

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

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	Case No. 02CV0159
)	
v.)	Judge: Royce Lamberth
)	
THE MANITOWOC COMPANY, INC.,)	DECK TYPE: Antitrust
GROVE INVESTORS, INC., and)	
NATIONAL CRANE CORP.,)	
)	DATE STAMP: July 31, 2002
<i>Defendants.</i>)	
)	

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 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 Trucks, 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 Corporation, 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.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of either the National Crane or Manitowoc Boom Truck Business for the purpose of ensuring the establishment of a viable competitor in the boom truck industry capable of competing effectively to supply boom trucks in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from Manitowoc's acquisition of Grove. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the National Crane and Manitowoc Boom Truck Businesses are operated as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of Manitowoc's acquisition of Grove, and that competition is maintained during the pendency of the ordered divestiture.

III.

JURISDICTION AND VENUE

This 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 shall abide by and comply with the provisions of the proposed Final Judgment, pending 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 Stipulation 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.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before (1) the Court has signed this Hold Separate Stipulation and Order and (2) defendants have obtained from their lenders a written unconditional commitment to release any security interest(s) in the assets of the National Crane or Manitowoc Boom Truck Business pursuant to a divestiture under the terms of the Final Judgment.

D. 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.

E. 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 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.

F. 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 required by the Final Judgment has been accomplished:

A. Defendants shall preserve, maintain, and continue to operate, respectively, the National Crane and Manitowoc Boom Truck Businesses as competitively independent, economically viable parts of ongoing competitive businesses, with management, research, design, development, promotions, marketing, sales, and operations of such assets held entirely separate, distinct, and apart from each other's operations and from those of defendants' other operations. Within twenty (20) days after the entry of this 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 National Crane and Manitowoc Boom Truck Businesses will be maintained and

operated as independent, ongoing, economically viable and active competitors in the boom truck industry; (2) management of the National Crane and Manitowoc Boom Truck Businesses (designated in Section V(J)) will not be influenced by defendants, except to the extent necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution, or sales of products by or under any of the National Crane and Manitowoc Boom Truck Businesses will be kept separate and apart from each other's operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced by or sold under the National Crane and Manitowoc Boom Truck Businesses, and shall maintain at 2001 levels or previously approved levels for 2002, whichever are higher, all research, development, product improvement, promotional, advertising, sales, technical assistance, marketing and merchandising support for the National Crane and Manitowoc Boom Truck Businesses.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the National Crane and Manitowoc Boom Truck Businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

E. Defendants shall take all steps necessary to ensure that all the assets of the National Crane and Manitowoc Boom Truck Businesses are fully maintained

in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal product improvement and upgrade and repair and maintenance schedules for those 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 assets of the National Crane or Manitowoc Boom Truck Business; provided, however, that nothing in this provision prohibits defendants from selling inventory in the ordinary course of business or, subject to the terms of Section IV(C)(2), offering a lender a security interest in assets pursuant to Manitowoc's preexisting revolving lines of credit.

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 National Crane and Manitowoc Boom Truck Businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the National Crane and Manitowoc Boom Truck Businesses.

I. Defendants' employees with primary responsibility for the research, design, development, promotion, distribution, sale, and operation of the National Crane and Manitowoc Boom Truck Businesses 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. Prior to consummation of their transaction, defendants Grove and National Crane shall appoint Dan Wolf to oversee the National Crane Boom Truck Business and defendant Manitowoc shall appoint Brad Rogers to oversee the Manitowoc Boom Truck Business, and to be responsible for defendants' compliance with this section. Dan Wolf shall have complete managerial responsibility for the National Crane Boom Truck Business, and Brad Rogers shall have complete managerial responsibility for the Manitowoc Boom Truck Business, subject to the provisions of this Final Judgment. In the event either 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 divestiture pursuant to the Final Judgment to an Acquirer acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: July 31, 2002.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT
THE MANITOWOC COMPANY, INC.

/s/
Anthony E. Harris, Esquire
Illinois Bar No.: 1133713
United States Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW
Suite 3000
Washington, DC 20530
Telephone No.: (202) 307-6583

/s/
Darryl S. Bell, Esquire
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497
Telephone No.: (414) 277-5123

FOR DEFENDANTS
GROVE INVESTORS, INC. and
NATIONAL CRANE CORPORATION

/s/
Michael L. Weiner, Esquire
Skadden Arps Slate Meagher
& Flom LLP
Four Times Square
New York, NY 10036
Telephone No.: (212) 735-3000

ORDER

IT IS SO ORDERED by the Court, this 31st day of July 2002.

/s/
United States District Judge