UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
Suite 300, 325 Seventh Street, N.W.
Washington, D.C. 20530

Plaintiff,

v.

MILLER INDUSTRIES, INC.
8503 Hilltop Drive, P.O. Box 120
Ooltewah, TN 37363-0120,

MILLER INDUSTRIES TOWING EQUIPMENT, INC.,
8503 Hilltop Drive, P.O. Box 120
Ooltewah, TN 37363-0120,

and

CHEVRON, INC.
73 West Market Street
Mercer, PA 16137,

Defendants.

CASE NUMBER 1:00CV00305
JUDGE: Richard W. Roberts
DECK TYPE: Antitrust
DATE STAMP: 02/17/2000

COMPLAINT

1. The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain relief necessary to restore competition in the design, manufacture, and sale of the two types of towing and recovery vehicles generally used to service disabled passenger cars and light trucks: light-duty towtrucks and light-duty car carriers. Such competition was substantially reduced by Defendant Miller Industries,

Inc.'s illegal acquisitions of two of its three leading competitors, Vulcan Equipment, Inc. ("Vulcan") and Chevron, Inc. ("Chevron"), along with Vulcan's and Chevron's valuable patents[1] and technology.

2. Prior to the illegal acquisitions of Vulcan and Chevron, Miller Industries was already the leading manufacturer of light-duty towing and recovery vehicles and controlled valuable patented technology, much of which it had earlier obtained by acquiring other competitors.

3. The Vulcan and Chevron acquisitions gave Miller Industries dominant shares of about 73% of total annual revenues of the light-duty towtruck market and about 47% of total annual revenues of the light-duty car carrier market in this country, and left Miller Industries to face only one remaining significant competitor in the design, manufacture, and marketing of both of these types of towing and recovery vehicles.

4. The acquisitions of Chevron and Vulcan eliminated head-to-head competition that had benefitted consumers in both the light-duty towtrucks and the light-duty car carrier markets, and gave Miller Industries the ability unilaterally to raise prices or reduce quality in both of these markets. In addition, by reducing the number of competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality in both the light-duty towtruck and the light-duty car carrier markets.

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[1] After making these illegal acquisitions, Defendant Miller Industries, Inc. transferred title to certain of the patents referred to below to its wholly owned subsidiary, Defendant Miller Industries Towing Equipment, Inc. Defendant Chevron, Inc., now also a wholly owned subsidiary of Miller Industries, Inc., holds the title to other patents referred to below. The term "Miller Industries," when used herein, refers to any one or more of the defendants.

5. Miller Industries' illegal acquisitions also increased its ownership of patents critical to the manufacture and marketing of competitive light-duty towtrucks and light-duty car carriers and reduced the number of firms able to produce and offer customers towing and recovery vehicles with valuable patented technology.

6. Moreover, by illegally acquiring Vulcan in 1996 and Chevron in 1997, Miller Industries eliminated competition from two proven innovators that had patented and successfully marketed key functional improvements in light-duty towtrucks and light-duty car carriers, and, had they remained independent, likely would have developed further improvements to these products.

7. As a result of the acquisitions and Miller Industries' control of these patents, competition in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers in the United States has declined. Unless redressed by appropriate relief, the reduction in competition will likely lead to increased prices and reduced quality and product innovation.

I.

Defendants, Jurisdiction, and Venue

8. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, for equitable and other relief to remedy the anticompetitive effects of defendants' conduct in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

9. Defendant Miller Industries, Inc., is a Tennessee corporation that has its principal place of business in Ooltewah, Tennessee.

10. Defendant Miller Industries Towing Equipment, Inc., is a Delaware corporation that has its principal place of business in Ooltewah, Tennessee, and is a wholly owned subsidiary

under the full and exclusive control of Defendant Miller Industries, Inc. Defendant Miller Industries Towing Equipment, Inc., is the owner of record of the patents described below as formerly belonging to Defendant Miller Industries, Inc., or as formerly belonging to Vulcan Equipment, Inc.

11. Defendant Chevron, Inc., is a Pennsylvania corporation that has its principal place of business in Mercer, Pennsylvania, and is a wholly owned subsidiary under the full and exclusive control of Defendant Miller Industries, Inc. Defendant Chevron, Inc., is the owner of record of the patents described below as having belonged to Chevron, Inc., prior to its acquisition by Defendant Miller Industries, Inc.

12. Throughout the period covered by this complaint, defendants have engaged in interstate commerce and activities substantially affecting commerce, including the manufacture and sale of towing and recovery vehicles, including light-duty towtrucks and light-duty car carriers, and components thereof, in a steady stream of commerce across state lines. The Court has subject matter jurisdiction over this action and over the defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

13. Defendants consent to the Court's jurisdiction over their persons, and waive any challenge to venue.

II.

Illegal Acquisitions

14. On September 2, 1996, Miller Industries, Inc., acquired all of the issued and outstanding shares of capital stock of Vulcan Equipment, Inc., a Mississippi corporation engaged in the design, manufacture, and marketing of towing and recovery vehicles, including light-duty

towtrucks and light-duty car carriers. In exchange for capital stock of Miller Industries, Inc., having a value of approximately $ 8.2 million, Miller Industries, Inc., obtained full control of all Vulcan assets, including its patents. Miller Industries, Inc., subsequently transferred certain of these acquired assets, including Vulcan's patents, to Miller Industries Towing Equipment, Inc. Since its acquisition of Vulcan, Miller Industries has continued to market light-duty towtrucks and light-duty carriers under the Vulcan brand name through Vulcan distributors, but has transferred Vulcan's production and administrative functions to its existing facilities and closed Vulcan's manufacturing facilities.

15. On December 5, 1997, Miller Industries, Inc., acquired all of the issued and outstanding shares of capital stock of Chevron, Inc., a Pennsylvania corporation engaged in designing, manufacturing, and marketing towing and recovery vehicles, including light-duty towtrucks and light-duty car carriers. In exchange for $10 million in cash, Miller Industries, Inc., acquired full control of all Chevron assets, including its patents. Miller Industries, Inc., subsequently transferred certain of these acquired assets to Miller Industries Towing Equipment, Inc. Since its acquisition of Chevron, Miller Industries has continued to market light-duty towtrucks and light-duty car carriers under the Chevron brand name through Chevron distributors, but has integrated many Chevron operations with those of Miller Industries.

III.

Trade and Commerce

A. Relevant Product Market -- Light-Duty Towtrucks and Light-Duty Car Carriers

16. Towing and recovery vehicles are dispatched to remove disabled or other immobilized vehicles, such as those damaged in an accident, broken down, or illegally parked.

The two major types of towing and recovery vehicles used to service passenger cars and light trucks (including vans and sports utility vehicles) are light-duty "towtrucks" (also called "wreckers") and light-duty "car carriers."

17. A light-duty towtruck is equipped with a device, such as a wheel lift, that can raise the disabled vehicle either by its front or back tires and can then pull (*i.e.*, tow) it to its destination. Many light-duty towtrucks are also fitted with booms and winches to facilitate recovery tasks, such as pulling crashed vehicles out of ditches or turning overturned vehicles upright.

18. A light-duty car carrier has a flat truck bed that can be tilted on a horizontal axis until its rear edge descends close to the ground, permitting the disabled vehicle to be winched up onto the bed. Once that has been done, the car carrier's bed can be rotated back to its horizontal position, so that the disabled vehicle can be hauled to its destination atop the car carrier. A car carrier may also have attached to its back end a wheel lift to enable it to raise the front or back wheels of a second vehicle for towing after one vehicle has been loaded onto its bed, and thus to remove two disabled vehicles simultaneously, *e.g.*, from the scene of a multi-car accident.

19. Light-duty towtrucks and light-duty car carriers have gross vehicle weights ranging from 13,000 to 16,000 pounds and have towing equipment designed to lift vehicles by their tires. Heavier trucks, buses, and construction vehicles often must be lifted by their axles and generally require larger and more powerful towing and recovery vehicles. These heavier towing and recovery vehicles generally are equipped with different lifting equipment than the light-duty vehicles, and cost significantly more to build and operate.

20. Manufacturers of light-duty towtrucks and light-duty car carriers design, construct, and assemble the required specialized equipment components (*e.g.*, winches, booms, wheel-lifts, and bed-tilting mechanisms). The manufacturer generally either mounts these components on a standard truck chassis obtained from an automotive manufacturer (*e.g.*, Ford, GM, Dodge, or Navistar) and sells the distributor the fully assembled vehicle for resale, or sells the components in kit form to the distributors that wish to do their own installation, at prices generally in the $11,000 to $14,000 range for light-duty car carriers and in the $12,000 to $15,000 range for light-duty towtrucks. Many of these components include patented features, and many of the components required to build a light-duty towtruck differ from those required to build a light-duty car carrier.

21. Light-duty towtrucks and light-duty car carriers have different characteristics that render one or the other better suited to perform different types of service. Light-duty towtrucks are better equipped than light-duty car carriers for most passenger vehicle recovery tasks, such as returning to the roadway a car that has skidded into a ditch or righting an overturned car. Light-duty towtrucks also generally can more readily and efficiently remove a vehicle that is not accessible from directly in front or back, *e.g.*, a car that is sandwiched between other parked cars on an urban street. Moreover, light-duty towtrucks can be used to remove disabled vehicles from multi-story parking structures with vertical clearances too low to permit light-duty car carriers to tilt their beds into operating position.

22. Light-duty car carriers, on the other hand, are more adept than light-duty towtrucks at removing and transporting certain vehicles, especially luxury model cars, without damaging them. Owners' manuals for a number of vehicles recommend, should vehicle removal

be necessary, that it be performed by car carriers rather than towtrucks. Light-duty car carriers are also more efficient for transporting vehicles over long distances.

23. When necessary, light-duty towtrucks can handle most types of emergency calls that light-duty car carriers are better suited to handle, and vice versa. But they do so less efficiently than the optimum towing and recovery vehicle for a given task, *e.g.*, they may require more time or operator labor, or pose a greater risk of damaging the vehicle being serviced. Consequently, towing services generally operate both light-duty towtrucks and light-duty car carriers, enabling them to dispatch the vehicle best suited for any given service call.

24. Although some heavier towing and recovery vehicles may be able to handle some of the calls for which a light-duty towtruck or a light-duty car carrier is optimally suited, towing service operators would not consider them realistic substitutes. They cost more to purchase and operate, and may have equipment ill-suited to service smaller vehicles.

25. Light-duty towtrucks and light-duty car carriers are each distinct products that, for most uses, have no effective and cost-efficient substitutes.

26. In the face of a small but significant increase in the price of light-duty towtrucks, purchasers would not turn to light-duty car carriers to heavier towing and recovery vehicles, or to any other substitute product, in sufficient numbers to defeat the profitability of the price increase. Light-duty towtrucks are a relevant product market for purposes of analyzing the competitive effects of defendants' acquisitions under the Clayton Act.

27. A small but significant increase in the price of light-duty car carriers also would not cause purchasers of these products to turn to light-duty towtrucks, to heavier towing and recovery vehicles, or to any other substitute product, in sufficient numbers to defeat the

profitability of the price increase. Light-duty car carriers are a relevant product market for purposes of analyzing the competitive effects of defendants' acquisitions under the Clayton Act.

B. Relevant Geographic Market -- United States

28. Defendant and its competitors sell their light-duty towtrucks and light-duty car carriers in numerous parts of the United States. A purchaser of light-duty towtrucks and light-duty car carriers in any region of the United States likely could turn to suppliers based in other sections of the United States in the event of a price increase in its own locale.

29. Very few foreign manufacturers of light-duty towtrucks and light-duty car carriers sell their products in the United States. If faced with a small but significant increase in the price of light-duty towtrucks or of light-duty car carriers throughout the United States, purchasers of these products would be unlikely to switch sufficient sales volume to manufacturers outside of the United States to defeat the profitability of the price increase. Consequently the United States is the relevant geographic market for these product markets within the meaning of the Clayton Act.

C. Relevant Patents and Licenses

1. Patented Wheel-Lifts for Light-Duty Towtrucks and Light-Duty Car Carriers

30. A wheel lift is a device employed on a towtruck or car carrier to raise the front or back wheels of a disabled vehicle for towing. One end of the wheel lift cradles the lower portion of the front or back tires of the vehicle. The other end of the wheel lift is attached to a mechanical power source on the light-duty towtruck or light-duty car carrier capable of raising and lowering the wheel lift while it is supporting the front or back wheels of the vehicle.

31. Certain patented wheel-lift designs have gained great acceptance with towing service operators, primarily because of the ease with which they can be used under difficult conditions, as when servicing vehicles parked on uneven surfaces or vehicles that cannot be approached from directly in front or back. Manufacturers lacking the rights to produce and sell towtrucks with these devices cannot effectively compete in the light-duty towtruck and light-duty car carrier markets.

32. One such patented wheel-lift design used on both light-duty towtrucks and light-duty car carriers, known as the "L-Arm," is regarded as extremely important and effective in the industry. The L-Arm device is essentially a cradle whose parts are slid and pinned into place so that it surrounds and supports from beneath the lower portion of the wheels of the vehicle to be lifted for towing. Miller Industries acquired Patent No. 4,836,737, the "L-Arm patent," through its 1991 acquisition of its then-competitor, Century Wrecker Corporation. The right to incorporate wheel lifts covered by the L-Arm patents is very important for effective competition in the manufacture and sale of light-duty towtrucks and is also important for effective competition in the manufacture and sale of light-duty car carriers.

33. Prior to its acquisition by Miller Industries, Vulcan invented valuable improvements to the L-Arm wheel-lift design and was issued Patent Nos. 4,637,623 and 4,798,509 for them ("the Vulcan L-Arm improvements"). The most significant features of these improvements allow the L-Arm device to pivot both horizontally and vertically, thereby enabling the operator to deploy the wheel lift more easily. The right to use the patented Vulcan L-Arm improvements confers a very significant competitive benefit on manufacturers of light-duty towtrucks, and also provides a competitive advantage for light-duty car carrier manufacturers.

34. In 1992, Miller Industries and Vulcan entered into a cross-license whereby Vulcan obtained a license under Miller Industries' L-Arm patent, and Miller Industries obtained a license to incorporate some, but not all, of the Vulcan L-Arm improvements in Miller Industries' products. The Vulcan L-Arm improvements licensed to Miller Industries include the design features that allow the L-Arm to pivot horizontally and vertically, features that Miller Industries subsequently incorporated in its Century models.

35. In 1990, Century Wrecker Corporation (which was subsequently acquired by Miller Industries) had granted a paid-up license (without the right to sub-license) under the L-Arm patent to Jerr-Dann Corp. ("Jerr-Dann"), a manufacturer of light-duty towtrucks and light-duty car carriers. Consequently, prior to Miller Industries' acquisition of Vulcan in 1996, Miller Industries, Vulcan, and Jerr-Dann all had the right to make and sell light-duty towtrucks and light-duty car carriers with patented L-Arm wheel lifts; Miller Industries and Vulcan had the additional right to make and sell light-duty towtrucks and light-duty car carriers with significant features of the Vulcan L-Arm improvements; and Vulcan alone had the right to make and sell light-duty towtrucks and light-duty car carriers that fully incorporated all of its patented improvements in the L-Arm wheel lift. There is no established, commercially available alternative to the L-Arm wheel lift or to the Vulcan L-Arm improvements.

36. Prior to its acquisition by Miller Industries, Chevron, in an effort to design around Miller Industries' L-Arm Wheel Lift patent, developed the "Backsaver" wheel-lift design and obtained Patent No. 5,628,609 (the "Backsaver patent") covering the design. Miller Industries sued Chevron shortly after Chevron began marketing light-duty towtrucks, charging that the Backsaver infringed the L-Arm wheel-lift patent. This charge was never adjudicated because

Miller Industries acquired Chevron shortly thereafter, and products incorporating the Backsaver were only marketed briefly. The patented Backsaver design may have provided Chevron, and other competitors if Chevron had been willing to grant licenses, with a valuable alternative to the patented L-Arm wheel lift. However, the Backsaver patent has now joined the L-Arm patent in Miller Industries' portfolio of wheel lift patents, and Miller Industries has granted no licenses to use it.

2. Patented Independent Raise-and-Lower Mechanism for Car Carriers

37. Before being acquired by Miller Industries, Chevron had invented a device that improves the way a wheel lift can be deployed so that a light-duty car carrier can remove two disabled vehicles simultaneously, as from the scene of a multi-car accident. Mounted on the rear of the light-duty car carrier, the device permits a wheel lift (including the patented L-Arm wheel lift) to be raised and lowered independently of the car carrier's tilting bed. This allows the car carrier to more safely and efficiently pick up the front or back wheels of a second vehicle for towing after another vehicle has been loaded onto the car carrier's tilting bed and the carrier's bed has been returned to its horizontal position.

38. Chevron was awarded Patent No. 5,061,147 (the "Independent Raise-and-Lower" or "IRL" patent) for this device. This patent was also the subject of infringement litigation between Chevron and Miller Industries that was mooted by Miller Industries' acquisition of Chevron. The IRL patent significantly facilitates the use of a light-duty car carrier to remove or transport two vehicles simultaneously. Designing around the patent is difficult, time-consuming, and expensive. The right to manufacture light-duty car carriers incorporating this patented IRL feature confers a significant competitive advantage in the light-duty car carrier market.

IV.

Effect of Illegal Acquisitions - Reduction of Competition

A. Increased Concentration and Entry Barriers in the Light-Duty Towtruck Market

39. Even prior to its illegal acquisitions of Vulcan and Chevron, Miller Industries had become the country's largest supplier of light-duty towtrucks. Miller Industries had previously acquired, in 1990 and 1991, the long-established and widely respected Century, Challenger, Eagle, and Holmes towing and recovery vehicle businesses, along with their brand names and patents, and had introduced its own Champion brand. Some of these acquired firms had been important innovators in the light-duty towtruck market.

40. In 1995, the year before its illegal acquisition of Vulcan , Miller Industries' brands accounted for about 45% of the approximately $49 million total revenues generated in the light-duty towtruck market; Jerr-Dan held the second-largest share, about 18%; Vulcan was third-largest with approximately a 16% market share; Chevron had about an 8% market share; and about seven smaller producers accounted for the remaining sales.

41. Miller Industries, Vulcan, and Chevron competed to develop and improve the designs and features used in light-duty towtrucks, a id to manufacture and market various types of products offering these features to customers. This competition resulted in valuable improvements to light-duty towtruck design, providing customers with better products that offered greater maneuverability, efficiency, and safety in use.

42. Miller Industries' acquisitions of Vulcan and Chevron eliminated the competition in light-duty towtrucks among these companies. By 1998, Miller Industries' share of revenues in the light-duty towtruck market had risen to approximately 73%, while Jerr-Dan continued to hold

its approximately 18% market share and all other competitors accounted for the remaining 9%. Using a standard econometric measure of market concentration called the *Herfindahl-Hirschman Index* ("*HHI*"), defined and explained in Appendix A, the two illegal acquisitions increased concentration in the light-duty towtruck market in the United States from an *HHI* of about 2650 by about 3,000 points to a post-merger *HHI* of about 5,650.[2]

43. In addition to sharply increasing Miller Industries' share of the very highly concentrated light-duty towtruck market in this country, Miller Industries' illegal acquisitions placed the ownership of all of the important wheel-lift patents in Miller Industries' hands and reduced the number of firms with the right to use this technology. The number of competing manufacturers offering light-duty towtrucks with the basic patented L-Arm wheel-lift was reduced from three (Miller Industries, Vulcan, and Jerr-Dan) to two (Miller Industries and Jerr-Dan) and the number of competing manufacturers offering light-duty towtrucks embodying some of the patented Vulcan L-Arm improvements was reduced from two (Miller Industries and Vulcan) to Miller Industries alone. Miller Industries also acquired Chevron's "Backsaver patent," which may have provided an alternative wheel lift technology that competing light-duty towtruck manufacturers could have used to compete with Miller's patented L-Arm technology. Since acquiring Vulcan, Miller Industries has not licensed any of its wheel-lift patents to any competitor.

44. Moreover, Miller Industries' illegal acquisitions eliminated independently competing sources of innovation in the light-duty towtrucks market. Both Vulcan and Chevron had developed important improvements to towtruck technology prior to being acquired by Miller

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[2] Miller Industries' acquisition of Vulcan raised light-duty towtruck concentration by over 1600 points to a post-Vulcan-merger *HHI* of about 4250. Miller Industries' subsequent acquisition of Chevron further raised light-duty towtruck concentration by about 1400 points to a post-merger *HHI* of about 5,650.

Industries and, had they not been acquired, likely would have continued to innovate successfully.

45. The acquisitions of Vulcan and Chevron eliminated the head-to-head competition among Miller Industries, Vulcan, and Chevron that had benefitted consumers of light-duty towtrucks, and gave Miller Industries the ability unilaterally to raise prices or reduce quality. In addition, by reducing the total number of remaining effective competitors, these acquisitions increased the likelihood of anticompetitive coordinated behavior by these competitors to raise prices or reduce quality.

46. New entry into the light-duty towtruck market that would undo the anticompetitive effects of Miller Industries' illegal acquisitions is unlikely. Entry is difficult, in large part because the L-Arm and other patented wheel lift designs are critical for effective competition. No substitute technology is available from sources other than Miller Industries. Purchasers also tend to favor distributors and manufacturers that offer a full line of light-duty towtrucks and light-duty carriers, inasmuch as they generally have continuing demand for both types of vehicles. New entry is also made more difficult because the existing sellers enjoy considerable customer loyalty both to their established brands and to their road-proven product designs. A new entrant would need to expend considerable time and effort to develop product designs that did not infringe Miller Industries' patents -- if it could do so at all -- as well as establish a distribution network (preferably for a full line that includes light-duty towtrucks as well as light-duty car carriers), and gain customer acceptance of its products.

B. Increased Concentration and Entry Barriers in the Light-Duty Car Carrier Market

47. In 1995, the year before it acquired Vulcan, Miller Industries' brands accounted for about 23% of the approximately $84 million total revenues generated in the light-duty car

carrier market, second only to Jerr-Dan's share of about 41%. Chevron was third largest, accounting for about 11% of sales; Vulcan and Dual Tech each had a share of about 5%; and about eight smaller producers accounted for the remaining sales.

48. Miller Industries' acquisitions eliminated competition among itself, Vulcan, and Chevron, and doubled Miller Industries' share of revenues from the light-duty car carrier market. Its 1998 market share rose to about 47% of total light-duty car carrier revenues, Jerr-Dan's market share dropped to about 37%, and smaller producers accounted for the remaining approximately 16% of the market. Again using the *Herfindahl-Hirschman Index* ("*HHI*"), the two illegal acquisitions raised concentration in the light-duty car carrier market in the United States from an *HHI* of about 2380 by about 1,200 points to a post-merger *HHI* of about 3,580.[3]

49. Miller Industries' acquisition of Chevron's Independent Raise-and-Lower patent gave it exclusive rights to technology that is highly valuable to competition in the light-duty car carrier market. As noted above, Miller Industries' acquisitions of Vulcan and Chevron also placed ownership of all of the important wheel-lift patents in Miller Industries' hands and reduced the number of competing manufacturers with the right to offer these features. Since acquiring Vulcan, Miller Industries has not licensed its wheel lift patents or the IRL patent to any competitor.

50. Miller Industries' illegal acquisitions of Vulcan and Chevron also eliminated likely sources of future innovation in the light-duty car carrier market.

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[3] Miller Industries' acquisition of Vulcan raised light-duty carrier concentration by about 250 points to a post-merger *HHI* of about 2,630. Miller Industries' acquisition of Chevron further raised light-duty carrier concentration by about 950 points to an *HHI* of about 3,580.

51. The acquisitions of Vulcan and Chevron eliminated the head-to-head competition among Miller Industries, Vulcan, and Chevron that had benefitted consumers of light-duty car carriers and gave Miller Industries the ability unilaterally to raise prices or reduce quality. In addition, by reducing the total number of remaining effective competitors in the light-duty car carrier market, these acquisitions increased the likelihood of anticompetitive coordinated behavior to raise prices or reduce quality.

52. New entry into the light-duty car carrier market that would undo the anticompetitive effects of Miller Industries' illegal acquisitions is unlikely. The patented wheel lift designs and the patented IRL mechanism, all controlled by Miller Industries, are important for effective competition. Incumbent sellers also enjoy considerable customer loyalty both to their established brands and to their road-proven product designs. It would take a new entrant considerable time and effort to develop product designs that did not infringe Miller Industries' patents -- if this could be achieved at all -- and to establish a distribution network and gain consumer acceptance of its products.

V.

Violation Alleged

53. The effect of Miller Industries' acquisitions of the capital stock of Vulcan and Chevron has been substantially to lessen competition, or to tend to create a monopoly, in the markets for the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

54. Miller Industries' acquisitions have had the following adverse effects, among others, upon competition:

a. competition in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers among Miller Industries, Vulcan, and Chevron, including price competition, has been eliminated and competitive pressure on Miller Industries to continue to innovate has been significantly eased; and

b. competition generally, including price competition, in the markets for light-duty towtrucks and light-duty car carriers has been substantially lessened.

Request for Relief

Wherefore Plaintiff requests that this Court:

a. adjudicate that the said acquisitions by Defendant Miller Industries, Inc., of the capital stock of Vulcan Equipment, Inc., and Chevron, Inc., violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

b. grant injunctive and other relief appropriate to restore competition in the design, manufacture, and sale of light-duty towtrucks and light-duty car carriers in the United States;

c. grant plaintiff its costs of this action; and

d. grant such other relief as it may deem just and proper.

Dated: February 16, 2000

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APPENDIX A

DEFINITION AND CALCULATION OF "*HHI*"

The term "*HHI*" refers to the Herfindahl-Hirschman index, a commonly accepted measure of market concentration. The *HHI* is calculated by squaring the market share, expressed in percent, of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, respectively, the *HHI* is 2,600, calculated thusly: $30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2{,}600$. The *HHI* takes into account the relative size and distribution of the firms in the market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 when a market is controlled by a single firm. The *HHI* increases both as the number of firms in the market decreases and as the disparity in size among those firms increases.

Markets in which the *HHI* is between 1,000 and 1,800 are considered to be moderately concentrated, and markets in which the *HHI* is in excess of 1,800 points are considered to be highly concentrated. Transactions that increase the *HHI* by more than 100 points in highly concentrated markets presumptively raise significant antitrust concern under the 1992 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines.