

establish water users' compliance with Reclamation law.

*Bureau Form Numbers:* 7-21SUMM-R and 7-21SUMM-C.

*OMB Approval Number:* 1006-0006.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

*Frequency:* Annually.

*Description of Respondents:* Contracting organizations for Reclamation project irrigation water.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 40 hours per response.

*Estimated Number of Respondents:* 303.

*Estimated Number of Responses per Respondent:* 1.25.

*Estimated Annual Responses:* 379.

*Estimated Total Annual burden on Respondents:* 15,160 hours.

*Reclamation's Clearance Officer:* Marilyn Rehfeld (303) 236-0305 extension 459.

All comments received on this information collection request in Federal Register notice 61 FR 9485, Mar. 8, 1996, have been summarized and included in the request for OMB approval.

Dated: June 28, 1996.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 96-17099 Filed 7-3-96; 8:45 am]

BILLING CODE 4310-94-M

### Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act

The proposal for the revised collection of information listed below has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of this information collection and the supporting documentation may be obtained by contacting Reclamation's Clearance Officer at the telephone number listed below. Comments on this information collection should be made within 30 days directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006-0005), Washington, DC 20503, Telephone (202) 395-7340.

*Title:* Individual Landholder's Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

*Abstract:* This information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of reclamation law. The forms establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of reclamation law.

*Bureau Form Numbers:* 7-21INFO, 7-2180, 7-2180EZ, 7-2181, 7-2184, 7-2190, 7-2190EZ, 7-2191, 7-2194, 7-21PE, 7-21TRUST, 7-21VERIFY, 7-21XS, 7-21FC, 7-21CONT.

*OMB Approval Number:* 1006-0005.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

*Frequency:* Annually.

*Description of Respondents:* Owners and lessees of land on Federal Reclamation projects, whose landholdings exceed specified thresholds.

*Estimated Number of Respondents:* 41,400.

*Estimated Number of Responses per Respondent:* 1.02.

*Estimated Annual Responses:* 42,200.

*Estimated Total Annual Burden on Respondents:* 14,800.

*Reclamation's Clearance Officer:* Marilyn Rehfeld (303) 236-0305 extension 459.

All comments received on this information collection requested in Federal Register notice 61 FR 9485, Mar. 8, 1996, have been summarized and included in the request for OMB approval.

Dated: June 28, 1996.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 96-17100 Filed 7-3-96; 8:45 am]

BILLING CODE 4310-94-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States of America vs. The Thomson Corporation and West Publishing Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States vs. The Thomson Corporation and West Publishing Company*, Civ. Action No. 96-1415. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

On June 19, 1996, the United States filed a Complaint seeking to enjoin a transaction in which The Thomson Corporation ("Thomson") agreed to acquire West Publishing Company ("West"). Thomson and West are two of the country's largest publishers of law books and legal research materials. Thomson and West publish numerous competing legal publications, including the only two annotated United States Codes and the only two enhanced U.S. Supreme Court reporters. The Complaint alleged that the proposed acquisition would substantially lessen competition in the market for legal publications in violation of section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1.

The proposed Final Judgment orders defendants to divest 51 legal publications to one or more purchasers who have the ability effectively to compete in the market for legal publications. To insure that each divested product will be sold as a viable, ongoing line of business, Thomson is required to divest related production assets in addition to its rights to publication titles, and to allow the purchaser to seek to hire employees who have been working on the products. The defendants are also required to license openly the right to use the pagination of individual pages in West's National Reporter System to any interested third party for a fee. Thomson is also to grant to Lexis-Nexis options to extend for five years its current licenses for the three important non-legal databases: Investext, ASAP, and Precasts. In addition, Thomson is required to allow the state of California, Washington and Wisconsin to reopen the bidding for contracts presently held by Thomson for the publication of their respective official state case law reporters. In the event any of these states choose another official reporter, Thomson is required to divest its assets related to its current contract and to divest its associated state digest.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530 (telephone: 202-307-5779). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street NW., Washington, DC 20530 (telephone: 202-514-2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Lawrence R. Fullerton,  
*Deputy Assistant Attorney General, Antitrust Division.*

United States District Court for the District of Columbia

In the matter of United States of America, State of California, by and through its Attorney General Daniel E. Lungren; State of Connecticut, by and through its Attorney General Richard Blumenthal; State of Illinois, by and through its Attorney General Jim Ryan; Commonwealth of Massachusetts, by and through its Attorney General Scott Harshbarger; State of New York, by and through its Attorney General Dennis C. Vacco; State of Washington, by and through its Attorney General Christine O. Gregoire, and State of Wisconsin, by and through its Attorney General James E. Doyle, Jr.; Plaintiffs, vs. The Thomson Corporation and West Publishing Company, Defendants; Docket No.: 96-CV01415, Judge Charles R. Richey, File: 6/19/96.

#### Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiffs have not withdrawn their consent, which they may do at any time

before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Plaintiffs' consent to the entry of this decree should not be read to suggest that plaintiffs believe that a license is required before a legal publisher may star paginate to defendants' products. Plaintiffs expressly reserve the right to assert their views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. Plaintiffs and defendants agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

(4) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(5) Defendants will not consummate their transaction before the Court has signed this Stipulation and Order.

(6) Thomson shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VI of the proposed Final Judgment commencing no later than July 19, 1996, and every thirty (30) days thereafter pending entry of the Final Judgment.

(7) In the event the plaintiffs withdraw their consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June , 1996.

For plaintiff United States of America:

Craig W. Conrath,

*Attorney, U.S. Department of Justice.*

Keith S. Blair (DC Bar #450252),

*Attorney, U.S. Department of Justice,*

*Antitrust Division, Merger Task Force, 1401 H Street N.W., Washington, D.C. 20005, (202) 307-5779.*

For defendant the Thomson Corporation.

Wayne D. Collins,

*Shearman & Sterling, Citicorp Center, 153 East 53rd Street, New York, N.Y. 10022, (212) 848-4000, Attorney for The Thomson.*

For plaintiff State of California:

Kathleen F. Foote.

For plaintiff State of Connecticut:

Aaron S. Bayer.

For plaintiff State of Illinois:

Christine H. Roszo.

For plaintiff Commonwealth of Massachusetts:

George K. Weber.

For plaintiff State of New York:

Stephen N. Houck.

For defendant West Publishing Company:

James E. Schatz,

*Schatz Paquin Lockridge Grindal & Holstein P.L.L.P., Suite 2200, 100 Washington Avenue Sol, Minneapolis, MN 55401, (612) 339-6900, Attorney for West Publishing Company.*

For plaintiff State of Washington:

Tina E. Kondo.

For plaintiff State of Wisconsin:

Kevin J. O'Connor.

So ordered: \_\_\_\_\_ United States District Judge.

#### Final Judgment

WHEREAS plaintiffs, the United States of America (hereinafter "United States"), the State of California, the State of Connecticut, the State of Illinois, the Commonwealth of Massachusetts, the State of New York, the State of Washington, and the State of Wisconsin, having filed their Complaint herein, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture or license of certain assets to one or more third parties is the essence of this agreement;

AND WHEREAS, defendants acknowledge that plaintiffs' consent to the entry of this decree should not be read to suggest that plaintiffs believe

that a license is required before a legal publisher may star paginate to defendants' products and that plaintiffs expressly reserve the right to assert their views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. Plaintiffs and defendants further agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

AND WHEREAS, the parties intend to require defendants to divest, as viable lines of business, certain assets so as to ensure, to the sole satisfaction of the plaintiffs, that the Acquirer will be able to publish and sell the assets as viable, ongoing product lines;

AND WHEREAS, defendants have represented to plaintiffs that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

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 over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

#### II.

##### Definitions

As used in this Final Judgment:

A. "Acquirer" means the person(s) to whom Thompson shall sell the Divestiture Products (as defined below).

B. "Divestiture Products" means the product lines listed on Exhibit A.1 and Exhibit A.2 attached hereto, in any medium, including all rights and interests in them, including all intellectual property rights, all existing work in progress, plates, films, master tapes, machine-readable codes for CD-ROM production, existing inventory, pertinent correspondence and files, a copy of the current subscriber list, all related subscriber information, advertising materials, contracts with authors, software, and, at Acquirer's option, computers and other physical assets used primarily for production of the Divestiture Product. Auto-Cite is a

Divestiture Product and its divestiture shall include the sale of all Auto-Cite trademarks and service marks, the assignment of the Auto-Cite License Agreement, and delivery of a transferable royalty-free perpetual license of the Auto-Cite case database as of the time of the divestiture and all software, trade secrets, and know-how used in producing and updating the Auto-Cite case database.

C. "Official Reporter Contract States" means California, Washington, and Wisconsin.

D. "Official Reporter Contract" means a contract between Thomson and an Official Reporter Contract State pursuant to which Thomson publishes the official case law reporters for that state.

E. "Retained Product" means any product offered for sale or in development by Thomson or West as of June 1, 1996, that is not a Divestiture Product.

F. "Auto-Cite License Agreement" shall mean the agreement by which Thomson currently licenses the use of Auto-Cite to Lexis-Nexis, specifically, the Thomson Legal Publishing License Agreement dated March 7, 1991, as amended by a letter agreement dated March 22, 1996 between Andrew G. Mills of Thomson and Louis J. Andreozzi of Lexis-Nexis.

G. "Thomson" means defendant The Thomson Corporation, a Canadian corporation with its headquarters in Toronto, Ontario, Canada, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

H. "West" means defendant West Publishing Company, a Minnesota corporation with its headquarters in Eagan, Minnesota, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

I. "Lexis-Nexis" means Lexis-Nexis, a division of Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

J. "National Reporter System" means those printed case report series published by West that West has designated, or in future designates, as part of the National Reporter System.

#### III.

##### Applicability

A. The provisions of this Final Judgment apply to the defendants, their

successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and 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. Thomson, as a condition of the sale or other disposition of any or all of the Divestiture Products, shall require the Acquirer to agree to be bound by the provisions of this Final Judgment.

#### IV.

##### Divestiture of Assets

A. Thomson is hereby ordered and directed, within nine (9) months from the date of this Final Judgment is filed with the Court, to divest the Divestiture Products listed on Exhibit A.1 and A.2. the United States, in its sole discretion, may agree to an extension of this time period of up to three (3) months, and shall notify the Court in such circumstances.

B. Divestiture under Section IV.A of the Divestiture Products listed on Exhibit A.1 shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to satisfy, the appropriate state plaintiff) that the Divestiture Products can and will be operated by the Acquirer as viable, ongoing product lines. Divestiture Products under Section IV.A shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to the satisfaction of the appropriate state plaintiff) that (1) the purchase is for the purpose of competing effectively in the publication and sale of the Divestiture Products, and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products. Defendants are prohibited from entering into any agreement with the Acquirer to license exclusively the Divestiture Products to the Defendants.

C. Thomson shall include in any purchase agreement made in connection with the divestiture obligations in Section IV.A the option to the Acquirer, exercisable at the time of the closing of the purchase agreement, to require Thomson to continue, for a reasonable period of time and for reasonable compensation, to produce the Divestiture Product on behalf of the Acquirer, provided that the Acquirer shall control all non-production-related

aspects of the Divestiture Product, including pricing, promotion, sales, and order fulfillment.

D. The Acquirer of any Divestiture Product which Thomson currently uses, in whole or in part, in any Retained Product (e.g., for purposes of supplying a Retained Product with primary law content or copies or indices of annotations or headnotes from a Divestiture Product) shall grant Thomson a royalty-free license to continue to use the Divestiture Product to the same extent for another twelve (12) months immediately following the closing of the sale of the Divestiture Product (twenty-four (24) months in the case of Auto-Cite).

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, by usual and customary means, the availability of the Divestiture Products. The defendants shall provide any person making inquiry regarding a possible purchase of a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to custody confidentiality assurances, all reasonably necessary information regarding the Divestiture Products, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the plaintiffs at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Divestiture Products to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. Defendants shall make available to plaintiffs and to Acquirer information about the personnel involved in editorial product of each of the Divestiture Products to enable Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any West or Thomson employee whose primary responsibility is the production, sale or marketing of such Divestiture Product.

G. Thomson shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

#### V.

##### Appointment of Trustee

A. In the event that Thomson has not divested the Divestiture Products within

nine (9) months from the date this Final Judgment is filed with the Court, Thomson shall notify the plaintiffs of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Divestiture Products. Unless the plaintiff otherwise consent in writing, the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to satisfy the appropriate state plaintiff), that the Divestiture Products can and will be used by the Acquirer as viable on-going product lines. The divestiture shall be made to an Acquirer for whom it is demonstrated to the United States' sole satisfaction after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to the satisfaction of the appropriate state plaintiff) that the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products, and that none of the terms of the divestiture agreement interfere with the ability of the purchaser to compete effectively in the publication and sale of the Divestiture Products.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Products. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States after consultation with the state plaintiffs, (and, for state specific Divestiture Products, acceptable to the appropriate state plaintiff), and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than (1) the trustee's malfeasance, or (2) that the sale is contrary to the express terms of this Final Judgment. Any such objections by

defendants must be conveyed in writing to the plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Thomson, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Thomson and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Thomson shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Thomson and West, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon 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. 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 may, if necessary, include

extending the trust and the term of the trustee's appointment by a period requested by the United States.

## VI.

### Notification

A. Within two (2) business days following execution of a definitive agreement, Thomson or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Thomson. 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 or expressed an interest in or desire to acquire any ownership interest in the Divestiture Products, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiffs may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Thomson or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) shall notify in writing Thomson and the trustee, if there is one, if it objects to the proposed divestiture. If the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) fails to object within the period specified, or if the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) notifies in writing Thomson and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Thomson's limited right to object to the sale under Section V.B. Upon objection by the United States (or, by the state specific Divestiture Products, the appropriate state plaintiff) or by Thomson under Section V.B, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when this Order becomes final, and every thirty (30) days thereafter until the divestiture has been completed or a trustee is appointed, Thomson shall deliver to the plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment.

Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Divestiture Products, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Thomson shall maintain full records of all efforts made to divest all or any portion of the Divestiture Products.

## VII.

### Financing

Thomson shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

## VIII.

### Preservation of Assets

Until the divestitures required by Section IV.A of the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that each Divestiture Product listed on Exhibit A.1 will be maintained as an independent, ongoing, economically viable and active competitor in its respective line of business in the United States and that, except as necessary to comply with Section IV.B of this Final Judgment, the product management for all Divestiture Products, including the marketing and pricing information and decision-making, be kept separate and apart from, and not influenced by, Thomson's and West's businesses in other products.

B. Defendants shall use all reasonable efforts to maintain and increase sales of the Divestiture Products, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing, and merchandising support for the Divestiture Products.

C. Defendants shall take all steps necessary to ensure that the Divestiture Products are fully maintained. Defendants shall not establish, prior to divestiture, any license of any of the Divestiture Products to themselves. Defendants' production, sales and marketing employees with primary responsibility for the Divestiture Products shall not be transferred or reassigned to any Retained Product, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy, provided that defendants give the

United States (and, for the state specific Divestiture Products, the appropriate state plaintiff) and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall not, except as part of a divestiture approved by the United States, sell any Divestiture Products.

E. Defendants shall take no action that would jeopardize the sale of the Divestiture Products.

## IX.

### Star Pagination

A. Beginning no later than ten (10) business days after the entry of the Final Judgment, defendants shall grant to any third party a license in the form attached as Exhibit B to star paginate to West's National Reporter System publications subject to license fees not to exceed the price indicated below per format per year per 1,000 Characters (as defined in Exhibit B) contained in the material being star paginated:

First year of license:—\$0.09.

Second year of license:—\$0.11.

Third and subsequent years of license:—\$0.13.

The license fees may increase at a rate based upon, but not to exceed, the change in the United States Department of Labor Producer Price Index for Finished Goods.

B. Any existing star pagination licensee may elect to modify its existing license on star pagination by substituting the terms and conditions of the license contained in Exhibit B on 120 days' notice.

## X.

### Options to Lexis-Nexis

Within ten (10) business days after the entry of the Final Judgment, Thomson shall grant to Lexis-Nexis the options to extend the License Agreements for Investext, ASAP, and Predicasts databases or any successor, follow-on, replacement, or substitute databases for an additional five (5) years beyond their current expiration dates, exercisable within one year of the date of the entry of this Final Judgment. Should Lexis-Nexis elect to exercise this option, all other terms and conditions of such License Agreement shall be no less favorable than the current terms and conditions. Nothing contained in any Lexis-Nexis agreement with Thomson shall be deemed to prohibit Lexis-Nexis from negotiating and contracting, but not implementing, the direct or indirect sourcing of information in those databases.

## XI.

## Option to Official Reporter Contract States

Within ten (10) business days after the entry of the Final Judgment, Thomson shall grant to the Official Reporter Contract States the option to terminate the contracts presently held by Thomson, for the publication of the official state case law reporters (listed in Exhibit A.3) in those states without cause upon ninety (90) days' notice, notwithstanding anything to the contrary in those contracts. This option may be exercised at any time prior to the expiration of the current Official Reporter Contract. In the event any of the Official Reporter Contract States elect to exercise this option:

A. Thomson shall undertake all reasonable efforts to assist the Official Reporter Contract State in finding a substitute publisher for the product(s) at issue.

B Upon the identification of a substitute publisher:

1. Thomson shall provide that entity with copies of all existing work in progress, plates, films, master tapes, machine-readable codes for CD-ROM production, existing inventory, pertinent correspondence and files, a current copy of the subscriber list, all related subscriber information, advertising materials, Official Reporter Contracts, software, and, at the substitute publisher's option, computers and other physical assets used primarily for production of the respective official state case law reporters.

2. Thomson shall make available to the United States (and, for state specific Divestiture Products, the appropriate state plaintiff) and to that entity information about the personnel involved in editorial production of the respective official state case law reporter to enable that entity to make offers of employment. Thomson shall not interfere with any negotiations by that entity to employ any Thomson employee whose primary responsibility is the production, sale or marketing of such official state case law reporter.

3. Thomson shall not transfer or reassign production, sales and marketing employees with primary responsibility for the official state case law reporter to any Retained Product, except for transfer bids initiated by employees pursuant to Thomson's regular, established job posting policy, provided that Thomson gives the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) and that entity ten (10) days' notice of such transfer.

4. Thomson shall grant that entity an option to acquire Thomson's inventory of the official reports at its cost to Thomson; and

5. Thomson shall divest the digest product for that state set forth in Exhibit A.4, within the time periods and pursuant to the procedures set forth in Sections IV, V, VI, VII, and VIII of this Judgment.

C. Thomson shall transfer to the Official Reporter Contract State a license, which shall be perpetual in term, sublicensable, assignable, and royalty-free, to the use of any intellectual property rights which Thomson holds pertaining to the headnotes, case notes, and/or case summaries in the product(s) at issue.

## XII.

## Compliance Inspection

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 plaintiffs, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the appropriate State Attorney General with respect to the state specific Divestiture Products, and on reasonable notice to Thomson made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the appropriate State Attorney General with respect to the state specific Divestiture Products, made to Thomson at its principal offices, Thomson shall submit 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 nor any documents obtained by the means provided in this Section XII shall be divulged by any representative of the plaintiffs to any person other than a duly authorized

representative of the Executive Branch of the United States or of each state government, except in the course of legal proceedings to which the plaintiffs are 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 Thomson to the plaintiffs, Thomson represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Thomson 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 the plaintiffs shall give ten (10) days' notice to Thomson prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Thomson is not a party.

## XIII.

## Retention of Jurisdiction

Jurisdiction is retained by this Court 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 and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

## XIV.

## Termination of Provisions

Paragraphs IV, V, VI, VII, VIII, and XI, of this Final Judgment will expire on the tenth anniversary of the date of its entry.

## XV.

## Public Interest

Entry of this Final Judgment is in the public interest.

Dated \_\_\_\_\_

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16 \_\_\_\_\_ United States District Judge.

## Exhibit A

*Exhibit A.1*

U.S. Code Service  
U.S. Reports, L.Ed.  
U.S. Digest  
Manual of Federal Practice, 4th Ed.  
Bankruptcy Law & Practice, 6th Ed.  
Bankruptcy (Epstein, Nickels & White)  
Corbin on Contracts  
Insurance Law (Appleman)  
Search & Seizure (Thomson)

Ballantine's Law Dictionary  
 Auto-Cite  
 Deering's Annotated California Code  
 California ADR Practice Guide  
 California Civil Practice Handbook:  
   Choice Between State and Federal  
   Courts  
 California Civil Trailbook  
 California Litigation By the Numbers  
   Court Rules Companion  
 California Negligence & Settlement  
 California Products Liability Law &  
   Practice  
 California Trail  
 California Tort Law  
 Modern California Discovery  
 Colorado Trial Handbook  
 Trial Handbook for Connecticut  
   Lawyers  
 Florida Criminal Practice & Procedure  
 Florida Evidence 2d  
 Illinois Jurisprudence  
 Indiana Appellate Handbook 2d  
 Kentucky Probate PSL  
 Kentucky Workers' Compensation PSL  
 Louisiana Code of Evidence—Annotated  
 Louisiana Successions  
 Louisiana Workers' Compensation  
 Annotated Laws of Massachusetts  
 Massachusetts Corporation PSL  
 Massachusetts Domestic Relations PSL  
 Massachusetts Landlord-Tenant Law  
 Massachusetts Real Estate PSL  
 Michigan Criminal Law  
 Michigan Statutes Annotated  
 Michigan Digest  
 New Jersey Criminal Procedure  
 New York Consolidated Laws Service  
 New York Wills and Trusts  
 Ohio Family Law  
 Ohio Probate  
 Modern Texas Discovery  
 Texas Civil Pre-Trial Procedure  
 Texas Trial and Appellate Practice  
 Washington Trial Handbook

#### *Exhibit A.2*

Michigan Law & Practice  
 New York Estate Administration  
 Pennsylvania Law Encyclopedia

#### *Exhibit A.3*

California Appellate Reports  
 California Reports  
 California Reports Advance Sheets  
 Washington Appellate Court Reports  
 Washington Supreme Court Reports  
 Wisconsin Official Reports  
 Wisconsin Official Reports Advance  
   Sheets

#### *Exhibit A.4*

California Digest  
 Wisconsin Digest

#### EXHIBIT B

#### LICENSE AGREEMENT

THIS AGREEMENT, entered into in  
 Eagan, Minnesota by and between

\_\_\_\_\_ (“Licensee”) and WEST  
 PUBLISHING COMPANY (and its  
 successors, collectively “Licensor”);

WHEREAS, Licensee desires to obtain  
 a license from Licensor to allow  
 Licensee to star paginate to certain West  
 Case Reports in Licensee Case Reports  
 contained in Licensee's [Licensee  
 Product(s)/Service(s)]; and

WHEREAS, Licensor desires to grant  
 Licensee such a license;

NOW, THEREFORE, in consideration  
 of the foregoing and of the mutual  
 covenants which follow, the parties  
 hereby agree that:

#### *Article 1—Definitions*

As used in this Agreement, the  
 following terms shall have the following  
 meanings:

1.01. “West Case Reports” shall  
 mean Licensor's reports of judicial  
 decisions, identified in Exhibit A to this  
 Agreement, that are selected for  
 reporting by Licensor and coordinated  
 and arranged by Licensor within NRS  
 Reporters.

1.02. “NRS Reporters” shall mean  
 the following printed case report series  
 published by Licensor that are a part of  
 Licensor's National Reporter System  
 and any future case report series  
 published by Licensor that Licensor  
 designates as a part of Licensor's  
 National Reporter System:

Supreme Court Reporter  
 Federal Reporter  
 Federal Supplement  
 Federal Rules Decisions  
 Atlantic Reporter  
 North Eastern Reporter  
 North Western Reporter  
 Pacific Reporter  
 South Eastern Reporter  
 Southern Reporter  
 South Western Reporter  
 California Reporter  
 Illinois Decisions  
 New York Supplement  
 Bankruptcy Reporter  
 Military Justice Reporter  
 United States Claims Court Reporter  
 Federal Claims Reporter  
 Veterans Appeals Reporter

If Licensor (i) ceases publishing any  
 NRS Reporter in printed form; and (ii)  
 includes the case, reports of the court(s)  
 previously included in said NRS  
 Reporter as a part of a New Technology  
 or only on WESTLAW, such case  
 reports as a part of a New Technology  
 or on WESTLAW shall be deemed to be  
 said NRS Reporter. In such event,  
 should WESTLAW or the New  
 Technology continue to contain  
 citations to such case reports in the  
 same form (including volume numbers,  
 abbreviated NRS Reporter designation,  
 and beginning page numbers) as the  
 “NRS Citations” for said NRS Reporter

and with the same type of pagination as  
 previously included in said NRS  
 Reporter (i.e., such pagination shall not  
 include the electronic pagination  
 presently included on WESTLAW, any  
 pagination related to WESTLAW Cites  
 or any successor WESTLAW and/or  
 New Technology citation form, or any  
 other electronic pagination used on  
 WESTLAW and/or the New Technology;  
 jointly, “WESTLAW/New Technology  
 Pagination”) WESTLAW and/or the  
 New Technology shall be deemed to be  
 said NRS Reporter (with respect to the  
 case reports in question) for purposes of  
 the “Star Pagination License” provided  
 for in Article 2; provided, however, that  
 Licensee shall have no right whatsoever  
 under this Agreement to produce, use,  
 or make available WESTLAW/New  
 Technology Pagination in any form or  
 by any means.

1.03. “Licensee Case Reports” shall  
 mean Licensee's reports of judicial  
 decisions that are selected for reporting  
 by Licensee in [Licensee Product(s)/  
 Service(s)] and coordinated and  
 arranged by Licensee within [Licensee  
 Product(s)/Service(s)].

1.04. “[Licensee Product(s)/  
 Service(s)]” shall mean [description of  
 Licensee Product(s)/Service(s)]  
 published or provided in [print, CD-  
 ROM, online or other electronic format]  
 by Licensee after the effective date of  
 this Agreement.

1.05. “NRS Pagination” shall mean  
 the page breaks and related page  
 numbers of NRS Reporter publications.  
 Should WESTLAW and/or a New  
 Technology be deemed to be an NRS  
 Reporter pursuant to Section 1.02, the  
 “pagination” referenced in Section 1.02  
 (other than WESTLAW/New  
 Technology Pagination) shall be deemed  
 to be NRS Pagination; provided,  
 however, that WESTLAW/New  
 Technology Pagination shall not be NRS  
 Pagination.

1.06. “Licensed NRS Pagination”  
 shall mean the NRS Pagination which  
 Licensee obtains a license to use  
 pursuant to the terms and conditions of  
 this Agreement.

1.07. “Licensee Subscribers” shall  
 mean subscribers to or other licensees of  
 [Licensee Product(s)/Service(s)] that  
 include Licensed NRS Pagination.

1.08. “Licensee Subscriber  
 Limitations” shall mean contractual  
 obligations contained in the agreements  
 pursuant to which Licensee Subscribers  
 are licensed the right to access and use  
 Licensed NRS Pagination as a part of  
 [Licensee Product(s)/Service(s)] that (i)  
 allow access to and use of Licensed NRS  
 Pagination solely in the regular course  
 of legal research and related work; (ii)  
 prohibit the publication, broadcast,



loan, rent, lease, sale or other transfer of Licensed NRS Pagination, or of any copy or reproduction thereof; and (iii) prohibit or limit the making, maintenance or use of Licensed NRS Pagination, or of any copy or reproduction thereof, in the same manner as such actions are prohibited or limited for the other contents of [Licensee Product(s)/Service(s)]. *[Will not apply in cases of print licenses]*

1.09. "PPI" shall mean the United States Department of Labor, Bureau of Labor Statistics, Producer Price Index for Finished Goods (1982 = 100) or its successor index(es).

1.10. "Character" shall mean each alphabetic, numeric and punctuation symbol, and each space, in the material in question, and includes each mnemonic and other control, format and character code, whether or not displayed.

1.11. "New Technology" shall mean any form or means (including, without limitation, compact disc) by which databases containing legal materials may be used, made available, or otherwise distributed other than in any (i) printed or other hard copy form or means; (ii) microfilm, microfiche, or other form or means that can be visually perceived through magnification; or (iii) Online form or means.

1.12. "Online" shall mean a system of computer terminals directly linked to a central processing unit or units and related peripheral equipment on which a database is stored and/or searched, regardless of the software architecture employed.

1.13. "WESTLAW" shall mean the Online computer-assisted legal research services presently marketed by Licensors under the WESTLAW trademark, any portion of such services or any Online computer-assisted legal research service marketed by Licensors after the effect date of this Agreement, regardless of the name of the service; provided, however, that WESTLAW shall not include Licensors compact disc or "New Technology" products or services or Online updates or supplements thereto. Except as otherwise provided in the first sentence of this Section 1.13 or elsewhere in this Agreement, WESTLAW shall include all Online services (or portions thereof) described in the preceding sentence, regardless of how such services are distributed (including, without limitation, being made available directly to subscribers by Licensors, through agents or resellers, or through gateway arrangements with other database providers or distributors).

## Article 2—License And Related Terms

### 2.01. *Star Pagination License.*

During the term of this Agreement, subject to the terms and conditions hereof, including, without limitation, the timely payment by Licensee to Licensors of the license fees provided for in Section 2.03 hereof, Licensors hereby grants to Licensee, and Licensee hereby accepts from Licensors, a non-exclusive, non-transferable (except as specifically provided in Section 6.05 hereof), limited license (i) to obtain NRS Pagination from West Case Reports contained in NRS Reporter publications; (ii) to include such NRS Pagination (which shall become Licensed NRS Pagination when so included) in corresponding Licensee Case Reports contained in [Licensee Product(s)/Service(s)] to Licensee Subscribers subject to Licensee Subscriber Limitations; provided, however, that no right to in any way reproduce, use or make available, or authorize any third party to in any way reproduce, use or make available, West Case Reports, or any portion or portions thereof other than Licensed NRS Pagination as provided herein, is granted by Licensors to Licensee under this Agreement; provided, further, that Licensors shall not challenge, under any present or future legislation, any use by the Licensee of Licensed NRS Pagination if Licensee's use of same conforms to the terms of this Agreement.

### 2.02 *License Limitations.*

Notwithstanding the provisions of Section 2.01 hereof or any other provision of this Agreement, the limited license granted by Licensors to Licensee hereunder does not include any right to in any way reproduce, use or make available, or authorize any third party to in any way reproduce, use or make available, any NRS Pagination or Licensed NRS Pagination in any form, format or means other than as specifically provided in Section 2.01 hereof; provided, however, that, subject to the terms and conditions of this Agreement, Licensee may authorize Licensee Subscribers to create and use printouts of Licensee Case Reports containing Licensed NRS Pagination subject to Licensee Subscriber Limitations; provided, further, that nothing in this Agreement shall prohibit Licensee from selling, leasing, licensing or otherwise transferring Licensee Case Reports that contain Licensed NRS Pagination to third party information providers, but such transfers shall not include or grant any right to reproduce, publish, broadcast, distribute, loan, rent, lease, sell or otherwise transfer, make available or use the Licensed NRS

Pagination contained in such Licensee Case Reports.

2.03. *License Fees.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensors the license fees provided for in this Section 2.03. *[Specific license fee terms to be agreed upon, but not to exceed the following license fees per format (i.e., for each existing format and for each New Technology) per year per 1,000 characters contained in Licensee Case Reports contained in [Licensee Product(s)/Service(s)] that include Licensed NRS Pagination, subject to change based upon, but not to exceed, changes in the PPI: nine cents (\$.09) during the first year of this Agreement, eleven cents (\$.11) during the second year of this Agreement, and thirteen cents (\$.13) during the third year and subsequent years of this Agreement.]*

2.04. *No Warranty or Liability.* ALL NRS PAGINATION SHALL BE OBTAINED AND USED BY LICENSEE ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND LICENSORS SHALL HAVE NO LIABILITY WHATSOEVER TO LICENSEE IN ANY WAY RELATED TO ANY COPY OF NRS PAGINATION OR LICENSED NRS PAGINATION OBTAINED OR USED BY LICENSEE HEREUNDER.

2.05. *Display of Licensed NRS Pagination.* During the term of this Agreement, if Licensee includes Licensed NRS Pagination as a part of any Licensee Case Report, such Licensed NRS Pagination shall be presented no less prominently (in terms of size, high-lighting, underlining, etc.) than any other unofficial pagination or pinpoint locators for the Licensee Case Report in question.

2.06. *Impossibility.* Nothing contained in this Agreement shall in any way require Licensors to continue to publish or provide NRS Reports.

2.07. *Licensors's Subscription(s) to [Licensee Product(s)/Service(s)].* In order for Licensors to monitor Licensee's compliance with the terms and conditions of Articles 2 and 3 hereof, Licensee shall, at no charge to Licensors, provide Licensors with (a) subscription(s) to [Licensee Product(s)/Service(s)]. [A copy/Copies] of [Licensee Product(s)/Service(s)] shall be provided to Licensors as soon as it/they is/are made available to any third party.

## Article 3—Notice Provisions

3.01. *Copyrights.* During the term of this Agreement, Licensee (i) shall respect and not contest the validity of the copyrights claimed by Licensors in Licensors's arrangements of case reports in NRS Reports as expressed by NRS



Pagination; and (ii) shall not, except as specifically provided in this Agreement, copy, prepare a derivative work of, distribute a copy of or display publicly, any portion of any NRS Pagination for any commercial purpose whatsoever. Nothing contained in this Agreement shall be deemed to prohibit Licensee from copying or making any other use of the contents or pagination of any NRS Reporter publication after the term of copyright in such publication has expired as provided in 17 U.S.C. § 302, *et. seq.* and related statutes and regulations (or their successors).

3.02. *Copyright Notice.* As a condition of the license granted by Licensor to Licensee under Section 2.01 hereof, Licensee shall ensure that a copyright notice which complies with the provisions of 17 U.S.C. § 401, *et. seq.* and related statutes and regulations (or their successors) appears on all publicly distributed copies of [Licensee Product(s)/Service(s)] that contain any Licensed NRS Pagination from which such [Licensee Product(s)/Service(s)] can be visually perceived, either directly or with the aid of a machine or device.

3.03. *Notice to be Used in Connection with Licensed NRS Pagination.* Licensee shall cause the following notice, or such other notice as the parties may mutually agree upon from time to time, to be prominently displayed as a part of the [Licensee Product(s)/Service(s)] that contain(s) any Licensed NRS Pagination and as a part of the documentation made available in connection therewith:

STAR PAGINATION TO WEST PUBLISHING COMPANY'S NATIONAL REPORTER SYSTEM® PUBLICATIONS HAS BEEN CREATED AND ADDED TO THIS PUBLICATION BY [LICENSEE] AND IS BEING MADE AVAILABLE UNDER A LICENSE FROM WEST.

#### Article 4—Confidentiality

4.01. *Confidentiality Obligations.* During the term of this Agreement and thereafter, except as specifically provided herein and/or to the extent reasonably necessary to perform its obligations or exercise or enforce its rights hereunder, neither party shall provide or disclose to any third party, or itself use, unless authorized in writing to do so by the other party or properly directed or ordered to do so by public authority, any information or matter that (i) constitutes or concerns the terms and conditions of this Agreement; (ii) is provided to it by the other party hereunder or as a result hereof; or (iii) regards any dealings or negotiations with the other party related to this Agreement; provided, however,

that the parties may consult with their respective counsel with respect to such information or matter and said counsel agree to abide by the terms and conditions of this Article 4.

4.02. *Limitation on Confidentiality.* Except with respect to information or matter constituting or concerning the terms and conditions of this Agreement or regarding any dealings or negotiations between the parties hereunder, the parties shall have no confidentiality obligation under Section 4.01 hereof with respect to any information or matter specified therein that (i) is already known to them, (ii) is rightfully disclosed to them by a third party that is not acting as an agent or representative for the other party, (iii) is independently developed by or for them, (iv) is publicly known, or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the parties. Any party claiming an exception to Section 4.01 hereof under this Section 4.02 shall have the burden of proving the basis for the exception.

4.03. *Confidentiality Standard.* The parties shall follow the same procedures to insure their compliance with the requirements of Section 4.01 hereof as they follow to protect their own confidential and proprietary information and matter of a similar nature.

4.04. *Injunctive Relief.* Each party shall be entitled to injunctive relief to enforce the other party's compliance with the obligations contained in Section 4.01 hereof, it being understood and agreed that the parties will not have an adequate remedy at law if such obligations are not complied with.

#### Article 5—Term and Termination

5.01. *Term and Termination.* Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force [specific term and related provisions as agreed upon]. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination.

5.02. *Effect of Termination.* After termination of this Agreement, Licensee shall have no contractual right to include NRS Pagination in [Licensee Product(s)/Service(s)] published or provided after the effective date of such termination.

#### Article 6—Miscellaneous Provisions

6.01. *Limitations of Liability and Claims.*

(a) EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER

PARTY HEREUNDER FOR ANY PROFITS LOST BY THE OTHER PARTY OR FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) No claim, regardless of form, which in any way arises out of this Agreement or the parties' performance of this Agreement may be made, nor arbitration proceeding based upon such a claim commenced, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it.

#### 6.02. Relationship of the Parties.

The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

6.03. *Effect of Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

6.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which correspond to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to such interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

6.05. *Assignment and Successors.* Neither this Agreement nor any part or portion hereof, or right granted hereunder, shall be assigned, sublicensed or otherwise transferred by Licensee without Licensor's prior written consent.

6.06. *Severability.* Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

6.07. *Arbitration.*

(a) Any and all disputes or controversies arising under this Agreement shall be resolved by private arbitration conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified by the terms and conditions of this Section 6.07. The arbitration proceeding relating to any such arbitration shall be held in Minneapolis, Minnesota, and any judgment upon the resulting arbitration decision may be entered in the appropriate federal or state court located in Minneapolis, Minnesota. Each party hereby consents to arbitration jurisdiction and the jurisdiction of such courts for the purposes of the arbitration and related proceeding described in this Section 6.07.

(b) Arbitration proceedings under this Section 6.07 shall be commenced by a party by serving the other party with a notice of intent to arbitrate and filing such notice with the Minneapolis, Minnesota office of the AAA ("Office"). All arbitrations shall be conducted by a panel of three arbitrators selected as follows:

(i) Within ten (10) days after the notice of intent to arbitrate is filed with the Office, each party shall select an arbitrator and shall notify the other party and the Office of its selection. If either party fails to select an arbitrator within such ten (10) day period, the Office shall so notify such party, who shall thereafter have five (5) business days to select an arbitrator. Failing such selection, the Office shall make the appointment for such party.

(ii) The two arbitrators so selected shall select a neutral arbitrator within 15 days after the selection of the second of the initial arbitrators to be selected. The neutral arbitrator shall be counsel skilled in the licensing of copyrighted property. The neutral arbitrator shall not (A) be a present or former owner, officer, director, or employee of a party; (B) have or have had any business relationship (including, without limitation, an attorney-client relationship) with a party; or (c) be a present or former owner, officer, director, employee or member of any entity that has or has had a business relationship (including, without limitation, an attorney-client relationship) with a party. The initial arbitrators may seek a list of potential

neutral arbitrators from the Office, but shall not be limited to such a list in selecting the neutral arbitrator. If the initial two arbitrators cannot agree on the required neutral arbitrator within said 15 day period, they shall so notify the Office within five (5) business days after the expiration of said 15 day period, and the Office shall then promptly select the required neutral arbitrator (who shall meet the criteria set forth above).

(iii) The neutral arbitrator so selected shall be the head of the arbitration panel and responsible for scheduling and coordinating the arbitration proceedings.

(c) The decision of the arbitration panel of three arbitrators shall (i) be made by at least a majority of the arbitrators; (ii) be made within 60 days after the neutral arbitrator is selected; (iii) be in writing; and (iv) set forth each of the factors considered by the arbitrators and the impact of each such factor on their decision.

(d) All arbitration decisions made in accordance with this Section 6.07 shall be final and binding upon the parties. Arbitration as provided for in this Section 6.07 shall be the sole and exclusive right and remedy of the parties with respect to any and all disputes or controversies, and each party hereby waives its right to institute any judicial proceedings with respect to any such matters, other than the right to enter judgment upon any arbitration decision rendered as provided above and to seek enforcement of such judgment once so entered.

(e) Each party shall bear its own costs and expenses (including, without limitation, all attorneys' fees, and all costs and expenses of presenting evidence to and calling witnesses before the arbitration panel) and those of the arbitrator it selects in connection with any arbitration proceeding conducted pursuant to this Section 6.07. The arbitrators shall, in their sole discretion, determine how the parties shall bear all other arbitration expenses. If required by the Office, each party shall deposit such sums of money with said Office as said Office deems necessary to defray arbitration expenses, and failure to so deposit shall be grounds for a default arbitration decision to be entered by the arbitrators against a party which fails to make such a deposit.

6.08. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

6.09. *Certain Taxes.* Any sales, use, value added and similar taxes which

may be due with respect to Licensed NRS Pagination licensed to Licensee hereunder, or the license payments due or made by Licensee to Licensor hereunder, shall be the responsibility of Licensee and shall be paid by Licensee directly to the relevant taxing authority. Licensee shall obtain and provide to Licensor any exemption certificates necessary to absolve Licensor of any responsibility relating to such taxes.

6.10. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, West Publishing Company,

By mail: P.O. Box 64526, 610 Opperman Drive, St. Paul, MN 55164.

(By other means): 610 Opperman Drive, Eagan, MN 55123.

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

6.11. *Governing Law.* This agreement shall be governed by and construed under the laws of the State of Minnesota, and, subject to Section 6.07 hereof, any action related in any way to this Agreement shall be brought in the appropriate federal or state court located in Minneapolis, Minnesota. Each party hereby consents to the jurisdiction of such courts for the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives.

[LICENSEE]

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

WEST PUBLISHING COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

United States District Court for the District of Columbia

In the matter of: United States of America, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307-1858; State of California, by and through its Attorney General, Daniel E. Lungren, 1300 I Street, Sacramento, California 95814, (916) 324-7874; State of Connecticut, by and through its Attorney General, Richard Blumenthal, 110

Sherman Street, Hartford, Connecticut 06105, (860) 566-5374; State of Illinois, by and through its Attorney General, Jim Ryan, 100 West Randolph Street, Chicago, IL 60601, (312) 814-5610; Commonwealth of Massachusetts, by and through its Attorney General, Scott Harshbarger, 1 Ashburton Place, Boston, Massachusetts 02108, (617) 727-2200; State of New York, by and through its Attorney General, Dennis C. Vacco, 120 Broadway, Suite 2601, New York, New York 10271, (212) 416-8275; State of Washington, and by and through its Attorney General, Christine O. Gregoire, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164, (206) 464-7663; State of Wisconsin, by and through its Attorney General, James E. Doyle, Jr., 123 West Washington, Madison, Wisconsin 53707, (608) 266-8986; Plaintiffs, vs. the Thomson Corporation, and One Station Place, Stamford, Connecticut 06902, (203) 328-9400; West Publishing Company, 620 Opperman Drive, Eagan, Minnesota 55123, 1-800-328-9352; Defendants; Civil No. 96-1415 (CRR), File: 6/25/96, Judge Charles R. Richey.

### Competitive Impact Statement

The United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

### I. Nature and Purpose of the Proceeding

The plaintiffs filed a civil antitrust complaint on June 19, 1996, alleging that the proposed acquisition of West Publishing Company by the Thomson Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1. West and Thomson are two of the largest publishers of legal research materials in the United States.

The complaint alleges that the combination of these major competitors would substantially lessen competition in (1) the publication of research-enhanced cases and statutes ("enhanced primary law") in nine enhanced primary law product markets, (2) the markets for certain secondary law products, and (3) the market for the provision of comprehensive online legal research services. The prayer for relief seeks a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1. The prayer for relief also seeks a preliminary and permanent injunction preventing Thomson and West from carrying out the proposed merger, or any similar agreement, understanding or plan.

Shortly before that suit was filed, a proposed settlement was reached that permits Thomson to complete its

acquisition of West, yet requires extensive divestitures and takes other steps to preserve competition in the markets in which the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the proposed settlement were filed at the same time the complaint was filed.

The proposed Final Judgment orders the defendants to divest the products listed in Exhibit A.1 and A.2 of this Competitive Impact Statement and to offer to divest the products listed in Exhibit A.3 and A.4 of this Competitive Impact Statement. In general, the defendants must complete these divestitures within nine months after entry of Final Judgment. If they do not, the Court may appoint a trustee to sell the assets. The proposed Final Judgment further requires Thomson to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the products to be divested will be operated independently as continuing, viable, ongoing lines of business, and kept separate and apart from Thomsons and West's businesses in other products. The proposed Final judgment also requires Thomson to license to any publisher, for a fee, the use of "star pagination" (explained below), and requires Thomson to extend the licenses of certain products to Lexis-Nexis.

The plaintiffs and Thomson have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

### II. Description of the Events Giving Rise to the Alleged Violation

#### A. The Defendants and the Proposed Transaction

Defendant Thomson Corporation is a corporation organized and existing under the laws of the Province of Ontario, Canada, with its principal office in Toronto, Ontario, Canada. It is the world's largest publisher of information for professional markets, and it is one of the largest publishers of legal research materials in the United States.

West Publishing Company is a corporation organized and existing under the laws of the State of Minnesota, with its principal office in Eagan, Minnesota. West is the largest publisher of legal research materials in

the United States, notably of court decisions contained in its National Reporter System.

On February 25, 1996, Thomson agreed to purchase West for approximately \$3.42 billion in cash. This transaction, which would combine West and Thomson, precipitated the Government's suit.

### B. Legal Research Materials

#### 1. Enhanced Primary Law Products

Thomson and West compete directly with each other for print and/or CD-ROM sales in the following nine enhanced primary law product markets: United States code; United States Supreme Court case law; California code; California case law; Massachusetts code; Michigan code; New York code; Washington case law; and Wisconsin case law.

For both law reporters and codes, Thomson and West provide unique, enhanced primary law products. The enhanced case law reporters sold by Thomson and West in the above markets are distinguishable from any other legal research product in two respects. First, each reporter contains the entire body of case law for its respective jurisdiction. Second, each reporter contains comprehensive written descriptions of points of law within the opinions, also known as "headnotes" and "summaries." Similarly, Thomson's and West's enhanced codes are distinguishable from other codes because they contain the entire code for the jurisdiction and contain comprehensive written descriptions of relevant case law relating to code sections, also known as "annotations." There are no other codes or case law reporters in the above markets that offer this set of enhancements to consumers.

Unenhanced codes sold in print are not a substitute for enhanced primary codes, and legal researchers do not view them to be reasonably interchangeable. First, unenhanced codes are priced significantly lower than annotated primary codes. Second, unenhanced codes are used for different purposes than enhanced codes. For example, unenhanced codes are often used for the limited purposes of identifying the correct wording of a known statute or for obtaining a brief overview of the relevant statutes on a particular topic. Enhanced codes, unlike unenhanced codes, are appropriate sources of information when a researcher has a need to promptly determine judicial interpretations of statutory language or to determine how statutes may apply to a particular factual situation—the typical functions of an attorney

providing legal advice as it relates to statutes.

Likewise, unenhanced case law sold in print is not a substitute for enhanced case law. Unenhanced case law is generally used for different purposes than enhanced case law. For example, unenhanced case law is useful to check the correct language in a known case. However, enhanced primary law is necessary when the legal researcher wishes to identify and evaluate judicial interpretation of points of law within an opinion, what case law might apply to a particular factual situation, or how case law can be used to support a particular legal position—the standard practices of an attorney wishing to provide legal advice relating to case law.

Full-text searching of primary law on Lexis-Nexis, WESTLAW, and CD-ROM products is only a partial substitute to the enhanced primary law offered by Thomson and West. Full-text searching is not a good substitute, for most users and most uses, because it does not provide users with the editorial analysis of the West or Thomson enhanced primary materials.

Purchasers desiring to purchase enhanced codes would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. In addition, purchasers desiring to purchase enhanced case law reporters would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

## 2. Secondary Law Materials

Thomson and West also compete against each other for print and/or CD-ROM sales of national and state-oriented secondary law products, such as treatises and practice guides. Each of these competing products, together with similar competing products, is contained within a relevant secondary law product market ("relevant secondary law product markets"). One product from each such relevant secondary law product market is identified in Exhibit A (in addition to the enhanced primary law listed therein, as noted above). In each relevant secondary law product market, West and Thomson are either dominant or significant competitors.

Secondary law materials are used by researchers to become familiar with the law both before and after turning to primary law materials. These secondary materials enable the legal researcher, who might not have expertise in a particular area of the law, to begin his or her research in a focused manner. Secondary sources of law lead researchers to relevant case law,

statutes, and other secondary law products. Secondary sources of law can also be used by researchers to provide clarification of primary law.

Purchasers desiring to purchase any of the secondary law products in the relevant secondary law product markets alleged in the complaint would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

## 3. Comprehensive Online Legal Research Services

West, through WESTLAW, is one of two major competitors in the provision of comprehensive online legal research services; the other competitor is Lexis-Nexis. WESTLAW and Lexis-Nexis are the two largest comprehensive online legal research services and they compete directly with one another.

West places its own primary and secondary law products on WESTLAW. Lexis-Nexis places its own and third parties' materials on its service, including some Thomson enhanced primary and secondary law products. Thomson licenses to Lexis-Nexis, among other products, the Auto-Cite electronic citator service. Auto-Cite is used to gather negative commentary on a case and quickly determine case history for use in correct citation. Thomson also licenses to Lexis-Nexis the United States Code Service, as well as several other Thomson enhanced primary law materials, and certain non-legal materials.

Print versions of the law are not adequate substitutes for comprehensive online legal research services. Legal researchers who have the necessary computer hardware and the necessary skills to use this product value the timeliness and speed of comprehensive online legal research services. Material provided on a comprehensive online legal research service is updated often and is thus more timely than material offered in printed form.

Full-text word searching of primary law on CD-ROMs is not an adequate substitute for comprehensive online legal research services. The content of most CD-ROMs is limited to a particular jurisdiction or topic. Moreover, the material contained on CD-ROMs is not as current as the material offered on an online legal research service. If the materials on CD-ROMs are not current, lawyers must still use online legal research services to supplement their research. Furthermore, the topical or limited jurisdictional focus of CD-ROMs limits their primary appeal to smaller law firms or firms specializing in a particular area of the law. These firms are not heavy users of

comprehensive online legal research services.

While the Internet is a useful tool for some researchers, it is not a substitute for Lexis-Nexis and WESTLAW for several reasons. First, the material contained on the Internet is not nearly as comprehensive as the material offered on Lexis and WESTLAW. The Internet does not provide access to historical opinions, every court's opinions, every jurisdiction's statutes, or the number of secondary law products that Lexis-Nexis and WESTLAW offer. Second, the Internet's search mechanism is not as sophisticated or effective as Lexis-Nexis' or WESTLAW's. Third, the case law offered on the Internet does not provide citations that are accepted by courts or are relied on by attorneys.

Purchasers of comprehensive online legal research services would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. Therefore, the provision of comprehensive online legal research services is an appropriate product market in which to assess the competitive effects of the acquisition.

## C. Competition Between West and Thomson

Thomson and West compete directly to provide enhanced primary law in the relevant markets and consumers view the Thomson and West products as their first and second choices for primary law products. Indeed, in each relevant market, the Thomson and West products are the only printed products to which consumers can turn for enhanced primary law, and, to the limited extent to which full-text searching is a research enhancement, enhanced primary law products are offered by only Thomson, West, Lexis-Nexis and a few CD-ROM publishers.

It is unlikely that an entrant could offer comparable products, for three reasons. First, the entrant would have to compile an historical collection of cases. Second, the entrant would have to develop a sophisticated editorial staff capable of creating editorial enhancements that customers would accept as reliable. Third, West claims that its copyright is infringed by what is commonly referred to as "star pagination," the insertion of symbols in the text of decisions to indicate where internal page breaks are in West's National Reporter System, and the placement nearby of the corresponding West reporter's page number. West page numbers are commonly required or expected by courts. West has granted few, if any, licenses to employ star pagination. Thus, existing or potential

participants in the markets for primary law products cannot offer products with star pagination without the threat of costly infringement litigation.

West and Thomson also aggressively compete against each other in the sale of several secondary law products, referred to in Exhibit B. Thomson and West are the only publishers—or two of very few publishers—in each relevant secondary law product market. As with enhanced primary law, it is unlikely that an entrant would be able to offer comparable products. Thomson's and West's titles are established resources and it would take a long time for a putative entrant to overcome West's and Thomson's acceptance by consumers. Furthermore, West's claim of copyright infringement for "star pagination" has a significant effect on the competitive viability of CD-ROM products, where it would be possible to include both primary and secondary law products on the same CD-ROM.

Thomson and West compete vigorously on the basis of price for both enhanced primary law products and secondary law products. Thomson and West look almost exclusively to each other in making pricing decisions and promoting both their enhanced primary and their secondary law products in the relevant markets, and consumers have benefitted from this competition. Thomson and West also compete directly on the basis of quality. The quality of Thomson's and West's enhanced primary and secondary law products has improved as a result of such competition. Unless restrained, the proposed acquisition would allow the combined entity unilaterally to raise prices without the threat of a new entry into these markets by a third party. Unless restrained, the proposed acquisition would also have an adverse effect on the quality of enhanced primary law products and secondary law products.

In the comprehensive online legal research services market, Thomson supplies enhanced primary law, secondary law products, non-legal products, and Auto-Cite to Lexis-Nexis. West offers the competing WESTLAW service, and consumers have benefitted from the vigorous competition that has existed between Lexis-Nexis and WESTLAW. To effectively compete against WESTLAW, Lexis-Nexis depends upon access to certain products that Thomson licenses to Lexis-Nexis. Unless restrained, the proposed acquisition will increase Thomson's incentive to exercise market power by increasing prices for, reducing quality and innovation of, or withholding

access to certain products that Thomson licenses to Lexis-Nexis.

#### *D. Anticompetitive Consequences of the Acquisition*

The complaint alleges that Thomson's acquisition of West would substantially reduce or eliminate competition in (1) nine relevant enhanced primary law product markets, (2) the publication of secondary law in the relevant secondary law product markets and (3) the market for the provision of comprehensive online legal research services.

The complaint alleges that the acquisition would increase concentration significantly in the nine relevant enhanced primary law product markets and in the secondary law product markets. After the acquisition, the combined Thomson/West entity would dominate these relevant markets. Using a measure of market concentration called the HHI, defined and explained in Exhibit C, a combination of Thomson and West would substantially increase concentration in each of the nine relevant enhanced primary law product markets. The post-merger HHIs and increases in the HHIs for each market are listed in Exhibit C. Post-merger HHIs range between 4521 and 9010; increases range from 959 to 4234.

The complaint also alleges that it is unlikely that a new entrant would enter into any of these relevant markets that would be capable of restraining any anticompetitive increase in price within a two-year period. In the nine relevant enhanced primary law product markets and in the secondary law product markets, there is now competition between the parties that would end after the acquisition, risking price increases and reduced product quality and innovation for consumers.

In the market for the provision of comprehensive online legal research services, Lexis-Nexis depends upon access to some of Thomson's products to compete effectively against WESTLAW. The complaint alleges that the acquisition is likely to lessen competition substantially in the market for comprehensive online legal research services by increasing Thomson's incentive to increase the prices of, reduce the quality of, or withhold access to certain materials it provides to Lexis-Nexis. As a result of such an exercise of market power, there could be material injury to Lexis-Nexis' ability to compete effectively, and thus harm to competition in this market. In the event of such an exercise of market power by Thomson, Lexis-Nexis would be unable or unlikely to replace the licensed Thomson products in such a way, or

within such time, as to maintain the level of competition that existed between WESTLAW and Lexis-Nexis before the acquisition. Reduced competition in the provision of comprehensive online legal research services would mean higher prices and reduced product quality and innovation for consumers of those services.

#### *III. Explanation of the Proposed Final Judgment*

The proposed Final Judgment would preserve competition in the nine enhanced primary law product markets. The proposed Final Judgment requires the divestiture of enhanced code products for the United States, California, Massachusetts, Michigan, and New York. It also requires the divestiture of U.S. Reports, L.Ed., a United States Supreme Court case law reporter. Divestiture of these, and all products to be divested pursuant to the proposed Final Judgment, must be accomplished by Thomson within nine months after entry of the Final Judgment. The defendants must divest the assets and rights associated with the divested products in such a way as to satisfy the plaintiffs that the divested products can and will be operated by the acquirer as viable, ongoing product lines, and that until the divestiture, the defendants will maintain them as such.

The proposed Final Judgment also permits states to reopen bidding of three state contracts to publish the official state reporter. This process will allow the states effectively to cause a divestiture of the state reporters are all contracted by a bid process, the reopening of the bidding would stimulate competition in the publication of state reporters.

Furthermore, under the proposed Final Judgment, one secondary law product in each of the secondary law markets will be divested. Competition from buyers of the divested secondary products should cause Thomson to continually enhance and improve its products in response to such competition. Thus, the proposed Final Judgment would preserve competition in the secondary law product markets.

The proposed Final Judgment also requires Thomson to license the use of star pagination in the National Reporter System to other legal publishers. As noted above, West has claimed that a license is required for star pagination. There is pending litigation over the validity of West's copyright claim. See *Oasis Publishing Co. v. West Publishing Co.*, F. Supp. , 1996 WL 264773 (D.Minn. 1996); *Matthew Bender and Company, Inc. v. West Publishing Co.*, Docket No. 94-CIV-0589 (S.D.N.Y.).

However, West has asserted a copyright claim and has thus far prevailed in litigation. As a result, only two licenses to use West pagination have been issued by West. This has created a barrier to entry for enhanced primary law and secondary law products incorporating such pagination. The proposed Final Judgment would allow any person to license use of the West pagination at maximum prices. Thus, the proposed relief reduces one important barrier to entry and provides publishers who wish to produce such products with a new option for introducing products that will compete with Thomson/West. Thus, this relief, together with the divestitures of enhanced primary and secondary law products, will aid in maintaining the vigorous competition in these markets that has existed before the merger.

The proposed Final Judgment should not be read to suggest that the plaintiffs believe that a license is required before a legal publisher may star paginate to defendants' products. Indeed, the Antitrust Division expressly reserves the right to assert its views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. The proposed Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

Additionally, pursuant to the proposed Final Judgment, Thomson must divest itself of Auto-Cite and extend the terms of existing licenses of Investext, ASAP and Predicasts databases to Lexis-Nexis. The divestiture of Auto-Cite will ensure that Thomson-West cannot injure competition in the comprehensive online legal research services market by increasing prices for, reducing quality and innovation of, or by denying Lexis-Nexis access Auto-Cite. Likewise, the extension of the licenses will ensure that Lexis-Nexis will have access to these resources while it has the opportunity to make appropriate competitive adjustments. Furthermore, the divestiture of the enhanced primary law products and the secondary law products would enable the new owner of those products to make them available to Lexis-Nexis without the owner having the anticompetitive incentive that arises from owning the main Lexis-Nexis competitor.

If the defendants fail to divest the divestiture products within nine months after entry of final judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the proposed

Final Judgment provides that Thomson will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the Divested Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, 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. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Thomson maintain the Divested Products separate and apart pending divestiture.

#### 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 the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

#### V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530.

The proposed Final 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 the modification, interpretation, or enforcement of the Final Judgment.

#### VI. Alternatives to the Proposed Final Judgment

The plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits of their complaint against Thomson. The plaintiffs are satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in (1) the nine enhanced primary law product markets, (2) the markets for the relevant secondary law products, and (3) the market for the provision of comprehensive online legal research services. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

#### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the DC Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>1</sup> Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460-62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>2</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment require a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" (citations omitted).<sup>3</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 25, 1996.  
Respectfully submitted,

Craig W. Conrath,  
Chief, Merger Task Force, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307-5779.

#### Exhibit A

##### Exhibit A.1

U.S. Code Service  
U.S. Reports, L.Ed.  
U.S. Digest  
Manual of Federal Practice, 4th Ed.  
Bankruptcy Law & Practice, 6th Ed.  
Bankruptcy (Epstein, Nickels & White)  
Corbin on Contracts

<sup>2</sup> *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. see also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'" (citations omitted).

<sup>3</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716, *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Insurance Law (Appleman)  
Search & Seizure (Thomson)  
Ballantine's Law Dictionary  
Auto-Cite  
Deering's Annotated California Code  
California ADR Practice Guide  
California Civil Practice Handbook:  
Choice Between State and Federal Courts  
California Civil Trialbook  
California Litigation By the Numbers  
Court Rules Companion  
California Negligence & Settlement  
California Products Liability Law & Practice  
California Trial  
California Tort Law  
Modern California Discovery  
Colorado Trial Handbook  
Trial Handbook for Connecticut Lawyers  
Florida Criminal Practice & Procedure  
Florida Evidence 2d  
Illinois Jurisprudence  
Indiana Appellate Handbook 2d  
Kentucky Probate PSL  
Kentucky Workers' Compensation PSL  
Louisiana Code of Evidence—Annotated  
Louisiana Successions  
Louisiana Workers' Compensation  
Annotated Laws of Massachusetts  
Massachusetts Corporations PSL  
Massachusetts Domestic Relations PSL  
Massachusetts Landlord-Tenant Law  
Massachusetts Real Estate PSL  
Michigan Criminal Law  
Michigan Statutes Annotated  
Michigan Digest  
New Jersey Criminal Procedure  
New York Consolidated Laws Service  
New York Wills and Trusts  
Ohio Family Law  
Ohio Probate  
Modern Texas Discovery  
Texas Civil Pre-Trial Procedure  
Texas Trial and Appellate Practice  
Washington Trial Handbook

##### Exhibit A.2

Michigan Law & Practice  
New York Estate Administration  
Pennsylvania Law Encyclopedia

##### Exhibit A.3

California Appellate Reports  
California Reports  
California Reports Advance Sheets  
Washington Appellate Court Reports  
Washington Supreme Court Reports  
Wisconsin Official Reports  
Wisconsin Official Reports Advance Sheets

##### Exhibit A.4

California Digest  
Wisconsin Digest

#### Exhibit B

Secondary Law Products  
U.S. Digest

<sup>1</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.



Manual of Federal Practice, 4th Ed.  
 Bankruptcy Law & Practice, 6th Ed.  
 Bankruptcy (Epstein, Nickels & White)  
 Corbin on Contracts  
 Insurance Law (Appleman)  
 Search & Seizure (Thomson)  
 Ballantine's Law Dictionary  
 California ADR Practice Guide  
 California Civil Practice Handbook:  
   Choice Between State and Federal  
   Courts  
 California Civil Trialbook  
 California Litigation By the Numbers  
   Court Rules Companion  
 California Negligence & Settlement  
 California Products Liability Law &  
   Practice  
 California Digest  
 California Trial  
 California Tort Law  
 Modern California Discovery  
 Colorado Trial Handbook  
 Trial Handbook for Connecticut  
   Lawyers  
 Florida Criminal Practice & Procedure  
 Florida Evidence 2d  
 Illinois Jurisprudence  
 Indiana Appellate Handbook 2d  
 Kentucky Probate PSL  
 Kentucky Workers' Compensation PSL  
 Louisiana Code of Evidence—Annotated  
 Louisiana Successions  
 Louisiana Workers' Compensation  
 Massachusetts Corporations PSL  
 Massachusetts Domestic Relations PSL  
 Massachusetts Landlord-Tenant Law  
 Massachusetts Real Estate PSL  
 Michigan Criminal Law  
 Michigan Digest  
 Michigan Law & Practice  
 New Jersey Criminal Procedure  
 New York Wills and Trusts  
 New York Estate Administration  
 Ohio Family Law  
 Ohio Probate  
 Pennsylvania Law Encyclopedia  
 Modern Texas Discovery  
 Texas Civil Pre-Trial Procedure  
 Texas Trial and Appellate Practice  
 Washington Trial Handbook  
 Wisconsin Digest

#### Exhibit C

#### *Definition of HHI and Calculations for Nine Markets*

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI takes into account the relative size and distribution of the firms in a market and

approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

The HHIs for the nine primary law markets are as follows:

	Post merger	HHI increase
The market for:		
Enhanced United States Supreme Court case law	5023	959
Enhanced United States statutory law .....	9019	3964
Enhanced California statutory law .....	8088	3866
Enhanced California case law .....	4762	1540
Enhanced New York statutory law .....	8686	3792
Enhanced Massachusetts statutory law .....	8954	4234
Enhanced Michigan statutory law .....	8702	4196
Enhanced Washington case law .....	4521	996
Enhanced Wisconsin case law .....	5535	2424

#### Certificate of Service

I, Keith S. Blair, hereby certify that on June 25, 1996, I caused a copy of the Competitive Impact Statement, filed this day in *United States v. The Thomson Corporation and West Publishing Company*, to be served on defendants the Thomson Corporation and West Publishing Company by having a copy mailed, first class, postage prepaid, to:

Wayne D. Collins, Esq., Shearman & Sterling, Citicorp Building, 153 East 53rd Street, New York, New York 10022, Counsel for The Thomson Corporation.

James E. Schatz, Esq., Schatz Paquin Lockridge Grindal & Holstein P.L.L.P., Suite 2200, 100 Washington Avenue So., Minneapolis, MN 55401, Counsel for West Publishing Company.

Dated: June 25, 1996,

Keith S. Blair.

[FR Doc. 96-16891 Filed 7-3-96; 8:45 am]

BILLING CODE 4410-01-M

#### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1996, Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143) .....	II
Hydrocodone (9193) .....	II
Oxymorphone (9652) .....	II

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 3, 1996.

Dated: June 27, 1996.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

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#### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby