

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
11/23/94
Luther B. Thomas, Clerk
By: *Patricia L. Daniels*
Deputy Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
OUTDOOR SYSTEMS, INC.,)
)
Defendant.)

Civil No.

1 94-CV-2393-CC

Entered: November 23, 1994

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on September 8, 1994. Plaintiff and defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against, or an admission by, any party with respect to any issue of law or fact. Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. Prompt and certain divestiture is the essence of this agreement, and defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the

divestiture provisions contained below. Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "Capitol" shall mean Capitol Outdoor Advertising, Inc., Capitol Outdoor Leasing Co., Inc., each of their subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them. Such term shall also mean the entity owned by defendant that acquires the assets of Capitol Outdoor Advertising, Inc. and Capitol Outdoor Leasing Co., Inc.;

B. "OSI-Atlanta" shall mean the entity conducting the outdoor advertising business of Outdoor Systems, Inc. as of the date of the entry of this Final Judgment, or any successor entity, in the greater Atlanta, Georgia metropolitan area, each

of their subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them;

C. "Holding Company" or "defendant" shall mean defendant Outdoor Systems, Inc., each of its subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them;

D. "Separated Assets" shall mean (1) all of the outdoor advertising billboards (including bulletins and poster panels), structures and leases of OSI-Atlanta, (2) all contracts, including but not limited to advertising contracts, agreements, invoices, ledgers and other books and records relating to the business of OSI-Atlanta and (3) such equipment currently owned or operated by Capitol as the purchaser may select that would provide the purchaser with the functional equivalent of the equipment owned or operated by OSI-Atlanta;

E. "Separated Business" shall mean Capitol or OSI-Atlanta, as the case may be;

F. "Purchaser" shall mean an independent third party, not connected or affiliated in any way with Capitol, OSI-Atlanta or Holding Company, that acquires the Separated Assets; and

G. "Person" shall mean any natural person, corporation, association, firm, partnership or other business or legal entity.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to defendant, to its successors and assigns, to its subsidiaries, affiliates, directors, officers, managers, agents and employees 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.

B. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

DIVESTITURE OF OSI-ATLANTA

A. Defendant is hereby ordered and directed to divest all of its direct and indirect ownership and control of the Separated Assets to a purchaser within six (6) months of the entry of this Final Judgment. In addition, defendant shall offer to any purchaser of the Separated Assets the opportunity, which may be exercised in the purchaser's sole and absolute discretion, (1) to make offers of employment to all or any of the employees currently employed by Capitol and (2) to assume the lease of the facility now operated by Capitol in the conduct of its outdoor advertising business. The obligation to divest shall be satisfied if, within six (6) months of the entry of this Final Judgment, defendant has entered into a

binding contract with a qualified purchaser for the sale of the Separated Assets according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable date for the closing and if the sale is completed pursuant to the contract.

B. Defendant agrees to take all reasonable steps to accomplish the divestiture as quickly as possible. In carrying out the divestiture of the Separated Assets, defendant may divest the Separated Assets alone, or may divest along with the Separated Assets any other assets of defendant.

C. In accomplishing the divestiture ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability of the Separated Assets for sale and the opportunities described in Paragraph IV.A. above. Defendant shall notify any person making an inquiry regarding the possible purchase of the Separated Assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment, if requested. Defendant shall also offer to furnish to all bona fide prospective purchasers of the Separated Assets, subject to customary confidentiality assurances, all pertinent information regarding OSI-Atlanta, except information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available to plaintiff, upon plaintiff's request, such information as is made available to such potential purchasers. Defendant shall permit prospective

purchasers of the Separated Assets to have access to personnel at the business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant and customary to the sale of an outdoor advertising business.

D. The divestiture required by this Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Separated Assets can and will be operated by the purchaser as a viable, ongoing business. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the outdoor advertising business in the greater Atlanta, Georgia metropolitan area, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the outdoor advertising business.

V.

FINANCING

With prior consent of plaintiff, defendant may finance all or any part of any purchase made pursuant to this Final Judgment.

VI.

APPOINTMENT OF TRUSTEE FOR OSI-ATLANTA

A. If defendant has not accomplished the divestiture required by Section IV. of this Final Judgment within five (5) months of the entry of this Final Judgment, then defendant

shall notify plaintiff of that fact. Within ten (10) days after notification, plaintiff shall provide defendant with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendant shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant, it shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendant. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant has not accomplished the required divestiture at the expiration of the period specified in

paragraph IV.A. of this Final Judgment, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the Separated Assets.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Separated Assets and to offer any prospective purchasers the same opportunities as defendant is obligated to extend as provided in Paragraph IV.A. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of paragraph IX.A. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale of the Separated Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant of the proposed sale.

D. The trustee shall serve at the cost and expense of defendant, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior

to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the Separated Assets and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for the trustee's services, all remaining monies shall be paid to defendant and the trust shall then be terminated.

E. Defendant shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Separated Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of OSI-Atlanta.

F. After his or her appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Separated Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any ownership interest in the Separated Assets, and shall describe

in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after his or her appointment has become effective, if the trustee has not accomplished the divestiture required by this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VII.

NOTIFICATION

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect the proposed divestiture pursuant to

Section IV. or VI. of this Final Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (excluding any additional information requested of persons other than defendant or the trustee), whichever is later, plaintiff shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale

under the provisions in Section VI.C. Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendant under the proviso in Section VI.C., a divestiture proposed under Section VI. shall not be consummated.

VIII.

AFFIDAVITS

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section VI. of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV. of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any ownership interest in the Separated Assets and shall describe in detail each contact with any such person during that period. Defendant shall maintain full records of all efforts made to divest the Separated Assets.

IX.

PRESERVATION OF ASSETS

A. The Holding Company shall be created and take all steps necessary to assure that Capitol and OSI-Atlanta will be maintained as separate, independent and economically viable, ongoing businesses with their assets, management and operations separate, distinct and apart from one another. Without limitation of the foregoing, the Holding Company and the Separated Businesses shall comply with the following provisions during the pendency of this Final Judgment:

1. The Holding Company and the Separated Businesses shall refrain from causing or permitting any commingling of the assets of one Separated Business with those of the other Separated Business; provided, however, that financial statements may be consolidated at the Holding Company, subject to the accounting provisions set forth herein.

2. The Holding Company and the Separated Businesses shall assure that neither Separated Business, nor any of its directors, officers, employees or agents, influences or attempts to influence, directly or indirectly, any operational, marketing or financial decisions of the other Separated Business.

3. a. Within five (5) days of the entry of this Final Judgment, the Holding Company shall establish a Sales Committee ("Holding Company Sales Committee"), consisting of not less than two (2) members of the current Board of Directors of the

Holding Company, or their designees, who are not involved in the management of the Holding Company or of either of the Separated Businesses.

b. The Holding Company shall designate an "Operating President" for each of OSI-Atlanta and Capitol and said Operating Presidents shall serve in those capacities for the respective Separated Businesses until the divestiture required by this Final Judgment shall have been accomplished.

c. Without limiting his or her other responsibilities, each Operating President shall be responsible to supervise and assist in the respective Separated Business's outdoor advertising businesses and shall exercise such authority and responsibilities without consulting with any officer, director or employee of the other Separated Business regarding the terms and conditions of the operation of the other Separated Business.

d. Insofar as any contract or proposal of either Separated Business shall entail actions that would otherwise require approval by either the Chief Executive Officer or Board of Directors of the Holding Company, the Operating President of the Separated Business shall report the proposal to the Holding Company Sales Committee for its consideration and any requisite action. With respect to matters that are brought to it pursuant to the terms of this subsection, the Holding Company Sales Committee shall be authorized to bind the Holding Company.

e. Insofar as either Separated Business anticipates a need to exceed the amounts provided in its annual budget for capital expenditures, authority for such additional expenditures shall be sought and first obtained by the Operating President of the Separated Business from the Holding Company Sales Committee.

4. Except as expressly allowed by the terms of this Final Judgment, neither Separated Business, nor any of its directors, officers, employees or agents, shall provide to the other Separated Business, or any director, officer, employee or agent of the other Separated Business, any competitively sensitive information, including but not limited to actual or proposed prices, costs, bids, contract terms, financial data or profit data (other than aggregated monthly or quarterly results provided to the Board of Directors of the Holding Company). The Holding Company and the independent accounting firm referred to in this Final Judgment shall not provide any competitively sensitive information relating to one Separated Business to any director, officer or employee of the other Separated Business.

5. Except as authorized by the terms of this Final Judgment, Capitol and OSI-Atlanta shall not permit the use of the other's trademarks or otherwise identify the relationship of these Separated Businesses in their advertising, sales or promotional materials. In dealing with third parties, the Separated Business shall indicate and make clear that the

Separated Businesses are being operated as discrete and separate business entities during the pendency of this Final Judgment.

6. Each Separated Business shall compete with the other Separated Business in the same fashion as it competes with other outdoor advertising businesses in the greater Atlanta, Georgia metropolitan area.

7. Each Separated Business shall keep and maintain in accordance with generally accepted accounting principles, separate financial statements and records, including separate unaudited monthly and quarterly financial statements. Additionally, the Holding Company shall assure that an independent certified public accountant shall prepare certified annual financial statements for each Separated Business.

8. Paragraph IX.E. of this Final Judgment shall not preclude Arte Moreno from performing the following functions in his capacity as the Chief Operating Officer of the Holding Company:

a. Participating in decisions regarding the management of the cash and short-term assets of the Holding Company and the Separated Businesses, subject to all of the explicit limitations contained in this Final Judgment;

b. Participating in decisions regarding the deployment of existing equipment of either Separated Business in servicing contracts that have been awarded to that Separated Business;

c. Participating in decisions regarding the employment and redeployment of staff and administrative personnel within each Separated Business, as well as all personnel at the Holding Company level; and

d. Participating in decisions regarding employee compensation and employee benefits within the Holding Company.

B. The Holding Company and the Separated Businesses shall refrain from taking any action that would jeopardize the sale or operation of either Separated Business or would otherwise adversely affect the capability of either Separated Business to compete effectively in the sale of outdoor advertising, including but not limited to the following:

1. The Holding Company and the Separated Businesses shall refrain from taking any action, directly or indirectly, that would cause any material adverse change or alteration to be made in the operations of each Separated Business that would impair the ability of the Holding Company to sell or dispose of such Separated Business;

2. Except as incident to obtaining financing or refinancing of the transaction pursuant to which the Holding Company acquired Capitol, the Holding Company and each Separated Business shall refrain from disposing of, mortgaging, pledging or otherwise encumbering any of the assets of the Separated Businesses, other than in the ordinary course of business of the Holding Company or the respective Separated Businesses; and

3. Upon the entry of this Final Judgment, the Holding Company may move current employees of OSI-Atlanta to Capitol, but each employee moved from OSI-Atlanta to Capitol must be replaced at OSI-Atlanta by an employee of similar job description and experience. Replacement employees may come from Capitol.

C. Each Separated Business shall maintain, in accordance with usual industry standards, all outdoor advertising structures owned or operated by it.

D. The Separated Businesses shall have such outside financing for capital improvements and working capital available as is consistent with their budgets and past practices. Holding Company shall provide, consistent with the budgets established for the respective Separated Businesses prior to the date of this Final Judgment, funds for necessary capital improvements.

E. No director, officer or employee of one Separated Business shall also serve as a director, officer or employee of the other Separated Business. To the extent any director, officer or employee of the Holding Company is also a director, officer or employee of a Separated Business, that person may not receive any competitively sensitive information provided to the Board of Directors of the Holding Company by the other Separated Business.

X.

MODIFICATIONS

To the extent that either party later determines that modifications of this Final Judgment are necessary or appropriate, the parties shall first discuss any such proposed modifications among themselves, and shall present to the Court any such proposed modifications on which they agree in a form that they recommend the Court approve. In the event the parties cannot agree on any such modifications, either party may file a motion to the Court seeking a modification of this Final Judgment only after having provided the other party fifteen days' advance written notice of intention to seek such modification.

XI.

COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time, 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 defendant made to its principal office, be permitted:

1. access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or

under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XI. shall be divulged by a 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 legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedures, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil

under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XI. shall be divulged by a 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 legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedures, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil

XIV.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

SO ORDERED

Lawrence Cooper
United States District Judge
Northern District of Georgia

Dated: *November 23, 1994*