

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION
) No. 70-1807-M
 ASIATIC PETROLEUM CORPORATION, and)
 C. H. SPRAGUE & SON COMPANY,) Entered: October 4, 1971
)
 Defendants.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 8, 1970, and defendants having appeared and filed their respective answers to the complaint denying the substantive allegations thereof, and plaintiff and defendants, Asiatic Petroleum Corporation and C. H. Sprague & Son Company, by their respective attorneys, having severally 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 hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony, 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

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants Asiatic Petroleum Corporation and C. H. Sprague & Son Company under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. §18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Asiatic" means the defendant Asiatic Petroleum Corporation, a Delaware corporation.

(B) "Associates" means Sprague Associates, Inc., a Delaware corporation.

(C) "Sprague" means the defendant C. H. Sprague & Son Company, a Delaware corporation, all the outstanding shares of capital stock of which are presently owned by Asiatic.

(D) "Lease Guaranty" means the guaranty by Asiatic to Associates and its assignees of the obligations of Sprague under the Terminal Leases and Subleases, as defined below.

(E) "Person" means any individual, corporation, partnership, association, firm or other legal entity.

(F) "Sprague Oil Business" means the distillate and residual fuel oil business of Sprague, together with all its assets relating thereto, including, without limitation, sales and other contracts; goodwill; trademarks and trade names; accounts receivable; office leases, fixtures and equipment; its interest as lessee or sublessee in the Terminal Leases and Subleases; and all the outstanding shares of capital stock of its three wholly-owned subsidiaries, Atlantic Terminal Sales Corporation, Lord and Keenan, Inc., and Petroleum Heat and Power Company of Rhode Island.

(G) "Sprague Stock" means all the outstanding shares of capital stock of Sprague.

(H) "Terminal Leases and Subleases" means all the leases and subleases from Associates to Sprague of various deepwater terminals and related facilities.

(I) "New England" means the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, and Massachusetts.

III

The provisions of this Final Judgment shall apply to Asiatic, its officers, directors, agents and employees, and to Asiatic's subsidiaries (including Sprague unless and until Asiatic shall sell and dispose of the Sprague stock as provided in IV (A)(i) of this Final Judgment), successors and assigns and to each of their respective officers, directors, agents and employees and to all other persons in active concert or participation with defendants who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Asiatic is ordered and directed, within eighteen (18) months from the date of entry of this Final Judgment, at the option of Asiatic, either

- (i) to divest all the Sprague Stock, or
- (ii) to cause Sprague to divest the Sprague Oil Business.

Such divestiture shall be on a basis which will permit the Sprague Oil Business to be maintained as a viable operating business in competition with other distributors and marketers of fuel oil in the New England area.

(B) As a part of any offer to sell the Sprague Stock or the Sprague Oil Business pursuant to subsection (A) of this Section IV, Asiatic shall, if the person acquiring such stock or business so desires, agree to enter into a contract for a period of not more than three (3) years to supply or cause to be supplied, on reasonable terms and conditions, all or a portion of the requirements for residual fuel oil of the Sprague Oil Business up to a maximum annual number of barrels not exceeding the number of such barrels acquired by the Sprague Oil Business during the 12-month

period immediately preceding the date of sale of Sprague Stock or the Sprague Oil Business, of which

(i) during the calendar year 1972, up to 4,080,000 barrels will be of 1% sulphur content and 1,640,000 barrels will be of 1.5% sulphur content,

(ii) during the calendar year 1973, up to 7,500,000 barrels will be of 1% sulphur content and 1,640,000 barrels will be of 1.5% sulphur content, and

(iii) during the calendar year 1974 or any calendar year thereafter, up to 9,250,000 barrels will be of 1% sulphur content;

provided, however, that if the contract period shall include part of a calendar year, such maximum amounts shall be appropriately prorated.

(C) Asiatic shall make known the availability of the Sprague Stock or the Sprague Oil Business for sale by ordinary and usual means for a sale of a business, and shall furnish to all bona fide prospective purchasers on an equal and non-discriminatory basis all necessary information, including business records, regarding the property to be divested, and shall permit them to have access to and make such inspections of said property as are reasonably necessary for the above purpose.

(D) Prior to the closing of any sale or other form of divestiture under this Section IV, Asiatic shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division complete details of the proposed transaction. Within thirty (30) days of the receipt of these details, the Assistant Attorney General may request supplementary information concerning the transaction, which shall also be furnished in writing. If plaintiff shall object to the proposed sale, it shall notify Asiatic in writing

within forty-five (45) days after receipt of the supplementary information submitted pursuant to plaintiff's last request for such information made pursuant to this subsection (D), or within forty-five (45) days after the receipt of a statement from Asiatic, if applicable, that it does not have the requested supplementary information. If no request for supplementary information shall be made, said notice of objection shall be given within forty-five (45) days after receipt of the originally submitted details concerning the transaction. Any such notice of objection shall state the reasons plaintiff considers the transaction objectionable. In the event of such notice of objection by the plaintiff, the sale or other form of divestiture shall not be consummated unless approved by this Court or unless plaintiff's objection shall be withdrawn.

(E) Following the entry of this Final Judgment and continuing until the divestiture by Asiatic of the Sprague Stock or by Sprague of the Sprague Oil Business, Asiatic shall render reports to the Assistant Attorney General in charge of the Antitrust Division every three (3) months, outlining in detail the efforts made by Asiatic to accomplish said divestiture. The first such report shall be rendered within three (3) months after the entry of this Final Judgment.

(F) Pending divestiture pursuant to subsection (A) of this Section IV, the provisions of the Stipulation and Order entered by this Court on January 29, 1971, shall remain in effect.

V

(A) The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified and the Sprague Stock, if so divested, shall not be

reacquired by Asiatic and the Sprague Oil Business, if so divested, shall not be reacquired by Sprague or acquired by Asiatic.

(B) Anything in subsection (A) of this Section V to the contrary notwithstanding,

(i) if the divestiture shall be of the Sprague Stock by Asiatic, Asiatic may acquire, retain and enforce any bona fide pledge, lien, mortgage, deed of trust or other form of security on all or any part of the Sprague Stock or the Sprague Oil Business given for the purpose of securing to Asiatic payment of any unpaid portion of the purchase price of the Sprague Stock or performance of the sale transaction and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law;

(ii) if the divestiture shall be of the Sprague Oil Business, (a) Sprague and Asiatic or either of them may acquire, retain and enforce any bona fide pledge, lien, mortgage, deed of trust or other form of security on all or any part of the Sprague Oil Business given for the purpose of securing to Sprague or Asiatic, as the case may be, payment of any unpaid portion of the purchase price thereof or performance of the sale transaction and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law and (b) Sprague may retain and enforce against the purchaser of the Sprague Oil Business any rights as sublessor or assignor which Sprague may have pursuant to a sublease or assignment to such purchaser of the Terminal Leases and Subleases or as provided by law to ensure performance by such purchaser of the terms of such sublease or assignment to such purchaser and of the terms of the Terminal Leases and Subleases; and

(iii) Asiatic may retain and enforce against Sprague, if the divestiture shall be of the Sprague Stock by Asiatic, or against the purchaser of the Sprague Oil Business, if the divestiture shall be of said business by Sprague, any rights which Asiatic may have pursuant to the Lease Guaranty or as provided by law to reimburse it for any loss which it may incur under the Lease Guaranty or otherwise to ensure performance either, as the case may be, by Sprague of the terms of the Terminal Leases and Subleases or by such purchaser of the terms of such sublease or assignment from Sprague to such purchaser and of the terms of the Leases and Subleases.

In the event that any defendant, as a result of the enforcement of any bona fide pledge, lien, mortgage, deed of trust or other form of security, or as a result of its right as sublessor, assignor or guarantor, should acquire or reacquire possession of the divested Sprague Stock or the Sprague Oil Business or any part thereof, such defendant shall notify plaintiff in writing of such acquisition or reacquisition within thirty (30) days thereof, and within one (1) year from such repossession shall, in accordance with the provisions of this Final Judgment, effect divestiture of the Sprague Stock or Sprague Oil Business so reacquired.

VI

Except as provided in Section V hereof, Asiatic and all persons acting on its behalf shall not, for a period of ten (10) years from the date of entry of this Final Judgment, directly or indirectly purchase or acquire the stock, assets, properties or businesses, or any part thereof (excepting purchases or acquisitions of goods, wares, and merchandise in the regular course of business and enforcement of bona fide obligations, liens or other security interests or creditor's rights acquired in the regular course of

business) or merge with any person engaged in the distribution or marketing of distillate or residual fuel oil in New England unless it has obtained the prior written consent of the plaintiff.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege and subject in the case of Sprague to the provisions of Section III hereof, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Asiatic or Sprague made to its principal office, be permitted (i) reasonable access, during the office hours of Asiatic or Sprague, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in possession or under control of Asiatic or Sprague relating to any of the matters contained in this Final Judgment, and (ii) subject to the reasonable convenience of Asiatic or Sprague and without restraint or interference from Asiatic or Sprague, to interview officers or employees of Asiatic or Sprague, who may have counsel present, regarding any such matters.

(B) Asiatic, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States of America shall be

a party for the purpose of determining and securing compliance with this Final Judgment or as otherwise required by law.

VIII

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 or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: October 4, 1971

/s/ FRANK J. MURRAY
United States District Judge