

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Plaintiff,

v.

FAYEZ SAROFIM,

Defendant.

Civil Action No. 1:16-cv-02156
(RC)

**MOTION AND MEMORANDUM OF THE UNITED STATES IN SUPPORT OF ENTRY
OF FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-

interest. 15 U.S.C. § 16(e).

The Complaint alleges that the Defendant violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”). The HSR Act requires certain acquiring and acquired parties to file pre-acquisition Notification and Report Forms with the Department of Justice and the Federal Trade Commission (collectively, the “federal antitrust agencies” or “agencies”) and to observe a statutorily mandated waiting period before consummating their acquisition.¹ A fundamental purpose of the notification and waiting period is to allow the agencies an opportunity to conduct an antitrust review of proposed transactions that meet the HSR Act’s jurisdictional requirements.

enforcement by giving the agencies an opportunity to investigate certain large acquisitions before they are consummated.

As alleged in the Complaint, Defendant acquired voting securities of KMI in excess of the \$15 million size-of-transaction threshold then in effect in 2001, acquired voting securities of KMI in excess of the \$113.4 million threshold then in effect in 2006, and acquired voting securities of KMI in excess of the \$682.1 million threshold then in effect in 2012. In each instance, Defendant acquired these shares without complying with the pre-merger notification and waiting period requirements of the HSR Act. Additionally, the Complaint alleged that Defendant also acquired voting securities of Kemper (f/k/a Unitrin Inc.) in excess of the then applicable \$59.8 million size-of-transaction threshold in 2007 also without complying with the pre-merger notification and waiting period requirements of the HSR Act. Defendant's failure to comply undermined the statutory scheme and the purpose of the HSR Act by precluding the agencies' timely review of the Defendant's acquisitions. The Complaint seeks an adjudication that the Defendant's acquisitions of voting securities of KMI and Kemper violated the HSR Act, and asks the Court to award an appropriate civil penalty.

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment. The terms of the proposed Final Judgment are designed to deter Defendant's future HSR Act violations by imposing a civil penalty of \$720,000.

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 Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of written comments relating to

October 27, 2016, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those portions of the Competitive Impact Statement by reference.

IV. CONCLUSION

For the reasons set forth in this Motion and Memorandum and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment, attached hereto as Exhibit 2, be entered at this time.

Dated: January 23, 2017

Respectfully Submitted,

/s/ Kenneth A. Libby
Kenneth A. Libby
Special Attorney