

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALUMINUM COMPANY OF AMERICA,
and ALUMAX INC.,

Defendants.

Civil Action No.: 98-CV-1497

Filed:

(PROPOSED)

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America (“United States”), filed its complaint in this action on June 15, 1998, and plaintiff and defendants, Aluminum Company of America (“Alcoa”) and Alumax Inc. (“Alumax”), 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, the essence of this Final Judgment is the prompt and certain divestiture of the Alcoa Cast Plate Division to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract 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, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. “Alcoa” means defendant Aluminum Company of America, a Pennsylvania Corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. “Alumax” means Alumax Inc., a Delaware Corporation with its headquarters in Atlanta, Georgia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. “Alcoa Cast Plate Division” means all assets included within the cast plate operation of Alcoa’s Aerospace and Commercial Rolled Products Division as of the date hereof, including:

1. all tangible assets, including the cast plate manufacturing facility located at 1551 Alcoa Avenue, Vernon, California 90058 (“Vernon facility”) and the portion of the real property on which the Vernon facility is situated that is reasonably necessary for operation of the Vernon cast plate plant; any facilities used for research and development activities; Vernon offices; cast plate-related manufacturing assets including capital equipment, vehicles, interests, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements used in the cast plate operation; all licenses, permits and authorizations issued by any governmental organization relating to the cast plate operation; all contracts, agreements, leases, commitments and understandings pertaining to the cast plate operation; supply agreements; all customer lists, contracts, accounts, and credit records; and other records maintained by Alcoa in connection with the cast plate operation;
2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, and service names contain the name “Alcoa”), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols,

specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Alcoa provides to its own employees, customers, suppliers, agents or licensees; and

3. all research data concerning historic and current research and development efforts relating to the cast plate operation, including designs of experiments, and the results of unsuccessful designs and experiments.

D. “Cast Plate” means an aluminum plate product manufactured by casting or by sawing cast slab purchased from an external source, ranging in gauges from 1/4 inch to 30 inches, that is used for various tooling, industrial and mold plate applications, and that is manufactured by the Alcoa Cast Plate Division.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to Alcoa and Alumax, 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. Alcoa shall require, as a condition of the sale or other disposition of all or substantially all of the assets involving Cast Plate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE OF ASSETS

A. Alcoa is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Alcoa Cast Plate Division as an ongoing business to a purchaser acceptable to the United States in its sole discretion. With respect to the intangible assets described in Section II(C)(2) of this Final Judgment, the divestiture required hereunder shall be accomplished by entering into a perpetual, nonexclusive license (or licenses, as the case may be) with the purchaser, transferable to any future purchaser of the Vernon facility, to use, in manufacturing cast plate at the Vernon facility, all such intangible assets, wherever located, that have been used in the manufacture of cast plate at the Vernon facility.

B. Alcoa shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Alcoa promptly shall make known, by usual and customary means, the availability of the Alcoa Cast Plate Division described in this Final Judgment. Alcoa shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Alcoa shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Alcoa Cast Plate Division customarily provided in a due diligence process except such information subject to

attorney-client privilege or attorney work-product privilege. Alcoa shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Alcoa shall not interfere with any negotiations by any purchaser to employ any Alcoa employee who works at, or whose principal responsibility is, the Cast Plate business.

E. Alcoa shall permit prospective purchasers of the Alcoa Cast Plate Division to have reasonable access to personnel and to make such inspection of Alcoa Cast Plate's Vernon facility; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Alcoa shall warrant to the purchaser of the Alcoa Cast Plate Division that the Alcoa Cast Plate Division will be operational on the date of sale.

G. Alcoa shall not take any action, direct or indirect, that will impede in any way the operation of the Alcoa Cast Plate Division.

H. Alcoa shall warrant to the purchaser of the Alcoa Cast Plate Division that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Alcoa Cast Plate Division and that Alcoa will not undertake, directly or indirectly, following the divestiture of the Alcoa Cast Plate Division, any challenges to the environmental, zoning, or other permits pertaining to the operation of the Alcoa Cast Plate Division.

I. Alcoa shall not be permitted to locate any of its operations at the Alcoa Cast Plate Division's Vernon facility.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Alcoa Cast Plate Division, operated in place pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying the Alcoa Cast Plate Division to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Alcoa Cast Plate Division can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture of Cast Plate. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction that: (1) the purchaser has the capability and intent of competing effectively in the manufacture and sale of Cast Plate; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of Cast Plate; and (3) none of the terms of any agreement between the purchaser and Alcoa gives Alcoa the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

V.

APPOINTMENT OF TRUSTEE

A. In the event that Alcoa has not divested the Alcoa Cast Plate Division within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Alcoa Cast Plate Division.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Alcoa Cast Plate Division. 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 and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Alcoa 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 accountable solely 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 in its sole discretion and shall have such other powers as this Court shall deem appropriate. Alcoa shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Alcoa must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Alcoa, 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 Alcoa and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business 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. Alcoa shall use its best efforts to assist the trustee in accomplishing the required divestiture, including its best efforts to effect all necessary regulatory approvals. 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 the business to be divested, and Alcoa shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Alcoa shall permit *bona fide* prospective acquirers of the Alcoa Cast Plate Division to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

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; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly 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; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. 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 enter thereafter 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

Within two (2) business days following execution of a definitive agreement contingent upon compliance with the terms of this Final Judgment to effect, in whole or in part, any proposed divestiture pursuant to Sections IV and V of this Final Judgment, Alcoa or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Alcoa. 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 to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Alcoa, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Alcoa and the trustee shall furnish any additional information requested from them within fifteen (15) calendar

days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Alcoa, the proposed purchaser, or any third party, whichever is later, the United States shall provide written notice to Alcoa and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Alcoa and the trustee that it does not object, then the divestiture may be consummated, subject only to Alcoa's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Alcoa under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Alcoa shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts

that Alcoa has taken to solicit a buyer for the Alcoa Cast Plate Division and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa shall deliver to plaintiff an affidavit which describes in detail all actions Alcoa has taken and all steps Alcoa has implemented on an on-going basis to preserve the Alcoa Cast Plate Division pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Alcoa's efforts to maintain and operate the Alcoa Cast Plate Division as an active competitor, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Alcoa Cast Plate Division, and maintain the Vernon facility in operable condition at current capacity configurations. Alcoa shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Alcoa's earlier affidavit(s) filed pursuant to Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Alcoa shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Alcoa shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alcoa Cast Plate Division.

IX.

FINANCING

Alcoa is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X.

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 United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall

submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (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 defendants to plaintiff, defendants represent and identify 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 defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI.

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 or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

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