UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	**Civil No.:** 00-2824 (RWR)
v.	)	**Filed:**
GEORGIA-PACIFIC CORPORATION, and FORT JAMES CORPORATION	)	
Defendants.	)	

FILED
MAY 9 2001
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America ("United States"), filed its Complaint on November 21, 2000, and defendants Georgia-Pacific Corporation ("Georgia-Pacific") and Fort James Corporation ("Fort James"), 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 any 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 business and assets identified below to assure that competition is not substantially lessened,

AND WHEREAS, the United States requires defendants to make the divestitures ordered

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herein for the purpose of remedying the loss of competition alleged in the Complaint,

AND WHEREAS, defendants have represented to the United States that the divestitures ordered herein can and will be made promptly and that defendants later will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

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

II. DEFINITIONS

As used in this Final Judgment:

A. "Georgia-Pacific" or "G-P" means defendant Georgia-Pacific Corporation, a Georgia corporation with its headquarters in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Georgia-Pacific Tissue LLC" or "GPT" means Georgia-Pacific Tissue LLC, a limited liability company incorporated in Delaware with its headquarters in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees

C "Fort James" means defendant Fort James Corporation, a Virginia corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D "AFH Tissue Product(s)" means paper napkins, paper towels, and bathroom tissue sold into the away-from-home distribution channel, and all tissue product dispenser systems sold or leased into the away-from-home distribution channel or to away-from-home tissue customers, except for the proprietary tissue product dispenser systems and components sold or leased under the Cormatic and Ultimatic lines and all tangible and intangible assets necessary for the production, marketing and sale of the Cormatic and Ultimatic tissue product dispenser systems and components.

E "Georgia-Pacific AFH Tissue Business" means the business of developing, manufacturing, marketing, and selling AFH Tissue Products as conducted by GPT, including, but not limited to

(1) all tangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, has plans to sell, or leases, including, but not limited to: research and development activities, all manufacturing equipment, tooling, and fixed assets for the tissue paper making mills located in Menasha, Wisconsin, Flagstaff, Arizona, Alsip, Illinois, and Gary, Indiana, and the tissue converting facilities located in Neenah, Wisconsin, Bellemont, Arizona, Brattleboro, Vermont,

Greenwich, New York, and LaGrange, Georgia (but excluding Crossett, Arkansas, Palatka, Florida, and Toluca, Mexico and other Mexican property tangible and intangible); personal property, inventory, office furniture, materials, supplies, and other tangible property used to manufacture or sell AFH Tissue Products, all licenses, permits and authorizations issued by any governmental or standard setting organization relating to the manufacture or sale of any AFH Tissue Product, all contracts, agreements, leases, commitments, certifications, and understandings used in the manufacture or sale of any AFH Tissue Product, including supply agreement(s), except for (i) existing supply agreements for parent rolls with Georgia-Pacific (to be replaced by the new supply agreements under section IV.A (2)), and (ii) existing supply agreements for finished AFH tissue products transferred from the Crossett, Arkansas and Palatka, Florida tissue mills to GPT; all customer lists, contracts, accounts, and credit records; and all mill operations reports and other records relevant to AFH Tissue Products and the Georgia-Pacific AFH Tissue Business, and

(2) all intangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, or has plans to sell, or leases, including, but not limited to: all legal rights, including intellectual property rights, associated with AFH Tissue Products, including trademarks, trade

names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property, all legal rights to the brand names controlled by GPT, including, but not limited to "Park Avenue", "Main Street", "Second Nature", and "Coronet", and any derivations thereof, all trade secrets, all technical information, computer software and related documentation, and know-how, including, but not limited to, recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products, all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Georgia-Pacific Tissue LLC provided to its own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments, and all employment contracts and relationships, as existing on July 17, 2000

III. APPLICABILITY

A. This Final Judgment applies to Georgia-Pacific, Georgia-Pacific Tissue LLC, and Fort James, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise

B Defendants shall require, as a condition of the sale or other disposition of all or substantially all G-P's or Fort James's assets, or of lesser business units that include the Georgia-Pacific AFH Tissue Business, that the purchaser of G-P's or Fort James's assets agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the purchaser of the Georgia-Pacific AFH Tissue Business

IV. DIVESTITURES

A Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by this Court, whichever is later, to

(1) divest the Georgia-Pacific AFH Tissue Business in a manner consistent with this Final Judgment as a viable ongoing business to one or more purchasers acceptable to the United States in its sole discretion, provided that at least one of these purchasers, in the sole judgment of the United States, becomes, as a result of the acquisition and any preexisting AFH business, capable of competing effectively in supplying AFH Tissue Products to national accounts, and,

(2) at the option of the purchaser or purchasers of the Georgia-Pacific AFH Tissue Business, enter into an agreement to supply tissue parent rolls of a quality and character substantially similar to those currently provided to Georgia-Pacific Tissue LLC pursuant to its supply contract with G-P, such agreement to (a) obligate G-P to provide up to 120,000 tons of parent roll tissue in the aggregate, (b) continue for at least 3 years if requested by the

purchaser and to be renewed thereafter annually upon the request of the purchaser, with the concurrence of the United States in its sole discretion, for two periods of one-year each, to extend the total term of the agreement up to five (5) years, (c) permit the purchaser to terminate the agreement, or to reduce the total tonnage required, upon reasonable prior notice to G-P, and (d) specify commercially reasonable price and other terms for parent rolls that are reasonably designed to permit the purchaser or purchasers to compete in the sale of commercial tissue products generally and, in particular, to national accounts.

B. Defendants agree to use their best efforts to divest the Georgia-Pacific AFH Tissue Business as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestiture two additional periods of time, not to exceed thirty (30) calendar days each, and shall notify this Court in such circumstances.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Georgia-Pacific AFH Tissue Business Defendants shall inform any person making inquiry regarding a possible purchase of the Georgia-Pacific AFH Tissue Business that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information and documents relating to the Georgia-Pacific AFH Tissue Business customarily provided in a due diligence process, except such information or documents subject to the attorney-client or attorney work-product privileges Defendants shall make available such

information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the purchaser and the United States information relating to any Georgia-Pacific personnel primarily involved in the research, production, operation, development, marketing and sale of AFH Tissue Products by the Georgia-Pacific AFH Tissue Business to enable the purchaser to make offers of employment Defendants will not interfere with any negotiations by the purchaser to employ any Georgia-Pacific employee whose primary responsibility is the research, production, operation, development, marketing or sale of AFH Tissue Product(s) by the Georgia-Pacific AFH Tissue Business.

E. Defendants shall permit prospective purchasers of the Georgia-Pacific AFH Tissue Business to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, sales, marketing, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the purchaser of the Georgia-Pacific AFH Tissue Business that each asset of the Georgia-Pacific AFH Tissue Business will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Georgia-Pacific AFH Tissue Business.

H. Defendants shall warrant to the purchaser(s) of the Georgia-Pacific AFH Tissue Business that there are no material defects in the environmental, zoning or other permits pertaining to the operation of any of the assets of the Georgia-Pacific AFH Tissue Business, and

that following the sale of the Georgia-Pacific AFH Tissue Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Georgia-Pacific AFH Tissue Business.

I. Unless the United States consents in writing, the divestiture pursuant to Section IV of this Final Judgment, whether by defendants or by a trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Georgia-Pacific AFH Tissue Business as defined in Section II. Prior to divestiture, the Georgia-Pacific AFH Tissue Business shall be operated pursuant to the Hold Separate Stipulation and Order entered by this Court The divestiture of the Georgia-Pacific AFH Tissue Business shall be accomplished by selling or otherwise conveying the Georgia-Pacific AFH Tissue Business to a purchaser(s) in such a way as to satisfy the United States, in its sole discretion, that the business to be divested can and will be used by the purchaser(s) as part of a viable ongoing AFH tissue business, and that at least one of these purchasers, in the sole judgment of the United States, becomes, as a result of the acquisition and any preexisting AFH business, capable of competing effectively in supplying AFH Tissue Products to national accounts The divestiture of the Georgia-Pacific AFH Tissue Business, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser(s) in a manner so as to satisfy the United States, in its sole discretion, that it (1) has the capability and intent of competing effectively in the development, production and sale of AFH Tissue Products; (2) has the managerial, operational, technical and financial capability to compete effectively in the development, production and sale of AFH Tissue Products; and (3) is not hindered by the terms of any agreement between the purchaser and defendants that gives either defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to

interfere with the ability of the purchaser to compete effectively

V. NOTICE OF PROPOSED DIVESTITURES

A. 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 or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture If the trustee is responsible, it shall similarly notify defendants The notice shall set forth the details of the proposed divestiture 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 Georgia-Pacific AFH Tissue Business, together with full details of same Within fifteen (15) calendar days of receipt by the United States of such divestiture notice, the United States may request from defendants, the proposed purchaser, or any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants 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 United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants 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 defendants (and the trustee if applicable) that it does not object, then the divestiture may be consummated,

subject only to defendants' limited right to object to the sale under Section VI(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 VI may not be consummated Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

B In the event that the required divestitures are made to more than one purchaser, all purchasers must be identified simultaneously by the defendants, or by the applicable trustee, in order that the proposed divestitures may be reviewed jointly by the United States

VI. APPOINTMENT OF TRUSTEE

A. Immediately upon the filing of this Final Judgment, the United States may, in its sole discretion, nominate a trustee, which the Court shall appoint, if such trustee is approved by the Court. If a trustee is appointed, that person shall monitor the divestiture by defendants of the Georgia-Pacific AFH Tissue Business. This procedure will enable the trustee to be familiar with all applicable divestiture issues in the event the trustee becomes responsible, pursuant to this Final Judgment, for completing the divestiture required by this Final Judgment.

B. In the event that defendants have not completed the divestiture required by this Final Judgment within the time specified in Section IV of this Final Judgment, defendants shall notify the United States of that fact in writing. If a trustee has already been appointed under Section VI (A) of this Final Judgment, the trustee shall immediately assume the sole power and authority to effect the divestiture of the Georgia-Pacific AFH Tissue Business. If a trustee has not been appointed, the Court shall, on application of the United States, appoint a trustee selected

by the United States and approved by the Court to effect the divestiture of the Georgia-Pacific AFH Tissue Business. Upon the appointment of a trustee and expiration of the time specified in Section IV of this Final Judgment, then only the trustee shall have the power and authority to accomplish the divestiture of the Georgia-Pacific AFH Tissue Business 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 at such price and on such terms as are then obtainable for the Georgia-Pacific AFH Tissue Business, 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. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire, after the time period described in Section IV(A) and at the cost and expense of the 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 accountable solely to the trustee. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C The trustee shall serve at the cost and expense of defendants, on such terms and conditions as approved by the United States The trustee shall account for all monies derived from the sale of the Georgia-Pacific AFH Tissue Business, 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

defendants and the trust shall then be terminated The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Georgia-Pacific AFH Tissue 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, but timeliness is paramount

D If a trustee is appointed under Section VI(A) of this Final Judgment, defendants shall use their best efforts to assist the trustee in monitoring defendants' attempts to divest the Georgia-Pacific AFH Tissue Business pursuant to this Final Judgment. Defendants shall also use their best efforts to assist the trustee in accomplishing the required divestiture pursuant to this Section, including their best efforts to effect all necessary consents and 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 Georgia-Pacific AFH Tissue Business, and defendants shall develop financial or other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets 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 United States and the Court setting forth either the defendants' or the trustee's efforts, whichever is applicable, 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. After the time period described in Section IV(A), 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 Georgia-Pacific AFH Tissue Business.

F If the trustee has not accomplished the divestiture of the Georgia-Pacific AFH Tissue Business within six (6) months after it became responsible for selling the Georgia-Pacific AFH Tissue Business, 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 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 Final Judgment The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of this Final Judgment which may, if necessary, include extending this Final Judgment and the term of the trustee's appointment by a period requested by the United States.

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 VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Sections IV or VI 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 Georgia-Pacific AFH Tissue Business, 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 defendants have taken to solicit potential purchasers for the business to be divested and to provide required information to potential purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Georgia-Pacific AFH Tissue Business 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, defendants' efforts to maintain and operate the Georgia-Pacific AFH Tissue Business as an active competitor, maintain its management, staffing, research and development activities, sales, marketing and pricing, and maintain the business in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented

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

VIII. HOLD SEPARATE ORDER

Until the divestiture required by this Final Judgment has been accomplished, defendants 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 ordered by this Court

IX. FINANCING

Defendants are ordered and directed not to finance all or any part of any purchase made pursuant to Sections IV or VI of this Final Judgment.

X. NO REACQUISITION

Defendants may not reacquire any part of the Georgia-Pacific AFH Tissue Business divested during the term of this Final Judgment.

XI. COMPLIANCE INSPECTION

For the purposes of determining or securing compliance with this Final Judgment or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A Duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of 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, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the custody or possession or under the control of defendants relating to the 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 a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in this Final Judgment or the Hold Separate Stipulation and Order

C No information or documents obtained by the means provided in this Section of this Final Judgment shall be divulged by a representative of the United States to any person other than an 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 the United

States, defendants represent and identify in writing the material in any such information or documents to 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 ten (10) calendar day's notice shall be given to defendants by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII. 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

XIII. TERMINATION

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

XIV. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest

Dated May 8, 2000

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U S C §16

United States District Judge