

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APR 23 4 10 PM '95

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 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.)
 -----X

DISTRICT OF COLUMBIA
Civil No.: 96-1415 (PLF)

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. Defendants have agreed that they will not use the model license contained in this Final Judgment, or the fact that any

such license was included in the Final Judgment, in any litigation or negotiations with third parties to support the validity of their position on star pagination.

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 Thomson 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 if permitted by contract or otherwise the transfer of the economic benefits equivalent to those received by Thomson under the Auto-Cite License Agreement, and delivery of a transferrable sublicensable 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 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 of the 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 a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to customary 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 production 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.

H. Defendants shall not claim or assert any right to prohibit an Acquirer from including in any of the Divestiture Products or any other publications cross-references to the Defendant's products of the type contained in Thomson's Total Client Service Library ("TCSL") or Integrated Legal Research System ("ILRS"). Defendants shall not claim or assert any right to prohibit an Acquirer from including in Auto-Cite cross-references to Thomson's American Law Reports or other annotations of the type that are now included in Auto-Cite.

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 plaintiffs 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:	\$0.04
Second year of license:	\$0.04
Third year of license:	\$0.06
Fourth year of license:	\$0.06
Fifth year of license:	\$0.08
Sixth year of license:	\$0.08
Seventh and later years of license:	\$0.09

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 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

EXHIBIT A (continued)

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 start 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 I -- 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.]*

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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.

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2.04. No Warranty or Liability. ALL NRS PAGINATION AND LICENSED NRS PAGINATION SHALL BE OBTAINED AND USED BY LICENSEE ON AN "AS IS" BASIS

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Article 3 -- Notice Provisions

3.01. Copyrights. During the term of this Agreement, Licensee 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).

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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

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 _____