

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 80-111-S
)	
GARY L. McALILEY,)	Filed: June 1, 1982
DANIEL F. CARMICHAEL,)	
JOHN C. DOWLING,)	
THOMAS E. HAIGH,)	
S. MARK JORDAN,)	
D. BURCE McLEAN, and)	
PAUL YOUNG,)	
)	
Defendants.)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h) (the "Act"), 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 AND PURPOSE OF THE PROCEEDINGS

The Complaint in this action, filed on December 9, 1980, alleges that beginning at least as early as March, 1980 and continuing to filing of the Complaint, the defendants and their co-conspirators engaged in a combination and conspiracy to raise, fix, maintain and stabilize fees for legal and related services offered to purchasers in the Enterprise, Alabama area in violation of Section 1 of the Sherman Act, 15 U.S.C. §1, by formulating, publishing, and disseminating a schedule of fees to be charged for attorneys' services.

In its Complaint, the Government asked the Court to find that the defendants and their co-conspirators engaged in such a conspiracy and requested the Court to enjoin the defendants from continuing or renewing the conspiracy or engaging in any other actions having a similar purpose

or effect and to order the defendants to destroy any jointly formulated fee schedule in their possession.

Entry of the proposed final judgment would terminate the action, except that the Court would retain jurisdiction over the matter for further proceedings which might be required to interpret, enforce or modify the judgment, or to punish violations of it.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The defendants are attorneys admitted to the bar of Alabama and practice law in the Enterprise, Alabama area.

The Complaint alleges that the defendants and their co-conspirators engaged in a combination and conspiracy to raise, fix, maintain, and stabilize fees for legal and related services provided in the Enterprise, Alabama area by formulating a fee schedule to be used in determining how much to charge clients. These services include giving advice, drafting documents, representing clients in litigation, conducting negotiations on behalf of clients, acting as fiduciaries, and closing real estate transactions.

The Complaint further alleges that the combination has had the following effects, among others:

- (a) fees charged by the defendants
for their services have been
raised, fixed, maintained,

and stabilized at artificial and non-competitive levels;

(b) price competition among the defendants for their services has been restrained; and

(c) purchasers of legal and related services in the Enterprise, Alabama area have been deprived of the right to purchase such services at competitively determined prices.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the Court may enter the proposed final judgment after compliance with the Act. The proposed final judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Act, the proposed final judgment may not be entered until the Court finds that entry is in the public interest.

A. Prohibited Conduct

The proposed final judgment prohibits each defendant, in concert with others, from continuing the conspiracy or participating in any activities whose purpose or effect is to fix, establish, raise, or maintain legal fees. Each defendant is also prohibited from jointly formulating, renewing, publishing, or adopting any list or similar guide

used in calculating legal fees and from encouraging the use of any such guide. In addition, any form of communication between each defendant and any other attorney or law firm about legal fees is prohibited with certain exceptions, namely, (a) where the fees are court ordered, (b) where an attorney-client relationship exists between a defendant and the other attorney or law firm and the communication involves the fee to be charged as a result of that relationship, (c) where there is joint representation of a client and the communication involves the fee to be charged that client, and (d) where the legal fees are part of a settlement between a client of a defendant and a client of another attorney or law firm and the communication involves the paying of that legal fee.

Nothing in the final judgment prohibits in-house communications in a law firm or prevents attendance at state bar seminars.

B. Affirmative Obligations

Each defendant is required to destroy any list or similar guide for legal fees that was formulated by him and any other attorney not a member of his law firm and to destroy any document used in preparation of such a list or guide.

C. Scope of the Proposed Judgment

The proposed final judgment will remain in effect ten (10) years from date of entry and applies to the defendants and to each of their partners, members, 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 final judgment.

D. Effect of the Proposed Judgment on Competition

The relief in the proposed final judgment is designed to ensure that consumers have the opportunity to purchase legal and related services in the Enterprise, Alabama area at competitive rates.

Two methods for determining compliance with the terms of the final judgment are provided. First, upon reasonable notice, the Department of Justice is given access to any of the defendants' records relating to matters contained in the final judgment and is permitted to interview each of the defendant's partners, members, associates, employees, or agents. Second, upon written request, the Department of Justice can require each defendant to submit written reports about any matters relating to the final judgment.

The Department of Justice believes that this final judgment contains adequate provisions to prevent further violations of the type upon which the complaint is based.

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 attorney's 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 automatic effect in any subsequent lawsuits that may be brought against the defendants.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED JUDGMENT

As provided by the Act, any person who believes 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 Street and Pennsylvania Avenue, 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 that any of the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed final judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. The Department considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary because the judgment provides appropriate relief against the violations alleged in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

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

Respectfully submitted,

/s/ Joel F. Brenner
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Dated: