

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	Case No. 02 1509
)	
v.)	Judge: ECK
)	
THE MANITOWOC COMPANY, INC.,)	DECK TYPE: Antitrust
GROVE INVESTORS, INC., and)	
NATIONAL CRANE CORP.,)	
)	DATE STAMP:
<i>Defendants.</i>)	
)	

FILED
DEC 11 2002
NANCY MARCH WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on July 31, 2002, plaintiff and defendants, The Manitowoc Company, Inc. ("Manitowoc"), Grove Investors, Inc. ("Grove"), and National Crane, Inc. ("National Crane"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. “Acquirer” means the entity or entities to whom defendants divest the National Crane or Manitowoc Boom Truck Business.

B. “Manitowoc” means defendant The Manitowoc Company, Inc., a Wisconsin corporation with its headquarters in Manitowoc, WI, its successors and assigns, and its subsidiaries (including Manitowoc Boom Truck, Inc.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. “Grove” means Grove Investors, Inc., a Delaware corporation with its headquarters in Shady Grove, PA, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. “National Crane” means National Crane Corp., a Delaware corporation with its headquarters in Waverly, NE, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

E. “Boom truck” means any stiff boom telescopic crane designed for mounting on a commercial truck chassis fitted with outriggers for load lift stability.

F. “Manitowoc Boom Truck Business” means Manitowoc Boom Trucks, Inc. and its line of boom trucks, including:

1. Any and all tangible assets used in Manitowoc’s boom truck manufacturing business, including Manitowoc’s boom truck production facility in Georgetown, Texas; manufacturing, assembling and testing equipment, tooling, and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property, and all other assets used exclusively in connection with the Manitowoc Boom Truck Business; all licenses, permits, and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments, and understandings

relating to the Manitowoc Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the Manitowoc Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing Manitowoc, Manitex, USTC, JLG or Pioneer boom trucks, including but not limited to: (a) the Manitex, USTC, JLG and Pioneer brand names and all other intellectual property rights used exclusively in connection with the Manitowoc Boom Truck Business; (b) with respect to all other intellectual property rights (except the use of the Manitowoc brand name) used in connection with both the Manitowoc Boom Truck Business and other nondivested Manitowoc assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) with respect to use of the Manitowoc brand name, at Acquirer's option, subject to approval of the United States, at its sole discretion, a transferable, paid-up license, not to exceed three years in length, exclusive in the boom truck field of use; (d) all existing licenses and sublicenses relating exclusively to the Manitowoc Boom Truck Business; and (e) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the Manitowoc Boom Truck Business.

Intellectual property rights, as used herein, include, but are not limited

to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the Manitowoc Boom Truck Business.

Manitowoc Boom Truck Business, as used herein, does not include the right to develop, produce or sell Model S282, a mobile self-erecting tower crane licensed by Manitowoc from a foreign subsidiary, Potain.

G. “National Crane Boom Truck Business” means National Crane and its line of boom trucks, including:

1. Any and all tangible assets used in National Crane’s boom truck manufacturing business, including its boom truck production facility in Waverly, Nebraska; manufacturing, assembling and testing equipment, tooling and other fixed assets; personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the National Crane Boom Truck Business; all licenses, permits and authorizations issued by any governmental entity or organization in connection with making or selling boom trucks; all contracts, supply or teaming arrangements, leases, commitments and understandings

relating to the National Crane Boom Truck Business; all customer lists, accounts, and credit records of boom truck distributors, dealers or end users; and sales, performance, service and repair, warranty or other records relating to the National Crane Boom Truck Business; and

2. Any and all intangible assets used in developing, producing, selling, repairing or servicing National or National Crane brand boom trucks, including but not limited to: (a) the National Crane and National brand names and all other intellectual property rights used exclusively in connection with the National Crane Boom Truck Business; (b) with respect to all other intellectual property rights used in connection with both the National Crane Boom Truck Business and other nondivested Grove assets, a transferable, paid-up license, exclusive in the boom truck field of use; (c) all existing licenses and sublicenses relating exclusively to the National Crane Boom Truck Business; and (d) a transferable, paid-up sublicense, exclusive in the boom truck field of use, to all other existing licenses and sublicenses relating to the National Crane Boom Truck Business. Intellectual property rights, as used herein, include, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality

assurance and control procedures, design tools and simulation capability, manuals, and all data concerning historic and current research and development relating to the National Crane Boom Truck Business.

III. Applicability

A. This Final Judgment applies to Manitowoc, Grove and National Crane, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the National Crane or Manitowoc Boom Truck Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the National Crane or Manitowoc Boom Truck Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days, and shall notify the

Court in such circumstances. Defendants agree to use their best efforts to divest the National Crane or Manitowoc Boom Truck Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the National Crane or Manitowoc Boom Truck Business, whichever is then available for sale. Defendants shall inform any person making inquiry regarding a possible purchase of the National Crane or Manitowoc Boom Truck Business that either will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the National Crane or Manitowoc Boom Truck Business, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of the National Crane or Manitowoc Boom Truck Business and the United States information relating to the personnel involved in the production, operation, development and sale of the National Crane or Manitowoc Boom Truck Business (whichever is then available for sale) to enable the Acquirer to make offers of employment. Defendants will not

interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development and sale of the boom truck products of the National Crane or Manitowoc Boom Truck Business.

D. Defendants shall permit prospective Acquirers of the National Crane or Manitowoc Boom Truck Business to have reasonable access to personnel and to make inspections of the physical facilities of the National or Manitowoc Boom Truck Business (whichever is then available for sale); access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the National Crane and Manitowoc Boom Truck Businesses.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the boom truck products of the National Crane or Manitowoc Boom Truck Business, whichever is actually divested, for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the

ordinary course of business products that compete with the National Crane or Manitowoc Boom Truck Business.

H. Defendants shall warrant to the Acquirer of the National Crane or Manitowoc Boom Truck Business that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the National Crane or Manitowoc Boom Truck Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the National Crane or Manitowoc Boom Truck Business.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire National Crane or Manitowoc Boom Truck Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the National Crane or Manitowoc Boom Truck Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing and selling boom trucks in North America.

Divestiture of the National Crane or Manitowoc Boom Truck Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the National Crane or Manitowoc Boom Truck Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of boom trucks in North America; and
2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the National Crane or Manitowoc Boom Truck Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of either the National Crane or Manitowoc Boom Truck Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the National Crane or Manitowoc Boom Truck Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of

Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the National Crane or Manitowoc Boom Truck Business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the National Crane or Manitowoc Boom Truck Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane and Manitowoc Boom Truck Businesses and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the National Crane and Manitowoc Boom Truck Businesses.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting

forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the National or Manitowoc Boom Truck Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer,

any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the National Crane or Manitowoc Boom Truck Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the National Crane and Manitowoc Boom Truck Businesses, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants,

including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the National Crane and Manitowoc Boom Truck Businesses and to divest the National Crane or Manitowoc Boom Truck Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in

charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment ; and
2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the National Crane or Manitowoc Boom Truck Assets, whichever is divested, during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: 12-10-02

Court approval subject to procedures of the
Antitrust Procedures and Penalties Act, 15
U.S.C. § 16.


United States District Judge