

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Baldwin-United Corp. and MGIC Investment Corp., U.S. District Court, S.D. Ohio, 1982-2 Trade Cases ¶64,788, (May 21, 1982)

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United States v. Baldwin-United Corp. and MGIC Investment Corp.

1982-2 Trade Cases ¶64,788. U.S. District Court, S.D. Ohio, Western Division, Civil Action No. C-1-82-179, Entered May 21, 1982, (Competitive impact statement and other matters filed with settlement: 47 *Federal Register* 9591).

Case No. 2937, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Mortgage Guaranty Insurance: Divestiture: Hold-Separate Order: Ban on Future

Acquisitions: Consent Decree.— A holding company that acquired the largest private mortgage guaranty insurer was required by a consent decree to divest its pre-existing interest in the sixth largest such insurer. Until the divestiture was accomplished, the entity to be divested was required to be held completely separate. A 10-year ban on acquisitions in the industry without prior government approval was imposed.

For plaintiff: William F. Baxter, Asst. Atty. Gen., Mark Leddy, Stanley M. Gorinson, Robert E. Hauberg, John V. Thomas, Gordon G. Stoner, Julie L. Akins, Antitrust Div., Dept. of Justice, Washington, D. C. **For defendants:** Joshua F. Greenberg, of Kaye, Scholer, Fierman, Hays & Handler, for Baldwin-United Corp.; Ephraim Jacobs, of Foley, Lardner, Hollabaugh & Jacobs, for MGIC Investment Corp. (J. Leland Brewster, III and Neil Ganulin, of Frost & Jacobs, Alan F. Goott, of Kaye, Scholer, Fierman, Hays & Handler, of counsel, for Baldwin-United Corp.).

Final Judgment

Rubin, D. J.: Plaintiff, United States of America, having filed its Complaint herein on February 22, 1982, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment, and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under [Section 7 of the Clayton Act](#), as amended (15 U. S. C. §18).

II.

[*Definitions*]

As used in this Final Judgment:

A. "AMIC" shall mean AMIC Corporation and each of AMIC's directly and indirectly owned subsidiaries.

B. "Baldwin-United" shall mean defendant, Baldwin-United Corporation, and each of Baldwin-United's directly and indirectly owned subsidiaries including without limitation AMIC and MGIC Investment Corporation and Mortgage Guaranty Insurance Corporation. Provided, however, that for the purposes of paragraphs IV, V, VI and VII, the term Baldwin-United does not include AMIC.

C. "Private mortgage guaranty insurance" shall mean all forms of mortgage guaranty insurance on 1-4 family residential homes (including individual condominium policies) by licensed insurers that are not government or quasi-government organizations.

D. "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to Baldwin-United and its officers, directors, agents, employees, affiliates, 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.

IV.

[*Divestiture*]

A. Baldwin-United is ordered and directed to divest all direct or indirect ownership interest in and control over AMIC by February 8, 1983. If such divestiture is not effected by means of a sale to a third party or otherwise by February 8, 1983, Baldwin-United shall effect such divestiture on February 8, 1983 by means of a spin-off of all of its interest in AMIC to the shareholders of Baldwin-United. Such a spin-off shall be accomplished by a divestiture agent, who shall be proposed by Baldwin-United subject to the approval of plaintiff, which shall have all authority and power necessary to effect the spin-off on February 8, 1983. Said divestiture agent may be a commercial bank or trust company, or other appropriate entity; the divestiture agent shall have no present or past fiduciary relationship with Baldwin-United, and shall be paid by Baldwin-United. Baldwin-United shall engage the services of a divestiture agent sufficiently in advance of February 8, 1983 to ensure that the spin-off shall be accomplished on that date.

B. The period within which divestiture must be effected may be extended, for a maximum of six months, by the plaintiff, which shall not unreasonably withhold its consent, if Baldwin-United demonstrates that such an extension is necessary to enable Baldwin-United or any acquiring party to obtain necessary approvals from state insurance departments or other state or federal agencies having jurisdiction; provided, however, that all applications or notices required to be filed in connection with obtaining such approvals shall have been filed not later than January 9, 1983. If such an extension is granted by plaintiff, the date for the spin-off of AMIC by the divestiture agent specified above shall be the last day of the extended period. There shall be no other extensions granted.

C. The divestiture required by this Section IV shall be to a purchaser (or to the shareholders of Baldwin-United) and upon terms and conditions approved by the plaintiff or, failing such approval by the plaintiff, by the Court. Within 15 days after Baldwin-United presents to the plaintiff notice of any proposed divestiture, and full details of same, the plaintiff shall indicate its approval or disapproval in writing or shall request additional information concerning the proposed divestiture.

D. If plaintiff requests additional information concerning the proposed divestiture, it must indicate its approval or disapproval in writing within 15 days after receipt of the additional information. Failure to respond within the required time under either circumstance shall be deemed to be approval by the plaintiff. If plaintiff objects to the proposed divestiture, then such divestiture shall not be consummated unless approved by the Court or unless plaintiff notifies Baldwin-United in writing that its objection has been withdrawn.

V.

[**Compliance**]

Sixty (60) days after the date of entry of this Final Judgment and every sixty (60) days thereafter until Baldwin-United has complied with Section IV hereof, Baldwin-United and the divestiture agent shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Final Judgment. Each report from Baldwin-United shall include the name and address of each person, if any, who, since the last such report, made an offer, expressed a desire in writing, or entered into negotiations to acquire the property to be divested together with full details of same. Each report from the divestiture agent shall describe the state of preparation for the spin-off. All reports required by this subparagraph shall, to the extent permitted by law, be kept confidential within the meaning of 15 U. S. C. §18a(h).

VI.

[**Hold-Separate Order**]

Baldwin-United shall, until the divestiture required by this Final Judgment is accomplished:

A. Maintain persons on the AMIC Board of Directors who are all demonstrably independent of Baldwin-United's control; the directors will not be stockholders, officers, directors or employees of Baldwin-United, nor will they be relatives of any officers or directors of Baldwin-United, nor will they have any other substantial business relationship with Baldwin-United; such directors will be chosen on the basis of their business reputation and judgment; the Board of Directors will have the same authority and responsibilities as the board of directors of any independent corporation. Provided, however, that Baldwin-United may cause AMIC's directors to prevent AMIC from entering businesses other than the business of insurance.

B. Exercise no control over the conduct of AMIC's business. No competitive information shall be communicated by AMIC to Baldwin-United or MGIC. Each member of AMIC's Board of Directors and each officer of AMIC shall be given copies of this Final Judgment and shall submit to plaintiff, prior to entry of this Final Judgment, affidavits that they will comply with its terms.

In furtherance of these commitments, Baldwin-United will not (i) use any advertising agency or public relations counsel now being used in any material respect by AMIC; (ii) use the same principal bank now used by AMIC; (iii) share personnel with AMIC; or (iv) engage in financial or other transactions with AMIC except treaty reinsurance in the ordinary course of AMIC's business.

C. Baldwin-United and its independent auditors, where appropriate, will be entitled to receive from AMIC such information, reports and documents as are reasonably required to enable Baldwin-United to (i) prepare its regular financial reports and any filings made with the SEC or other regulatory agencies which require data or information concerning AMIC, (ii) to monitor and comply with the requirements of the Amended Stock Purchase Agreement and the officers' Stock Purchase Agreement among Baldwin-United and the five members of AMIC's management, and (iii) to prepare its federal income tax returns and other tax returns or reports which may require AMIC figures; in addition, Baldwin-United will be entitled and expects to receive monthly, quarterly and annually, as applicable, financial statements and notes thereto in reasonable detail and in form similar to financial statements and notes thereto sent to the shareholders of publicly-held companies on a quarterly and annual basis; such statements shall include the following:

- (i) AMIC's consolidated and consolidating balance sheets together with notes thereto.
- (ii) AMIC's consolidated and consolidating statements of income together with notes thereto.
- (iii) AMIC's analysis of risks to capital ratios for companies involved.
- (iv) AMIC's consolidated statement of changes in financial position together with notes thereto.
- (v) AMIC's annual statements filed with state insurance commissioners.
- (vi) AMIC's detailed analysis by company of investment portfolios.

Baldwin-United reserves the right to inquire in writing about and to receive such further information related to such reports and analyses as may be reasonably required to comply with the provisions of this paragraph; any information required to be supplied to regulatory agencies which may be of a confidential nature will, to the extent possible within the rules of the agency involved, be supplied by AMIC directly to the agency and not to Baldwin-United.

D. Not request or otherwise seek to obtain, any information of a confidential nature concerning AMIC's present lines of business (except for the financial information described above), its short and long-term plans, its customers or customer prospects, or any trade secrets.

E. Not cause the destruction of AMIC or cause the viability of AMIC to be impaired.

VII.

[10-Year Ban on Acquisitions]

At any time during the period of ten (10) years from the date of entry of this Final Judgment, without prior written approval of the plaintiff, Baldwin-United is enjoined and restrained from acquiring:

A. Any capital stock of any person engaged in the sale of private mortgage guaranty insurance in the United States (excluding, however, Baldwin-United's planned acquisition of MGIC Investment Corporation and its subsidiary corporations engaged in such business); and

B. Any assets employed in the sale of private mortgage guaranty insurance in the United States by any other person, but this shall not prohibit Baldwin-United from acquiring assets in the ordinary course of the mortgage guaranty insurance business.

VIII.

[Inspections]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Baldwin-United made to its principal offices, be permitted:

(i) Access during regular office hours of Baldwin-United to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Baldwin-United and without restraint or interference from Baldwin-United, which may have counsel present; and

(ii) Subject to the reasonable convenience of Baldwin-United and without restraint or interference from Baldwin-United, to interview officers, employees, and agents of Baldwin-United, who may have counsel present.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Baldwin-United's principal offices, Baldwin-United 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 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, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law; and

D. If at the time information or documents are furnished by Baldwin-United to plaintiff in accordance with this Section, Baldwin-United 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 Procedure and

Baldwin-United marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then unless a court of competent jurisdiction orders otherwise, ten (10) days' notice shall be given by plaintiff to Baldwin-United prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which Baldwin-United is not a party.

IX.

[Retention of Jurisdiction]

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 or 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 hereof, for the enforcement of compliance therewith and for the punishment of any violation hereof.

X.

[Public Interest]

Entry of this Final Judgment is in the public interest.