

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA; PLAINTIFF

v. Civil No.: 95-5048

NAT, L.C. AND D.R. PARTNERS [filed 4/17/95]
d/b/a DONREY MEDIA GROUP; DEFENDANTS

COMMUNITY PUBLISHERS, INC.; and
SHEARIN INC., d/b/a SHEARIN & COMPANY REALTORS; PLAINTIFFS

v. Civil No.: 95-5026

DONREY CORP. d/b/a DONREY MEDIA GROUP,
NAT, L.C.; THOMSON NEWSPAPERS, INC., and
THE NORTHWEST ARKANSAS TIMES; DEFENDANTS

AMENDED PRETRIAL CONFERENCE INFORMATION SHEET
OF THE UNITED STATES

Pursuant to Arkansas Local Rule D-4, Plaintiff, the United States of America, hereby provides this supplemental pretrial conference information sheet.

1. Counsel for the United States:

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2. Brief summary of claims and relief sought. Plaintiff requests that the acquisition of the assets of the *Northwest Arkansas Times* ("the *Times*") by NAT, L.C. be adjudged a violation of Section 7 of the Clayton Act as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. To remedy this violation of the antitrust laws Plaintiff requests the following relief: That the Court's preliminary injunction be continued until such time as the defendant, NAT, L.C., divests itself of the assets of the *Times*; that NAT, L.C. be required to divest itself of these assets within two months after the date of the Court's Order, and further that: pending sale the assets be put under the control of an independent trustee, who is given the power and incentive to maintain the value and competitive viability of the assets, and that this trustee be directed to sell the assets to a person that is competitively suitable and capable of managing the *Times* effectively and is not affiliated in any way with any Stephens family member or any trust, partnership, or corporation with which a Stephens family member is affiliated.

3. Prospects for settlement, if any. Plaintiffs and Defendants have discussed settling the case, and there is little

prospect that the case will be settled. The United States remains ready to reach a settlement that restores the competition lost by the acquisition.

4. The basis for jurisdiction or objections to jurisdiction.

This action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Antitrust Act, 15 U.S.C. § 4, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

5. List of pending motions. The United States has pending a Motion in Limine to Preclude Admission of Benevolent Monopolist Evidence. Other parties have filed motions now pending which are listed in their pretrial conference information sheets.

6. A concise summary of the facts. The *Morning News of Northwest Arkansas* ("the *Morning News*") and the *Northwest Arkansas Times* ("the *Times*") are the only two local daily newspapers with significant circulation serving the Fayetteville, Arkansas, metropolitan area. These two newspapers are each other's primary competitor in the sale

of local daily newspapers and in the sale of daily newspaper local advertising. The *News* and the *Times* have been brought under substantially common ownership. This combination will end the real competition between them. Thus, readers of local daily newspapers in the Fayetteville metropolitan area, and purchasers of advertising space in those newspapers, will lose the benefits in quality, service, and price that competition and choice provide. The United States brings this suit to prevent that substantial reduction in competition.

7. All proposed stipulations. Plaintiff, the United States, has proposed or will propose the following stipulations:
 - A. All documents submitted by the Defendants to Plaintiff in response to a Civil Investigative Demand are admitted to be business records and therefore not subject to an objection of inadmissibility as hearsay.
 - B. Authenticity of documents to be offered as evidence.
 - C. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce.
 - D. Defendants NAT, L.C. and D.R. Partners both transact business, maintain offices, and are found within the Western District of Arkansas.

E. Facts regarding ownership of the various corporate entities involved and the corporate structure.

8. Issues of fact expected to be contested.

A. Whether the relevant product markets, or lines of commerce, within the meaning of the Clayton Act, are the sale of local daily newspapers and the sale of daily newspaper local advertising.

B. Whether the relevant geographic market, or section of the country, within the meaning of the Clayton Act, is the Fayetteville metropolitan area (the cities of Fayetteville and Springdale, Arkansas).

C. Whether the *Times* and the *Morning News* are each other's primary competitor in the sale of local daily newspapers and the sale of daily newspaper local advertising.

D. Whether the acquisition of the *Times* by NAT, L.C. is likely to substantially reduce or eliminate actual and potential competition between the *Morning News* and the *Times* in any relevant product and geographic market.

E. Whether the acquisition of the *Times* by NAT, L.C. is likely to substantially lessen competition generally in any relevant product and geographic market.

F. Whether the acquisition of the *Times* by NAT, L.C. unreasonably restrains trade and lessens competition in any relevant product and geographic market.

G. Whether entry would be timely, likely, and sufficient to prevent any harm to competition.

9. Issues of law expected to be contested.

A. Whether the acquisition of the *Times* by NAT, L.C. is a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

10. A list and brief description of exhibits that will be offered in evidence. See attachment. Plaintiff United States, like Defendants, also reserves the right to use any documents listed (or subsequently produced) by any other party to this case.

11. A list and brief description of charts, etc. which will be used in opening statement or closing argument.

Plaintiff United States agrees with defendants that a short opening statement would be appropriate. In this event, the United States may use the following illustrative exhibits:

A. Maps showing the relative circulations of the *Morning News* and the *Times* in the Fayetteville metropolitan area by zip code.

B. Charts showing the coverage of local news stories by the *Morning News* and the *Times*.

- C. Map showing population densities in the Fayetteville metropolitan area.
- D. Charts showing the organization and ownership of, and relationships between, the relevant corporations and partnerships, including Stephens Group, Inc., Stephens Holding, Inc., NAT, L.C., and D.R. Partners.
- E. Charts showing market shares.
- F. Enlargements of documents which are business records of one of the defendants.
- G. Plaintiff may use additional demonstrative evidence drawn from the exhibits listed in Attachment A or other documents submitted to plaintiff by the defendants and a description of all such additional items will be made available to opposing counsel prior to trial.

12. Witnesses

Jim Lindsey
Lindsey Management Co., Inc.
Lindsey & Associates, Inc.
Lindsey Construction
3900 N. Front St.
Fayetteville, AR 72703
501-521-6611

Tom Lewis, Sr.
Lewis Chrysler Plymouth Dodge
Lewis Ford
Springdale Ford, Inc.
3373 N. College Ave.
Fayetteville, AR ,72703
501-636-8686

Lawrence Ash
Wallpaper Plus
20 E. Township St.
Fayetteville, AR 72703
501-521-8165

Hadley Toher
Essence of Lace
908-L Rolling Hills Dr.
Fayetteville, AR 72703
501-442-6247

Jay Watson
Watson's Supermarket
2523 E. Huntsville Rd.
Fayetteville, AR 72701
501-442-9941

Lee Ward
Realty Concepts
524 N. College Ave.
Fayetteville, AR 72703
501-521-8970

Joyce Stafford
Star Shopper
355 N. College Ave
Fayetteville, AR 72701
501-521-6873

Boyce Davis
211 S. Main Ave.
Lincoln, AR 72744-8765
501-824-3305

Bryon Kelly
Consumers Market
3340 N. College
Fayetteville, AR 72701
501-521-7910

Randy Favorite
Campbell & Bell
Westside Square
Fayetteville, AR 72701
501-521-4500

Tom Stallbaumer
Donrey Media Group
Morning News of Northwest Arkansas
2560 Lowell Road
Springdale, AR 72764
501-751-6200

George S. Smith
Northwest Arkansas Times
702 S. Thompson
Fayetteville, AR 72701
501-750-3999

Jackson T. Stephens
Stephens Group, Inc.
111 Center St.
Little Rock, AR 72201-4402
501-374-4361

Warren Stephens
Stephens Group, Inc.
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In addition, plaintiff reserves the right to call at trial any witness who has been identified on the witness list of any other party to this case.

13. Any request to amend pleadings. None.

14. The current status of discovery, a precise statement of the remaining discovery and an estimate of the time required to complete discovery.

On March 29, 1995. the day of the hearing on Defendant's Motion for Continuance, the United States provided Defendants with a copy of its witness list. The day after the hearing, March 30, 1995, the United States provided Defendants with a copy of its exhibit list. On March 31, 1995, the United States sent to Defendants five binders containing copies of the actual exhibits on that exhibit list.

Defendants have indicated their interest in deposing plaintiff's witnesses, and the United States has expressed its interest in deposing some of the Defendant's witnesses, to the extent that matters relevant to issues which the United States will contest were not previously covered in prior depositions. The United States will cooperate with Defendants in establishing a reasonable schedule for such depositions. With that in mind, on March 30, 1995, Plaintiff wrote Defendants and requested that Defendants provide the United States with a more narrowly drawn witness list than the list of 72 individuals provided in Defendants' pretrial information sheet. Counsel for NAT L.C. informed us on April 3, 1995, that all 72 listed witnesses are essential.

The United States offered to do depositions of both its and the defendants' economic expert at any time of NAT L.C. counsel's choice when both could be done. On Friday, April 7, Defendants deposed the United States' expert witness, Kenneth Baseman, and on Monday, April 10, the United States deposed Defendants' expert witness, Thomas R. Overstreet, Jr. Additional depositions of those experts are scheduled for April 20 and 21.

15. Suggestions for expediting disposition of the action. None.

16. An estimate of the length of trial.

The United States estimates that it will complete its case in four days, and that the entire trial should last seven to nine days.

/s/
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Fayetteville: 521-5083

Dated: April 17, 1995