

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
ALLEN COUNTY INDIANA BAR)
ASSOCIATION, INC.,)
)
 Defendant.)

Civil Action No. F-79-0042
Filed: 8 JUL 1980

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 (b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)-(h)), the United States of America submits this Competitive Impact Statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

I

NATURE OF THE PROCEEDING

On March 2, 1979, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the defendant, Allen County Indiana Bar Association, Inc. ("defendant"), violated Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2). The complaint alleges a combination and conspiracy among the defendant and co-conspirators to restrain and prevent title insurance companies from competing with defendant's members in the business of certifying title to residential real estate in Fort Wayne, Indiana, in transactions not involving federally guaranteed loans. The complaint also alleges that the defendant and co-conspirators combined and conspired to monopolize the above-mentioned business.

Entry of the proposed final judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret,

modify or enforce the judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF THE PRACTICES
INVOLVED IN THE ALLEGED VIOLATION

The defendant is a voluntary professional association for attorneys practicing in Allen County, Indiana. Approximately 480 attorneys are currently members of the defendant.

The complaint alleges that the defendant and co-conspirators engaged in a combination and conspiracy, beginning in or about 1976, to monopolize and restrain trade in the business of certifying title to residential real estate in Fort Wayne, Indiana. The complaint further alleges that the defendant and co-conspirators engaged in a conspiracy to restrain and prevent title insurance companies from competing with the defendant's members in the business of certifying title to residential real estate in Fort Wayne. Such competition between the defendant's members and title insurance companies was alleged in the complaint to have been restrained as a result of activities which included the defendant's adoption and dissemination of a resolution and a statement of principles intended to limit and restrict the sale of title insurance without lawyers' examinations of abstracts of title. In addition, the defendant was alleged to have restrained competition by inducing lending institutions, real estate brokers, members of the public and attorneys not to participate in residential real estate transactions without the examination by an attorney of an abstract of title.

The complaint alleges that the conspiracy has had the following effects, among others:

- (a) Title insurance companies have been limited, restricted and injured in their efforts to sell title insurance in the Allen County area;

III

EXPLANATION OF THE
PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the Court may enter the proposed final judgment after compliance with the Antitrust Procedures and Penalties Act. The stipulation provides that neither party has made any admission about any issue of fact or law. Under the provisions of Section 2 (e) of the Antitrust Procedures and Penalties Act, the proposed final judgment may not be entered until the Court determines that entry is in the public interest.

A. Prohibited Conduct

The proposed final judgment prohibits the defendant from initiating, implementing, entering into, carrying out or furthering any conspiracy, agreement, understanding, plan or concert of action with any person which has the purpose or effect of discouraging the use or acceptance of title insurance in residential real estate transactions. The defendant is also prohibited from adopting, promulgating, publishing or seeking adherence to any resolution, statement of principle, rule, standard or any other collective statement which has the purpose or effect of discouraging the use or acceptance of title insurance in residential real estate transactions. The decree provides that conduct which is deemed to have the purpose or effect of discouraging the use or acceptance of title insurance includes, but is not limited to, conduct by the defendant which encourages, recommends or requires that title insurance be based upon an attorney's opinion. The decree defines an attorney's opinion to mean a statement by an attorney, determining the validity or marketability or extent of the title to residential real property, subject to stated terms and conditions.

The decree further provides that an attorney or firm, acting alone, is not prohibited from giving legal advice to a client, or from otherwise expressing an opinion, concerning the use or acceptance of title insurance in residential real estate transactions. The decree also provides that the defendant, for the purpose of assisting its members in discharging their professional responsibilities, is not prohibited from conducting educational seminars which present the individual views of the participants or from publishing and disseminating its Standards of Marketability of Abstracts of Title as they existed on December 1, 1979.

The proposed final judgment requires that the defendant furnish a copy of the judgment to each of its members, including new members as they join, and to publish a copy of the final judgment in the defendant's newsletter. The defendant is also required to furnish a copy of the judgment, together with a letter explaining its terms, to each real estate firm, title insurance company, abstract of title company, savings and loan association, bank and mortgage company with offices located in Allen County.

The proposed final judgment further requires that the defendant cause a copy of the judgment to be published in a daily newspaper of general circulation in Allen County. Also, the defendant is required to furnish to the Court and the plaintiff an affidavit as to the fact and manner of its compliance with the above-mentioned notification and publication requirements.

B. Scope of the Proposed Judgment

The proposed final judgment will remain in effect for a period of 10 years from entry. It applies to the defendant and to each of its officers, directors, committees, other

organizational units, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who receive actual notice of the judgment.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed final judgment is designed to insure that title insurance companies are not disadvantaged by unlawful restraints in competing with attorneys in the business of providing residential buyers with security from the risk of defects in a seller's title. The proposed final judgment should also insure that realtors, lenders and residential property buyers are permitted to make informed decisions as to whether title insurance, attorney's opinions based on title abstracts or both are best for their particular needs or purposes.

The proposed final judgment provides two methods for determining the defendant's compliance with its terms. First, the United States is given access, upon reasonable notice, to the records of the defendant to examine them for possible violations of the judgment, and to interview officers, employees and agents of the defendant. Second, the United States may require the defendant to submit written reports about any matters pertaining to the judgment.

The Department of Justice believes that the proposed final judgment contains adequate provisions to prevent further violations by the defendant of the type upon which this complaint is based. The Department believes that disposition of the lawsuit without further litigation is appropriate because the proposed judgment provides all the relief which the United States sought in its complaint, and the additional expense of litigation would not result in further public benefit.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed final judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16 (a)), the judgment has no prima facie effect in any subsequent lawsuits that may be brought against this defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed final judgment should be modified may submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, 10th and Pennsylvania Ave., N. W., Washington, D. C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. The judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this final judgment. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which reasonably could have been expected after trial.

VII

OTHER MATERIALS

No materials and documents of the type described in Section 2 (b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)) were considered in formulating the proposed final judgment.

Dated:

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