

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: 6/15/98

HOLD SEPARATE STIPULATION AND ORDER

It is hereby STIPULATED 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. “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.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Alcoa’s prompt divestiture of the Alcoa Cast Plate Division for the purpose of maintaining a viable competitor in the manufacture and sale of Cast Plate to remedy the effects that the United States alleges would otherwise result from Alcoa’s proposed acquisition of Alumax.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Alcoa Cast Plate Division which is being divested be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III.

HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Alcoa Cast Plate Division as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from Alcoa Cast Plate Division's business with the Cast Plate business that Alcoa will own as a result of the acquisition of Alumax. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Alcoa Cast Plate Division will be maintained and operated as an independent, ongoing, economically viable and active competitor in Cast Plate manufacture and sale; that the management of the Alcoa Cast Plate Division will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Alcoa Cast Plate Division will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Alcoa Cast Plate Division shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Alcoa Cast Plate Division to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain Cast Plate manufacturing at the Alcoa Cast Plate Division, and shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Alcoa Cast Plate Division.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Alcoa Cast Plate Division as an economically viable, ongoing business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Alcoa Cast Plate Division as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Vernon facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Alcoa Cast Plate Division.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any assets of the Alcoa Cast Plate Division, including intangible assets that relate to the permits described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, 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, income, profit and loss of the Alcoa Cast Plate Division.

I. Until such time as the Alcoa Cast Plate Division is divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement,

Alcoa shall not hire and defendant shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Alcoa employees who on the date of the signing of this Agreement (i) work in the Alcoa Cast Plate Division, or (ii) are members of management referenced in Section III(J) of this Order unless such individual has a written offer of employment from a third party for a like position.

J. Until such time as the Alcoa Cast Plate Division is divested, the assets to be divested shall be managed by John Hogarth. John Hogarth shall have complete managerial responsibility for the Alcoa Cast Plate Division, subject to the provisions of this Order and the Final Judgment. In the event that John Hogarth is unable to perform his duties, Alcoa shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should Alcoa fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement.

K. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

L. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

_____/s/_____
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Dated: _____

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ORDER

It is SO ORDERED, this _____ day of _____, 1998.

United States District Court Judge