

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHOWA DENKO K.K.,

SGL CARBON SE, and

SGL GE CARBON HOLDING LLC (USA),

Defendants.

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. “Acquirer” means Tokai or another entity to which defendants divest the Divestiture Assets.

B. “SDK” means defendant Showa Denko K.K., a Japanese corporation headquartered in Tokyo, Japan, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “SGL” means defendant SGL Carbon SE, a German corporation headquartered in Wiesbaden, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, including defendant SGL GE Carbon Holding LLC (USA), a Delaware limited liability company that is an indirect, wholly-owned subsidiary of SGL Carbon SE, and is headquartered in Charlotte, North Carolina.

D. “Tokai” means Tokai Carbon Co., Ltd., a Japanese corporation headquartered in Tokyo, Japan, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divestiture Assets” means SGL’s U.S. Graphite Electrodes Business.

F. “SGL’s U.S. Graphite Electrodes Business” means SGL GE Carbon Holding LLC (USA), all of its subsidiaries, and all additional operations of SGL related to the production, distribution, engineering, development, sale, and servicing of graphite electrodes manufactured in the United States, including, but not limited to:

1. The manufacturing facility located at 3931 Carbon Plant Rd., Ozark, Arkansas 72949 (the “Ozark Facility”);
2. The manufacturing facility located at 2320 Myron Cory Dr., Hickman, Kentucky 42050 (the “Hickman Facility”);
3. All tangible assets used in connection with SGL’s U.S. Graphite Electrodes Business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with SGL’s

U.S. Graphite Electrodes Business; all licenses, permits, and authorizations issued by any governmental organization relating to SGL's U.S. Graphite Electrodes Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements relating to SGL's U.S. Graphite Electrodes Business; all customer lists, contracts, accounts, and credit records relating to SGL's U.S. Graphite Electrodes Business; all repair and performance records and all other records relating to SGL's U.S. Graphite Electrodes Business; and

4. All intangible assets used in connection with SGL's U.S. Graphite Electrodes Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name, service mark, or service name containing the name "SGL"), technical information, computer software (including, but not limited to, SGL's CEDIS® EAF performance monitoring system) and related documentation, 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, all manuals and technical information SGL provides to its own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to SGL's U.S. Graphite Electrodes Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

G. “Relevant Employees” means all SGL personnel involved in the production, distribution, engineering, development, sale, or servicing of graphite electrodes for SGL’s U.S. Graphite Electrodes Business.

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 one or more viable competitors in the business of the production, distribution, engineering, development, sale, and servicing of large diameter ultra-high power graphite electrodes in the United States in order to remedy the effects that the United States alleges would otherwise result from SDK’s acquisition of SGL’s graphite electrodes business. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by defendants, and that competition is maintained during the pendency of the ordered divestitures.

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. Defendants waive service of summons of the Complaint.

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 (“APPA”) 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.

B. 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.

C. 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 Stipulation 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.

D. 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.

E. This Stipulation 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.

F. 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 Stipulation, 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 Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures 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 Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, 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 under any of 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 independent, ongoing, economically viable and active competitors in the production, distribution, engineering, development, sale, and servicing of large diameter ultra-high power graphite electrodes in the United States; (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 production, distribution, engineering, development, sale, or servicing of products by or under any of 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 or sold under Divestiture Assets, and shall maintain at 2017 or previously approved levels for 2018, 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 economically viable and competitive, ongoing businesses, 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. Relevant Employees 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 this Final Judgment. In the event such person is unable to perform his 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 Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

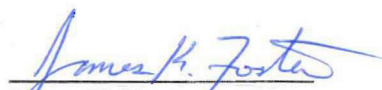
**VI. DURATION OF HOLD SEPARATE AND
ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures 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.

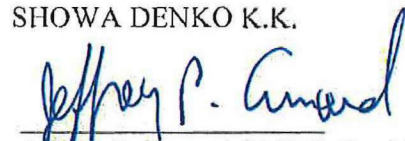
Dated: September 27, 2017

Respectfully submitted,

FOR PLAINTIFF
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ORDER

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

United States District Judge