

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Washington, D.C. 20530,
Plaintiff,

v.

BIGLARI HOLDINGS, INC.
Suite 400
17802 IH 10 West
San Antonio, TX 78257

Defendant.

Civil Action No.

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY
WITH THE PREMERGER REPORTING REQUIREMENTS
OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties against Defendant Biglari Holdings, Inc. (“Biglari Holdings”). Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Biglari Holdings violated the notice and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, (“HSR Act” or “Act”) in June of 2011 when it acquired voting securities of Cracker Barrel Old Country Store, Inc. (“Cracker Barrel”) in excess of the threshold for filing established by the HSR Act. Although the HSR Act contains an exemption from notice and waiting requirements for certain acquisitions “solely for the purpose of investment,” Biglari Holdings’ acquisitions did not come within that exemption.

V. THE HART-SCOTT-RODINO ACT AND RULES

purpose of investment” as follows:

Voting securities are held or acquired “solely for the purpose of investment” if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

11. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. The maximum amount of civil penalty is \$16,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 74 Fed. Reg. 857 (Jan. 9, 2009).

VI. VIOLATION

12. On May 23, 2011, Biglari Holdings held 100 shares of the voting securities of Cracker Barrel. On May 24, 2011, Biglari Holdings began acquiring additional shares of voting securities of Cracker Barrel. Biglari Holdings acquired Cracker Barrel voting securities every day the stock market was open through June 13, 2011.

15. Biglari Holdings did not file and observe the waiting period under the HSR Act prior to making the acquisitions described in Paragraph 13 above.

16. On June 13, 2011, Biglari Holdings filed a Form 13D with the SEC, disclosing its holdings in Cracker Barrel.

stock described in Paragraph 13 above, and Biglari Holdings was in continuous violation of the HSR Act during the period beginning on June 8, 2011, when it acquired Cracker Barrel stock that resulted in it holding in excess of \$66 million, and ending on September 22, 2011, when the waiting period triggered by its August 26, 2011 HSR filing expired.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the acquisitions by Defendant Biglari Holdings of Cracker Barrel voting securities from June 8 through June 13, 2011, were made in violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Biglari Holdings was in violation of the HSR Act each day from June 8, 2011, through September 22, 2011.
2. That the Court order Defendant Biglari Holdings to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 74 Fed. Reg. 857 (Jan. 9, 2009).
3. That the Court order such other and further relief as the Court may deem just and proper.
4. That the Court award the Plaintiff its costs of this suit.

CIVIL COVER SHEET

JS-44 (Rev. 5/12 DC)

(a) PLAINTIFFS

DEFENDANTS

Biglari Holdings, Inc.
Suite 400

United States of America
c/o Department of Justice

Washington, DC 20030

17802 IH 10 West

San Antonio, TX 78257

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Federal Trade Commission

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Injunction

Malpractice

Review

Order/Preliminary

Any nature of suit from any category

410 Antitrust

315 Airplane Product Liability

340 Marine

862 Black Lung

330 Federal Employers' Liability

345 Marine Product Liability

864 SSID Title XXV

Antitrust (then governs)

850 Motor Vehicle

865 RSL 405

362 Medical Malpractice

365 Product Liability

890 Other Statutory

Pro Se General Civil

General Civil (Other)

440 Prison Term

Prisoner Term

210 Land

Other Statutory

555 Prison Conditions

400 State Reapportionment

As/Review of Appellate

Other Statutory

870 Bar Panel

870 US Plaintiff

330 Patent

Other Statutory

870 Bar Panel

870 US Plaintiff

Other Statutory

870 Bar Panel

870 US Plaintiff

870 LRS Third Party 28 USC 7609

