

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

UNITED STATES OF AMERICA

Plaintiff

v.

L.B. FOSTER COMPANY

and

PORTEC RAIL PRODUCTS, INC.

Defendants

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**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 Koppers, the entity to which Defendants shall divest the Divestiture Assets.

B. "Foster" means Defendant L.B. Foster Company, a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Portec" means Defendant Portec Rail Products, Inc., a West Virginia corporation headquartered in Pittsburgh, Pennsylvania, its successors and assigns, and its subsidiaries,

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

D. “Koppers” means Koppers, Inc., a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divested Portec Product Lines” means Portec’s bonded insulated rail joints (assemblies and kits), polyurethane-coated insulated rail joints, end posts, polyurethane-coated gauge and tie plates, fiberglass (CyPly) joint kits, plastic insulation, standard rail joints, compromise and transitional rail joints, and Weldmate joint bars, but excluding Coronet rail joints and end posts manufactured by Coronet Rail Limited.

F. “Divestiture Assets” means:

(1) Portec’s facility located at 900 9th Avenue W, Huntington, West Virginia (the “Huntington Facility”), including all equipment located in and around the Huntington Facility that is used in connection with the Divested Portec Product Lines;

(2) All tangible assets that are used for any of the Divested Portec Product Lines, 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 in connection with any of the Divested Portec Product Lines; all licenses, permits and authorizations issued by any governmental organization relating to any of the Divested Portec Product Lines; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to any of the Divested Portec Product

Lines, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to any of the Divested Portec Product Lines;

(3) All intangible assets used in the design, development, production, marketing, servicing, distribution, and/or sale of any of the Divested Portec Product Lines, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software 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, all marketing and sales data relating to any of the Divested Portec Product Lines, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Portec provides to its own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to any of the Divested Portec Product Lines, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments; and

(4) The Divestiture Assets exclude the trademark, trade name, service mark, or service name "Portec."

G. "Transaction" means Foster's acceptance for payment of at least 65 percent of the Fully Diluted Number of Company Shares of Portec, as defined in the Agreement and Plan of Merger dated February 16, 2010, between L.B. Foster Company, Foster Thomas Company, and Portec Rail Products, Inc.

## **II. OBJECTIVES**

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets to the Acquirer for the purpose of establishing an independent and economically-viable competitor in the business of the design, development, production, marketing, servicing, distribution, and sale of bonded insulated rail joints and polyurethane-coated insulated rail joints in order to remedy the effects that the United States alleges would otherwise result from Foster's acquisition of Portec. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Foster, 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.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the Antitrust Procedures and Penalties Act. The publication shall be arranged no later than five (5) calendar days after Defendants' receipt from the United States of the text of the notice and 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 entry of the Final Judgment 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 as though the same were in full force and effect as an order of the Court.

D. Defendants shall not consummate the Transaction before the Court has signed this Hold Separate Stipulation and Order.

E. 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.

F. In the event: (1) the United States has withdrawn its consent, as provided in Section 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 stipulation shall be without prejudice to any party in this or any other proceeding.

G. 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 Divestiture Assets are sold to the Acquirer in accordance with the terms of the Final Judgment:

A. Each Defendant shall preserve, maintain, and continue to operate its own assets as an independent, ongoing, economically viable competitive business, with management, sales, and operations of its assets held entirely separate, distinct, and apart from the other Defendant's operations. Each Defendant shall not coordinate its production, marketing, or terms of sale of any of its products with those produced or sold by the other Defendant.

B. Defendants shall maintain and operate the Divestiture Assets in such a manner to ensure that Portec is an independent, ongoing, economically viable, and active competitor in the markets for all products in the Divested Portec Product Lines. Defendants shall take all steps necessary to ensure that management of Portec's assets will not be influenced by Foster and that Portec's books, records, competitively sensitive sales, marketing, and pricing information, and decision making will be kept separate and apart from Foster's operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of all products within the Divested Portec Product Lines, and shall maintain at 2010 or previously approved levels for 2011, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for all products within the Divested Portec Product Lines.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain Portec as an economically viable and competitive, ongoing business, consistent with the requirements of Sections 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 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 Portec's assets.

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

I. Portec employees with responsibility for the design, development, production, marketing, servicing, distribution and/or sale of all products within the Divested Portec Product

Lines or the operation and maintenance of the Divestiture Assets shall not be transferred or reassigned to other areas within Foster or Portec except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall notify the United States immediately 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.

#### **VI. DURATION OF HOLD SEPARATE OBLIGATIONS**

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until: (1) consummation of the sale of the Divestiture Assets to the Acquirer; or (2) 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.



Respectfully submitted:

FOR PLAINTIFF  
UNITED STATES OF AMERICA



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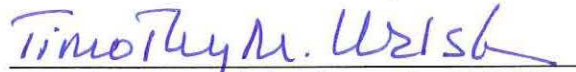
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Dated: December 14, 2010

**ORDER**

IT IS SO ORDERED by the Court, this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
United States District Judge

### **CERTIFICATE OF SERVICE**

I, Christine A. Hill, hereby certify that on December 14, 2010, I caused a copy of the foregoing Hold Separate Stipulation and Order to be served upon Defendants L.B. Foster Company and Portec Rail Products, Inc. by mailing the documents electronically to the duly authorized legal representatives of Defendants as follows:


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