Citizen" (hereinafter "Citizen").

C. The "joint Sunday newspaper" means a Sunday newspaper of general circulation published by Arden and Citizen Publishing pursuant to an agreement approved by this order.

D. "TNI" means defendant Tucson News papers Incorporated, a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Tucson, Arizona, which under the provisions of this order will be engaged in the business of (a) conducting all operations in connection with the production and distribution of Star, Citizen and the joint Sunday newspaper, and (b) acting as agent for Arden and Citizen Publishing for the sale of combination advertising, and as agent for the joint Sunday newspaper for the sale of all advertising.

E. "Combination Advertising" means identical advertising which (a) appears in Star and Citizen, or in either of such newspapers and the joint Sunday newspaper, and (b) is reproduced in each newspaper by use of the same type, plate, or other device.

II. Persons Bound.

The provisions of the Judgment and Decree entered January 31, 1968, and the provisions of this Order applicable to the defendants shall also apply to each of their officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who receive actual notice of the Judgment and Decree or of this Order by personal service or otherwise.

III. Injunctive Provisions.

A. Effective upon divestiture of the Arizona Daily Star as hereinafter ordered, the defendants are enjoined and restrained from:

(1) Offering to sell or selling advertising space in the Star and the Citizen, or in either of them and a joint Sunday newspaper, at a combination rate, unless said combination rate is optional and is calculated by adding the individual rates of the newspapers and subtracting from the total the actual cost savings;

(2) Charging or allocating the expenses of common or shared facilities, equipment or personnel on any basis or formula which does not result in Star, Citizen and the joint Sunday newspaper each paying only those expenses that it is responsible for; provided, however, that

(a) the discount resulting from the sale of a combination advertisement may be charged in equal shares to the newspapers in which it appears; and

(b) property taxes and interest on real property assessments, fire and casualty and all other general insurance, and utilities other than electrical power may be charged equally to Star and Citizen;

(3) Distributing operating revenues on any basis which does not result in Star, Citizen and the joint Sunday newspaper each receiving only those revenues which are derived from its individual operations.

B. Neither Arden nor Citizen Publishing shall prohibit or attempt to prohibit the joint Sunday newspaper from publishing combination advertising with their respective weekday editions.

IV. Approval of Agreements and By-Laws.

The Third Revised Operating Plan for Star, Citizen and Tucson Newspapers, Incorporated, attached hereto and made a part hereof, together with all acts of the defendants necessary or appropriate for the performance of said Operating Plan, are hereby approved. Said Operating Plan shall be put into effect not later than ninety (90) days from the date of this order.

V. Divestiture.

A. In accordance with the Court's Judgment and Decree of January 31, 1968, defendants Arden Publishing Company and William A. Small, Jr. are directed to divest themselves of the Star within Twenty-One (21) months from the date of this Order, either by defendant Arden Publishing Company selling the assets acquired by it from Star Publishing Company or by defendant William A. Small, Jr., selling and disposing of all of the stock of Arden Publishing Company. Such divestiture shall be to a person who will continue publication of the Star, and shall result in total separation of the ownership of Star and Citizen.

B. Defendants shall make generally known the availability of the Star for sale and shall furnish to bona fide prospective purchasers all appropriate information regarding the Star, the joint Sunday newspaper and T. N. I. and shall permit them to make such inspection of the facilities and operations of the Star, of the joint Sunday newspaper and of T. N. I., as is reasonably necessary for a prospective purchaser to properly advise himself.

C. At least sixty (60) days in advance of the closing date in any agreement for the sale of the Star, defendants shall supply plaintiff with the name and address of the prospective purchaser, and with a copy of such agreement. At the same time, defendants shall make known to plaintiff the names and addresses of all other persons, corporations, or other legal entities that have made an offer of purchase, together with a general description of the terms and conditions thereof. Plaintiff must make known to the defendants and to the Court any objection it may have to such sale within thirty (30) days following receipt of the aforesaid information. Within said period, defendants will furnish any additional pertinent information requested by plaintiff. If plaintiff does not file with the Court a notice of objections within said 30-day period, such sale may be accomplished without further proceedings herein.

D. Any contract of sale pursuant to this Order shall require the purchaser to file with the Court its representation that it intends to continue publication of the Star and at the same time to submit to the jurisdiction of the Court and to be bound by the applicable terms of this Order and of the Judgment and Decree of this Court entered on January 31, 1968.

VI. Right of Visitation.

For the purpose of determining or securing compliance with this Order and for no other purpose:

A. Duly authorized representatives 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 to his principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of any defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of any defendant which relate to any matters contained in this Order; and

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

B. Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such reports in writing with respect to the matters contained in this Order as may from time to time be reasonably requested; provided, however, that no information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings in which the Department of Justice is a party for the purpose of securing compliance with this Order, or as otherwise required by law.

VII. Continuing Jurisdiction.

Jurisdiction of this cause is retained by this Court for the purpose of enabling any party to this Order to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the

modification, construction, or carrying out of the provisions of this Order and for the enforcement of compliance therewith and the punishment of violations thereof.



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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA
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11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

Civil No. 74-102-PHX-CAM

14 HOLSUM BAKERY, INC.;)

15 RAINBO BAKING COMPANY OF PHOENIX;)

RAINBO BAKING COMPANY OF TUCSON;)

16 BAIRD'S BREAD COMPANY; and)

C.J. PATTERSON COMPANY,)

17 Defendants.)
18
19

FINAL JUDGMENT

Filed: April 17, 1978

Entered: July 7, 1978

20 Plaintiff, United States of America, having filed its
21 complaint herein on February 14, 1974, and plaintiff and
22 defendants, by their respective attorneys, having consented
23 to the entry of this Final Judgment without trial or
24 adjudication of any issue of fact or law herein, and without
25 this Final Judgment constituting evidence of an admission
26 by any party consenting hereto with respect to any issue;

27 NOW, THEREFORE, before any testimony or evidence has
28 been taken herein, and without trial or adjudication of any
29 issue of fact or law herein, and upon the consent of the
30 parties hereto,

31 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:
32

I.

This Court has jurisdiction of the subject matter hereof and of the parties hereto. Count I of the complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

- (a) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (b) "Bakery products" means any type of bread or other baked product exclusive of fruit cakes, cookies and other confections, produced, distributed or sold by defendants;
- (c) "Federal Institution" means any agency, instrumentality or institution of the United States of America which purchases bakery products;
- (d) "State Institution" means any agency, instrumentality or institution of the State of Arizona or any political subdivision thereof, including, but not limited to, any county, city, town, municipality, or school district.

III.

The provisions of this Final Judgment are applicable to any defendant herein and shall also apply to each of its officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them, who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply only to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the

1 State of Arizona.

2 IV.

3 Each defendant is enjoined and restrained from directly
4 or indirectly entering into, adhering to, maintaining,
5 enforcing or claiming any right under any contract, agreement
6 combination, understanding, plan or program with any person
7 to:

- 8 (a) Fix, determine, establish, maintain or
9 stabilize the prices, discounts or other
10 terms or conditions for the sale of bakery
11 products to any third person;
- 12 (b) Submit noncompetitive collusive or rigged
13 bids for bakery products to any federal
14 institution;
- 15 (c) Submit noncompetitive collusive or rigged
16 bids for bakery products to any State
17 institution, or to any other third person;
- 18 (d) Allocate, rotate or divide markets,
19 customers or territories;
- 20 (e) Communicate to or exchange with any other
21 person producing, distributing or selling
22 any bakery product any actual or proposed
23 price, price change, discount, or other
24 term or condition or sale at or upon which
25 any bakery product is to be, or has been,
26 sold to any third person, prior to the
27 communication of such information to
28 customers generally.

29 Nothing in this Section IV shall be applicable to any
30 prices, discounts or other terms or conditions of sale, or
31 communications relating thereto, offered by a defendant to
32 any person or offered by any person to a defendant in

1 negotiating for, entering into or carrying out a sale or
2 proposed sale or purchase of bakery products between that
3 defendant and such other person, or where such other person
4 is acting as a purchasing agent or group buying
5 representative on behalf of any third person.

6 V.

7 Each defendant is enjoined and restrained from directly
8 or indirectly:

9 (a) Communicating to or exchanging with any other
10 person producing, distributing or selling
11 bakery products any information relating to
12 price, discount or any other term or
13 condition of sale of bakery products which
14 has been charged or allowed or is to be
15 charged or allowed by any person to any
16 customer or prospective customer prior to
17 the communication of such information to
18 customers generally.

19 (b) Communicating to or exchanging with any
20 other person producing, selling or
21 distributing bakery products any information
22 relating to price, discount or any other
23 term or condition of sale of bakery products
24 which has been charged or allowed or is to
25 be charged to allowed by any person to any
26 federal or state institution prior to the
27 communication of such information to the
28 public generally.

29 (c) Nothing in this Section V shall be applicable
30 to any prices, discounts or other terms or
31 conditions of sale, or communications
32 relating thereto, offered by a defendant to

1 any person or offered by any person to a defendant in
2 negotiating for, entering into, or carrying out a sale or
3 proposed sale or purchase of bakery products between that
4 defendant and such other person, or where such other person
5 is acting as a purchasing agent or group buying representative
6 on behalf of any third person.

7 VI.

8 Each defendant shall for a period of five (5) years
9 from the date of entry of this Final Judgment, furnish
10 simultaneously with each bid or quotation required to be
11 sealed which is submitted by it for the sale of bakery
12 products to any federal institution in the State of Arizona,
13 a written certification by an officer of such defendant, that
14 such bid was not in any way the result, directly or
15 indirectly, of any agreement, understanding, or communication
16 with any other producer, seller or distributor of bakery
17 products. Nothing in this Section VI shall be interpreted
18 to prohibit any defendant from negotiating for, entering
19 into, or carrying out purchase or sale transactions with
20 any other person, with respect to said bid, whereby the
21 defendant would purchase or supply bakery products; provided,
22 however, that the amount of such defendant's bid for such
23 purchased products shall not in any way be the result of
24 any agreement, understanding or communication between such
25 defendant and such other person.

26 VII.

27 For a period of five (5) years from the date of entry
28 of this Final Judgment, each defendant shall preserve all
29 written price computations and other written calculations
30 actually performed by such defendant in the preparation and
31 submission of any bid required to be sealed which is
32 submitted to any federal or state institution, and shall

1 retain such written computations and calculations for a
2 period of at least five (5) years from the date each bid
3 which is based on such computations or calculations is
4 submitted to any federal or state institution.

5 VIII.

6 The injunctions contained in this Final Judgment shall
7 not apply to relations between a defendant and a parent or
8 subsidiary of, or corporations under common control with,
9 such defendant or between the officers, directors, agents
10 and employees thereof.

11 IX.

12 Each defendant shall:

- 13 (a) Serve within sixty (60) days after the entry of
14 this Final Judgment a copy of this Final
15 Judgment upon each of its officers and
16 directors, and upon each of its employees
17 and agents who have any responsibility for
18 establishing prices, discounts or other terms
19 or conditions for the sale of bakery products;
20 (b) Serve a copy of this Final Judgment upon each
21 successor to such officers, directors, employees
22 or agents described in Paragraph (a) of this
23 Section IX within sixty (60) days after such
24 successor becomes employed or associated with
25 each such defendant;
26 (c) Within ninety (90) days after entering of
27 this Final Judgment, to file with this Court
28 and to serve upon the plaintiff affidavits
29 concerning the fact and manner of compliance
30 with Paragraph (a) of this Section IX.

31 X.

32 Upon motion of the plaintiff or upon this Court's own

1 motion, responsible officials of each defendant may from time
2 to time be ordered to appear before this Court to give sworn
3 testimony relating to each such defendant's manner of
4 compliance with the provisions of this Final Judgment.

5 XI.

6 (A) For the purpose of determining or securing compliance
7 with this Final Judgment, defendants shall permit
8 duly authorized representatives of the Department
9 of Justice, on written request of the Attorney
10 General or the Assistant Attorney General in charge
11 of the Antitrust Division, and on reasonable
12 notice, subject to any legally recognized privilege:

13 (1) Access, during the business hours of defendants,
14 who may have counsel present, to those books,
15 ledgers, accounts, correspondence, memoranda
16 and other records and documents in the
17 possession or under the control of defendants
18 which relate to any matters contained in
19 this Final Judgment;

20 (2) Subject to the reasonable convenience of defendants
21 and without restraint or interference from them, to
22 interview officers, directors, agents, partners
23 or employees of defendants, any of whom may have
24 counsel present, regarding any matters contained
25 in this Final Judgment.

26 (B) For the purpose of determining or securing compliance
27 with this Final Judgment, upon written request of the
28 Attorney General or the Assistant Attorney General
29 in charge of the Antitrust Division, defendants shall
30 submit such reports in writing, with respect to the
31 matters contained in this Final Judgment, as may
32 from time to time be requested.

1 (C) No information obtained by the means provided in
2 this Section XI of the Final Judgment shall be
3 divulged by a representative of the Department of
4 Justice to any person other than a duly authorized
5 representative of the Executive Branch of the
6 United States, except in the course of legal
7 proceedings to which the United States is a party,
8 or for the purpose of securing compliance with
9 this Final Judgment, or as otherwise required by
10 law. If at the time information or documents are
11 furnished by a defendant to plaintiff, such
12 defendant identifies in writing the material in any
13 such information or documents of a type described
14 in Rule 26(c)(7) of the Federal Rules of Civil
15 Procedures, and said defendant marks each
16 pertinent page of such material, "Subject to claim
17 of protection under Rule 26(c)(7) of the Federal
18 Rules of Civil Procedure," then 10 days' notice
19 shall be given by plaintiff to such defendant
20 prior to divulging such material in any legal
21 proceeding (other than a Grand Jury proceeding)
22 to which that defendant is not a party.

23 XII.

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

31 XIII.

32 Entry of this Final Judgment is in the public interest.

Dated: July 7, 1978

DOJ-1978-07

/s/ C. A. Muecke
UNITED STATES DISTRICT JUDGE