

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONTINENTAL AG

and

VEYANCE TECHNOLOGIES, INC.

Defendants.

CASE NO:

JUDGE:

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Continental” means defendant Continental AG, a German corporation with its headquarters in Hanover, Germany, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Veyance” means defendant Veyance Technologies, Inc., a Delaware corporation with its headquarters in Fairlawn, Ohio, its successors, assigns, subsidiaries, divisions, groups,

affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Acquirer” means the entity to which defendants divest the Divestiture Assets.

D. “Air Springs” means rolling lobe, bellow, sleeve and other air springs used as original equipment or replacement parts in commercial vehicle, passenger car, and industrial applications.

E. “Veyance North America Air Springs Business” means Veyance’s North American operations for the development, manufacture and sale of Air Springs and includes Veyance’s subsidiary, Veyance Productos Industriales, S. de R.L. de C.V., a Mexican corporation with its principal place of business in San Luis Potosi, Mexico.

F. “Divestiture Assets” means the Veyance North America Air Springs Business, including, but not limited to:

1. The manufacturing facility located at Eje Central Sahop No 215, Manzana 53, Zona Industrial 1A. Seccion Land A, San Luis Potosi, SLP, CP 78395;

2. The assembly facility located at Eje 128 No.140 interior C y D, Zona industrial del Potosi, SLP, CP 78395;

3. The Air Springs research and development, engineering and testing operations, and administration assets used for the Veyance North America Air Springs Business located at 703 South Cleveland Massillon Road, Fairlawn, Ohio 44333 (“Fairlawn Facility”);

4.a. All tangible assets used primarily in or for the Veyance North America Air Springs Business, including, but not limited to, all real property and improvements, manufacturing equipment, product inventory, tooling and fixed assets, personal property, input inventory, office furniture, materials, supplies, and other tangible property and assets;

b. All tangible assets used primarily in or for the research and development, product and material design, and testing of any Air Spring product for the Veyance North America Air Springs Business, including, but not limited to, equipment, records, materials, supplies, and other property (except for the testing machines located on the second floor of the Fairlawn Facility); and

c. All records and documents relating to the Veyance North America Air Springs Business, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, purchase orders, accounts, and credit records; and all repair and performance records and all other records relating to the Veyance North America Air Springs Business.

5.a. All intangible assets used by the Veyance North America Air Springs Business in the development, manufacture, and sale of Air Springs, including, but not limited to, all U.S. patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how (including, but not limited to, recipes, formulas, and machine settings), 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, all research data concerning historic and current research and development relating to the Veyance North America Air Springs Business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and

development efforts relating to the Veyance North America Air Springs Business (including, but not limited to, product testing, designs of experiments, and the results of successful and unsuccessful designs and experiments);

b. The trade names “SUPER-CUSHION” and “SPRINGRIDE”, or any derivation thereof; and

c. A non-exclusive, perpetual, worldwide, royalty-free license for all non-U.S. patents and pending patent applications for use in the design, development, manufacture, marketing, servicing, and/or sale of Air Springs produced for locations outside of North America, which shall be transferable only to any future purchaser of all or substantially all of the Veyance North America Air Springs Business. Any improvements or modifications to these intangible assets developed by the Acquirer of the Veyance North America Air Springs Business shall be owned solely by that Acquirer.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the commercial vehicle air springs business in order to remedy the effects that the United States alleges otherwise would result from Continental’s acquisition of Veyance. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by defendants, and that competition is maintained during the pendency of the ordered divestiture.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals

of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the Final Order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate their production, marketing, or terms of sale of any products with those produced by or sold by the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the development, manufacture, and sale of Air Springs in North America; (2) management of the Divestiture Assets will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the development, manufacture, or sale of products by the Divestiture Assets will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by the Divestiture Assets, and shall maintain at 2014 levels or previously approved levels for 2015, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an economically viable and competitive, ongoing business, consistent with the requirements of Paragraphs V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the development, manufacture, and sale of Air Springs shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets, and who will be responsible for defendants'

compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment. In the event such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

VI.

DURATION OF HOLD SEPARATE AND
ASSET PRESERVATION OBLIGATIONS

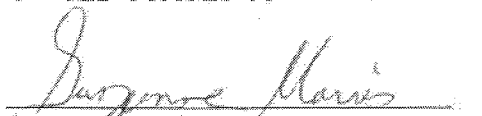
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the

Complaint in this matter, defendants are released from all further obligations under this Hold
Separate Stipulation and Order.

Dated: December 11, 2014

Respectfully submitted,

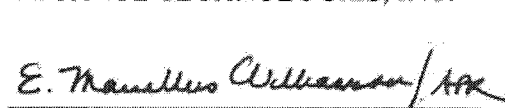
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O R D E R

IT IS SO ORDERED by the Court, this _____ day of _____.

United States District Judge