IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Petitioner, v. SMITH INTERNATIONAL, INC., and SCHLUMBERGER LTD., Respondents.	Supplemental to Civil Action No. 93-2621 -- SS Judge Stanley Sporkin

REPLY OF THE UNITED STATES TO RESPONSE OF SMITH AND SCHLUMBERGER TO PETITIONS FOR ORDERS TO SHOW CAUSE WHY RESPONDENTS SHOULD NOT BE FOUND IN CIVIL AND CRIMINAL CONTEMPT

In 1994, this Court entered a Final Judgment prohibiting Smith International, Inc., as the purchaser of a 64 percent interest in M-I L.L.C. ("M-I") -- the "drilling fluid business" divested pursuant to the Judgment -- from "sell[ing] the drilling fluid business to, or combin[ing] that business, with the drilling fluid operations of . . . Schlumberger Ltd. . . . or any of its affiliates or subsidiaries." On July 14, 1999, in violation of the Final Judgment and despite a warning from the United States, Respondents Smith and Schlumberger formed a joint venture, pursuant to which Smith sold to Schlumberger a prohibited interest in M-I and Respondents combined the U.S. and foreign assets of M-I with Schlumberger's non-U.S. drilling fluid assets.

In their Response, Respondents proffer excuses for proceeding with their joint venture and argue that the Court should read the Final Judgment to prohibit only: (1) combinations that

include Schlumberger's U.S. drilling fluid assets, or (2) a sale of M-I to Schlumberger only so long as Schlumberger owns and operates U.S. assets. But the Judgment's language, which Respondents never quote, contains neither limitation, the documents to which they point the Court support neither limitation, and this Court's jurisdiction imposes neither limitation. Respondents' arguments provide no basis upon which to conclude that the language of Paragraph IV.F. of the Final Judgment means anything other than exactly what it says, or that their proffered excuses for ignoring the Final Judgment are valid. The Court should reject Respondents' deliberate violation of the Final Judgment and order them to restore immediately the *status quo ante* July 14, 1999.

The only relevant issues in this proceeding are: (1) whether the Final Judgment was clear and unambiguous; (2) whether in forming the joint venture on July 14, 1999, Respondents violated that Final Judgment; and (3) whether, for criminal contempt, the violation was willful. Respondents do not dispute that Smith sold part of the "divested drilling fluid business" to Schlumberger and that Smith combined the divested drilling fluid business with Schlumberger's drilling fluid business. The agreement relating to the joint venture formed by Respondents on July 14 makes clear that Schlumberger now owns 40 percent of a venture that includes M-I. Thus, Smith sold to Schlumberger part of the interest in M-I that it purchased from Dresser in 1994. See Exhibit 14. Smith admittedly combined the divested drilling fluid business with some of Schlumberger's drilling fluid operations. Indeed, Smith's web site describing the joint venture uses the word "combine" to describe the venture: "Why Schlumberger and Smith agreed to *combine* their drilling fluid businesses." (Emphasis added.) See Exhibit 15E, Slide 002. Nor do

they deny that they proceeded with the joint venture after receiving a clear warning from the Justice Department that the joint venture would violate the Court's Final Judgment.

There are no relevant or material factual issues in dispute regarding the civil contempt petition, and the United States is prepared to proceed with oral argument on September 17. Where there is no genuine issue of material fact, an evidentiary hearing is not necessary in a civil contempt case. Food Lion, Inc. v. United Food & Commercial Workers Int'l. Union, 103 F.3d 1007, 1019 (D.C. Cir. 1997). Respondents have indicated that they desire to call witnesses regarding whether they willfully violated the Final Judgment. If they intend to do so, the United States will seek discovery regarding Respondents' good faith defense to the willfulness element.

I. The Final Judgment Clearly, Specifically, and Unambiguously Bars the Smith/Schlumberger Joint Venture

A. The Final Judgment Language is Unambiguous

Respondents argue that the Final Judgment does not prohibit the joint venture because Schlumberger is not contributing its U.S. assets and is winding down its U.S. drilling fluid operations. Respondents completely ignore the plain language of the Final Judgment, which provides in Paragraph IV.F., as modified:

> The purchaser of the divested drilling fluid business shall not sell the drilling fluid business to, or combine that business, with the drilling fluid operations of Dresser Industries, Inc., Baker Hughes, Inc., or Schlumberger Ltd., or any of their affiliates or subsidiaries during the life of this decree.

The decree does not limit this provision to the U.S. drilling fluid business or operations of the Respondents and does not make an exception for assets located outside the United States. (Indeed, this provision does not even refer to assets, but rather to drilling fluid operations.)

Respondents would have the Court add language to Paragraph IV.F. to say that Smith cannot "sell the drilling fluid business to . . . Dresser Industries, Inc., Baker Hughes, Inc., or Schlumberger Ltd., if those companies have United States drilling fluid assets at the time of the sale and are not in the process of winding down their United States drilling fluid operations," or "combine that business with the United States assets and drilling fluid operations of Dresser Industries, Inc., Baker Hughes, Inc., or Schlumberger Ltd." There is simply no support in the language of the Final Judgment for Respondents' contention that it applies, or was "meant" to apply, or should be "interpreted" to apply, only to the extent Schlumberger's drilling fluid assets located in the United States are involved.

B. The Fact that the Final Judgment Is Directed at Preserving Competition in The United States Does Not Limit Its Scope to U.S. Assets

Respondents argue that because the Final Judgment is concerned with drilling fluid competition in the United States, the Final Judgment should be read as limiting the application of Paragraph IV.F. to U.S. assets. There is no dispute that the purpose of the Final Judgment was to preserve competition in the U.S. drilling fluid market. See Complaint ¶ 14; Competitive Impact Statement at 1-2. It does not follow, however, that the Final Judgment must be construed as barring only sales or combinations of U.S. assets. See Response at 17-19. Respondents have confused the market of competitive concern with the scope of the relief appropriate to preserve competition in that market.

The Complaint challenged the Dresser/Baroid merger because it would have substantially lessened competition in the United States by combining two of the three dominant drilling fluid

firms, which collectively accounted for about two-thirds of revenues.[1] The Final Judgment ordered divestiture to protect that competition, and it is noteworthy that the required divestiture included significant foreign assets.[2] Indeed, Respondents acknowledge that the original divestiture requirement encompassed assets located outside of the United States. See Response at 19 n.17 (citing Final Judgment ¶ II.H.).

The Final Judgment also contained restrictions that sought to prevent future acquisitions or combinations that would increase concentration in the U.S. drilling fluid market (as the Dresser/Baroid transaction would have) or would block the growth of another significant independent competitor that potentially might make the market less concentrated. It did so by barring the subsequent acquisition of the divested drilling fluid business by, or a combination of it with the drilling fluid operations of, M-I's actual and potential competitors, including Schlumberger, one of the largest worldwide oilfield service companies. See Exhibit 16. At the time, Schlumberger had only a fledgling drilling fluid business in the United States, but was included in the Final Judgment because of its importance as a potential competitor in the U.S. drilling fluid market.[3]

---

[1] Today, the U.S. drilling fluid market is even more concentrated, with the top three firms accounting for more than 80 percent of revenues.

[2] The Final Judgment required the defendants to divest either Dresser's entire interest in M-I, an international company, or Baroid Drilling Fluids and "any other assets that Baroid owns or has an interest in that are used to research, develop, test, produce, manufacture, service, or market, domestically or internationally, drilling fluids . . . ."

[3] In the Memoranda in Support of the Contempt Petitions, the United States stated that Schlumberger had no U.S. drilling fluid operations when the Final Judgment was filed on

That the Final Judgment required the divestiture of non-U.S. located assets and contained limitations on foreign firms is not uncommon. The remedy needed to preserve competition in a particular geographic market can extend to assets and firms physically located outside the affected geographic market. See, e.g., United States v. Schlitz Brewing Co., 253 F. Supp 129, 145, 147-48 (N.D. Cal.), aff'd, 385 U.S. 37 (1966); United States v. Halliburton Co., et al., Civil Action No. 1:98CV02340 (D.D.C. Apr. 1, 1998); United States v. Imperial Chem. Indus., Ltd., 105 F. Supp. 215, 237 (S.D.N.Y. 1952). Thus, neither the Complaint nor the Final Judgment provide any basis for importing U.S. asset-based limitations into the clear and specific language of Paragraph IV.F.

C. The 1996 Modification Did Not Interpret or Amend the Final Judgment

Respondents argue that because the United States consented to a modification of Paragraph IV.F. in 1996 (that allowed Smith to acquire Anchor Drilling Fluids if it divested Anchor's U.S. assets), the Final Judgment should be interpreted to apply only to transactions involving U.S. assets. There is no basis for this argument. The 1996 modification did not "interpret" or "limit" the Final Judgment in any way.

After investigating Smith's modification proposal in 1996, the Department determined that, in that particular instance, the prophylactic purpose of the prohibition -- maintaining actual or potential competition -- would not be compromised if Smith divested the U.S. assets of

---

December 23, 1993. In the Response, Respondents stated that Schlumberger did generate a very small amount of drilling fluid revenues in the United States in 1993. The United States accepts that correction.

Anchor. No statement by the United States -- and, more importantly, no action taken by the Court -- in connection with the 1996 modification in any way purported to interpret or modify the Final Judgment to apply only to transactions involving U.S. assets. The fact that the United States agreed in 1996 to join with Smith in a motion to permit a specific transaction did not, and could not, change the plain meaning of the Final Judgment.

II. The Court's Jurisdiction to Enforce the Final Judgment Is Not Limited to Transactions That Include Schlumberger's U.S. Drilling Fluid Assets

Respondents argue that this Court does not have "jurisdiction" to find them in contempt unless the joint venture combined drilling fluid assets that were owned by Schlumberger and physically located in the United States.[4] Relying primarily on cases describing extraterritorial application of the antitrust laws and cases involving federalism issues, Respondents advance the remarkable proposition that the Final Judgment cannot prohibit conduct unless that conduct would itself constitute a separate violation of the antitrust laws. Respondents are clearly in error.

This Court obviously had jurisdiction to enter the Final Judgment negotiated by the original parties in the Baroid case, which encompassed remedies designed to protect and promote competition in the United States. The very language of the Final Judgment states that the Court had personal jurisdiction over the defendants, Dresser and Baroid, and had subject matter jurisdiction over the litigation under the federal antitrust laws. See Final Judgment ¶ I.

---

[4] They do not explain why this argument makes unenforceable the prohibition against Smith selling to Schlumberger part of the interest in M-I that Dresser divested to Smith.

The Final Judgment can validly prohibit transactions, even if those transactions would not themselves independently violate the antitrust laws. A court's equitable power is broad, and not limited to enjoining illegal activity. The court can also impose prophylactic or remedial provisions that prohibit otherwise legal conduct if it concludes that those measures are an aid to, or are necessary or important for, ensuring effective relief. United States v. Loew's, Inc., 371 U.S. 38, 53 (1962) ("Some of the practices which the Government seeks to have enjoined with its requested modifications are acts which may be entirely proper when viewed alone. To ensure, however, that relief is effectual, otherwise permissible practices connected with the acts found to be illegal must sometimes be enjoined."); United States v. United States Gypsum Co., 340 U.S. 76, 88-89 (1950); see also United States v. Grinnell Corp., 384 U.S. 563, 580 (1966); FTC v. National Lead Co., 352 U.S. 419, 429 (1957).[5] Thus, whether a combination of M-I and Schlumberger's non-U.S. assets would constitute a separate violation of Section 7 of the Clayton Act is irrelevant in a contempt action. The Court had the power to prohibit such a transaction as a means of furthering the goal of protecting competition in the U.S. drilling fluid market.[6]

---

[5] These cases involved orders entered by the court following trial or hearing. With regard to a consent decree under the Tunney Act, 15 U.S.C. § 16, the standard is no less broad. United States v. Thomson Corp., 949 F. Supp. 907, 914 (D.D.C. 1996) (the court "may at the relief stage prohibit practices which have not been found unlawful if such prohibition is necessary to avoid the recurrence of monopolization . . . and may consider factors other than [the consent decree's] effect on competition" (internal quotations and citations omitted)); United States v. AT&T, 552 F. Supp. 131, 150 n.80 (D.D.C. 1982) ("[R]estraints may be imposed upon the defendant which are designed to allow the development of nascent competition within the relevant market." (Citation omitted)), aff'd, 460 U.S. 1001 (1983).

[6] Respondents incorrectly suggest that the only effect of the joint venture can be on competition outside the United States. As one of the largest and best known oilfield service

Remedial measures are not improper simply because they apply to firms headquartered outside the United States and to foreign assets of those firms. The Court's jurisdiction over foreign firms and their assets in antitrust cases is firmly established. United States courts have ordered relief involving foreign firms and foreign assets to protect competition in the United States. Schlitz, 253 F. Supp. at 145, 147-48 (divestiture of interest in Canadian brewery ordered because its acquisition by U.S. company eliminated potential competitor into the U.S. market); United States v. True Temper Corp., 1959 Trade Cas. (CCH) ¶ 69,441, at 75,663 (1959) (consent decree ordering U.S. corporation to divest interest in foreign corporations and refrain from agreements that limited competition in the United States); see also United States v. Imperial Chem. Indus., Ltd., 105 F. Supp. 215, 237 (S.D.N.Y. 1952).[7]

This Court had jurisdiction over the original action and the parties to that action; it had jurisdiction to enter the Final Judgment, including Paragraph IV.F.; it has jurisdiction over Smith

---

companies in the United States and the world, as well as the third largest drilling fluid competitor outside the United States, Schlumberger would remain a potential entrant into the United States drilling fluid market even if it did not currently operate in the United States drilling fluid business. Instead, Schlumberger will compete in the United States drilling fluid market through the joint venture with M-I. Indeed, it appears that Schlumberger has given up its right to compete independently in the United States drilling fluid market under the joint venture agreement. See Exhibit 14 ¶ 9.6, at 69.

[7] The Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a ("FTAIA"), codified existing case law to make it clear that the Sherman Act is applicable to foreign conduct that has a "direct, substantial, and reasonably foreseeable effect" on United States commerce. See generally Hartford Fire Ins. Co. v. California, 509 U.S. 764, 794-99 (1993) (finding civil jurisdiction for alleged conspiracy in violation of the Sherman Act by wholly foreign actors and noting that it is "well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States").

and Schlumberger; and it has jurisdiction to enforce the Final Judgment against Respondents. Respondents cite no authority to the contrary.[8] Its jurisdictional arguments are without merit.[9]0. The permissible breadth of a consent decree is not unlimited. The prohibitions must come within the general scope of the pleadings and further the objectives of the law on which the complaint is based. Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986) ("Local No. 93"). Those requirements are clearly satisfied by the Final Judgment entered by the Court here because the Final Judgment (1) sprang from and resolved a dispute within the court's subject matter jurisdiction (an alleged violation of the Clayton Act); (2) came within the general scope of the United States" pleadings (preventing undue concentration of the United States drilling fluid market by requiring the divestiture of the Dresser or Baroid drilling fluid

---

[8] Respondents claim that Saahir v. Estelle, 47 F.3d 758 (5th Cir. 1995), and Lelsz v. Kavanagh, 807 F.2d 1243 (5th Cir.), cert. dismissed, 483 U.S. 1057 (1987), support an argument that a court does not have the jurisdiction to enforce a consent decree unless the enforcement is authorized by substantive law. But those cases are inapposite here. They are based on principles of federalism under the Eleventh Amendment. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 98 (1984) ("[The Eleventh Amendment affirms] that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III."). Saahir and Lelsz find the Eleventh Amendment deprives federal courts of jurisdiction in cases filed by private citizens against state officials to order compliance with decree provisions not based on federal law. Such issues are not present in this matter. Cf. Komyatti v. Bayh, 96 F.3d 955, 963 (7th Cir. 1996) (refusing to follow Saahir and stating that "continuing respect for the valid decrees of a court commands that they be obeyed until changed" (quoting Kindred v. Duckworth, 9 F.3d 638, 644 (7th Cir. 1993) (internal quotations omitted)). This Court is not being asked to enforce an order against a state. Other decisions affirming the inapplicability of this exception to non-federalism cases that are firmly rooted in federal law include Consumer Advisory Board v. Glover, 151 F.R.D. 496, 501 (D. Me. 1993); Kozlowski v. Coughlin, 711 F. Supp. 83, 86 (S.D.N.Y. 1988), aff'd, 871 F.2d 241 (2d Cir. 1989); and Giesking v. Schafer, 672 F. Supp. 1249, 1266 (W.D. Mo. 1987).

9

business, and prohibiting the subsequent sale of that business to or combination with any of the major drilling fluid companies, including Schlumberger); and (3) furthered the objectives of the law upon which the complaint was based (promotion of competition in the United States drilling fluid market).

[10]0. Local No. 93 also holds that a consent decree must come within the general scope of the pleadings and further the objectives of the law on which the complaint was based. 478 U.S. at 525. Those requirements are clearly satisfied by the Final Judgment entered by the Court here.[11]

III. Respondents' Remaining Excuses Are Irrelevant to a Determination of the Issues Presented by the Civil and Criminal Contempt Petitions

Respondents raise a number of additional excuses in their effort to avoid confronting the central issue of this proceeding; namely, whether they violated the clear language of the Final

---

The permissible breadth of a consent decree is not unlimited. The prohibitions must come within the general scope of the pleadings and further the objectives of the law on which the complaint is based. Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986) ("Local No. 93"). In this case those requirements are satisfied because the Final Judgment (1) sprang from and resolved a dispute within the Court's subject matter jurisdiction (an alleged violation of the Clayton Act); (2) came within the general scope of the United States' pleadings (preventing undue concentration of the U.S. drilling fluid market by requiring the divestiture of the Dresser or Baroid drilling fluid business and prohibiting the subsequent sale of that business to or combination with any of the major drilling fluid companies, which included Schlumberger); and (3) furthered the objectives of the law upon which the complaint was based (protection of competition in the U.S. drilling fluid market). Moreover, parties can consent to remedies that a court has no authority to order, as Local 93 -- cited by Respondents -- states: "[A] federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial." Id. at 525.

Judgment. They variously contend that they were frustrated by the length of the Department of Justice's review of their modification request, that Smith needed to close the transaction in order to refinance its acquisition of the remaining interest in M-I it had acquired from Halliburton Company in August of 1998, and that Schlumberger was beginning to lose business in the North Sea because its customers mistakenly believed that the transaction had already been consummated. None of these contentions provides a defense to a violation of the Final Judgment.[12]

Respondents' request that the Department support modification of the Final Judgment presented a number of issues requiring substantial investigation and consideration to determine whether it was in the public interest to ask the Court to modify the five-year-old Judgment for a second time. Rather than await the outcome of the Department's investigation or move unilaterally for modification of the Final Judgment, Respondents closed their transaction after making changes that they asserted, and the Department disputed, made modification unnecessary. Impatience does not constitute a defense for violating a court order.[13]

Smith also claims that closing the transaction was important to its ability to refinance its purchase of the remaining interest in M-I from Halliburton Company. This might be a prudent

---

[12] Respondents' counsel has indicated a desire to present testimony on these issues. The United States will move to exclude that testimony as irrelevant.

[13] It is not a defense to a properly alleged charge of contempt in violation of a consent decree that the violation did not harm the other party, or that the violation was justified by the violator's need. Wyoming v. Colorado, 309 U.S. 572, 581 (1940); Brooks v. United States, 119 F.2d 636, 645-46 (9th Cir. 1941), cert. denied, 313 U.S. 594 (1941).

financial objective for Smith, but its desire to reduce debt does not constitute a defense to violating a court order. See United States v. Work Wear Corp., 602 F.2d 110, 116 (6th Cir. 1979) ("[M]ere financial hardship is no excuse for failure to comply with a court order" (citing United States v. Dupont, 366 U.S. 316, 326-31 (1961)). The court went on to criticize the company because it "placed its own financial considerations ahead of complying with the law.").

Finally, Respondents say they wanted to close the transaction because certain Schlumberger customers in the North Sea had contracted with M-I or another drilling fluid company in the mistaken belief that Smith and Schlumberger had already combined their operations. This contention appears unreasonable on its face. Can it really be the case that Schlumberger, an almost $12 billion oilfield services giant, was unable to compete for renewal contracts with its pre-existing customers because it failed to keep those customers aware of the status of its pending deal with Smith? Fortunately, this is a contention -- like the contention that Schlumberger just happened to decide (acting unilaterally, of course) that now was the time to close down its U.S. operations -- that the Court need not address. Losing contracts is not a defense to violating a court order.

IV. Respondents' Proper Recourse Was To Petition the Court for Modification, Construction or Termination; Not To Violate the Judgment

If Respondents believed the Final Judgment's bar on transactions with Schlumberger no longer served the public interest or that circumstances had changed, their only lawful recourse was to seek modification, construction or termination of the order. See, e.g., Walker v. City of Birmingham, 388 U.S. 307, 315 (1967); United States v. General Motors Corp., 1983-2 Trade

Cases ¶ 65,614 (N.D. Ill.); United States v. Greyhound Corp., 363 F. Supp. 525, 534 (N.D. Ill. 1973), aff'd, 508 F.2d 529 (7th Cir. 1974).[14] They were not free to take matters into their own hands[15] and ignore this Court's Order. As long as the Court had jurisdiction over the subject matter and persons involved, its order must be obeyed until it has expired or been set aside. United States v. United Mine Workers, 330 U.S. 258, 293 (1947).

V. Rescission Is the Appropriate Remedy for Civil Contempt in This Case

Respondents' actions in consummating the joint venture on July 14, 1999, violated the clear, unambiguous, and specific language of the Final Judgment. Respondents continue to profit from their violation every day that the joint venture continues. See United States v. ITT Continental Baking Co., 420 U.S. 223, 240 (1975) (violation of consent decree by making prohibited acquisition "continues until the assets obtained are disgorged").[16] Rescission of the

---

[14] That is precisely the course of action that Western Electric chose in a case cited by Respondents for the proposition that courts should not apply consent decrees to transactions that do not affect U.S. markets. United States v. Western Elec. Co., 1990-2 Trade Cas. (CCH) ¶ 69,139, at 64,241 (D.D.C. 1990). In fact, in Western Electric, the court specifically rejected a party's suggestion that it adopt "a general rule that would permit any Regional Company to acquire a ten percent interest in any prohibited business, or that any such waivers for foreign business ventures will be blindly granted in the future." Instead, the court decided to evaluate future waiver requests (in essence, modifications of the underlying final judgment) "on a case by case basis." Id. at 64,246.

[15] See Response at 28: "It was the considered judgment of the companies that the Final Judgment no longer applied."

[16] To support their argument against rescission, Respondents selectively quote language from the concurrence in the Tenth Circuit decision in United States v. ITT Continental Baking Co., 485 F.2d 16 (10th Cir. 1973), rev'd, 420 U.S. 223 (1975): "[T]he purpose of divestiture as remedy to consent order is 'to fulfill the objective of the antitrust laws.'" Response at 28 n.17 (quoting Continental, 485 F.2d at 21 (concurring opinion)). Respondents omitted the rest of the quote that

transaction is the only remedy that would effectively restore the status quo and protect the integrity of the Court's order. United States v. Coca-Cola Bottling Co., 575 F.2d 222, 228 (9th Cir. 1978). None of the cases cited by Smith and Schlumberger support their contention that recission is inappropriate as a remedy for their continuing violation of this Court's order,[17] and they offer no alternative to recission that would effectively restore the status quo. Respondents' failure to comply with the Final Judgment was not an act of omission where the Court simply needs to order obedience in the future, or an act of commission that cannot be undone. Respondents must be ordered to comply with the Final Judgment, which can only be accomplished by rescission of the joint venture.

VI. The Evidence Will Show That Criminal Contempt Sanctions Are Warranted

Respondents argue that they had a good faith belief that the Final Judgment did not bar the July 14 transaction, and Respondents' counsel has indicated to the United States that Respondents will present testimony of company representatives to show that there was no willful violation of the decree. The United States therefore requests that the Court allow discovery on

---

indicates that a purpose of divestiture is also protection of the integrity of the court's order. The full sentence reads, "Ordinarily a divestiture of the wrongfully acquired business would be the proper remedy, both to fulfill the objective of the antitrust laws, *and to deter the defendant-appellant and other similarly situated entities from committing such abuses in the future*." Continental, 485 F.2d at 21 (concurring opinion) (emphasis added).

[17] The two cases other than Continental Baking cited by Respondents as support for the argument that rescission would be an inappropriate remedy do not in fact provide that support. Neither of the cases addressed the appropriateness of rescission as a remedy.

any bases for Respondents' claimed good faith belief that the joint venture does not violate the decree, including any advice from counsel on interpretation of the Final Judgment.

When the criminal contempt hearing is over, the United States expects the evidence to show that, in light of the strained interpretation Respondents have given to Paragraph IV.F., they could have had no good faith basis for believing that their actions were permitted under the Final Judgment. At a minimum, they acted in reckless disregard of the Court's order, which is sufficient to establish willfulness. See In re Holloway, 995 F.2d 1080, 1082 (D.C. Cir. 1993), cert. denied, 511 U.S. 1030 (1994); Sykes v. United States, 444 F.2d 928, 930 (D.C. Cir. 1971).[18] Even if Smith and Schlumberger claim an advice of counsel defense, the United States' clear warning that consummating the joint venture would violate this Court's Final Judgment should be sufficient to show the requisite willfulness for criminal contempt. See Lindquist & Vennu v. FDIC, 103 F.3d 1409, 1415 (8th Cir. 1996) (corporation could not willfully violate law and escape liability by claiming advice of counsel defense where "petitioners were aware of the illegality of their actions after receipt of a clear warning of the FDIC's position that the stock

[18] Respondents' reading of Paragraph IV.F. is the type of "twisted interpretation" cited by the court in United States v. Greyhound, 363 F. Supp. 525, 534 (N.D. Ill. 1973), aff'd, 508 F.2d 529 (7th Cir. 1974), as justifying a finding of criminal contempt, especially after receiving a warning from the United States. "[T]he law is clear that a party who makes his own determination as to the meaning of a decree, acts at his peril." Id. at 534 (finding corporation acted wilfully in violating court order). Smith and Schlumberger have dozens of years of experience operating in the oilfield services industry and were in constant consultation with antitrust and corporate counsel. See United States v. Schafer, 600 F.2d 1251, 1253 (9th Cir. 1979) (finding individual in criminal contempt, and stating, "We find it impossible to believe that an operator in this highly competitive field with the help of his own counsel and with 14 years of operating experience would not have known that he was treading on dangerous ground").

purchase violated the [Change in Bank Control Act]"), cert. denied sub nom. Donohoo v. FDIC, 118 S. Ct. 77 (1997); Greyhound, 508 F.2d at 536-37, 538 (finding of willfulness supported by fact that contemnor received warnings that actions were in violation of court order).

Conclusion

By any reasonable reading, Paragraph IV.F. of the Final Judgment proscribed the joint venture formed by Smith and Schlumberger on July 14, 1999. Indeed, they were so advised by the United States before they proceeded with the transaction. Despite the clear prohibitory language of this Court's Final Judgment and the warning from the United States -- and despite their ability to come to the Court for modification, construction or termination -- Respondents chose to ignore the Final Judgment and to close the transaction. Their conduct should not be tolerated.

Smith and Schlumberger, by their actions, are in civil and criminal contempt of this Court and should be so found. Their civil contempt must be remedied in the only appropriate manner to restore the *status quo ante* and preserve the integrity of this Court's order -- immediate rescission of the joint venture agreement. The United States also believes that the Court will, in the end, find the conduct of Respondents criminally contemptuous and penalize them in a manner designed not only to punish but also to deter others from willfully violating this Court's orders.

Dated: September 10, 1999

Respectfully submitted,

"/s/"

ANGELA L. HUGHES
Member of The Florida Bar, #211052

ROBERT L. McGEORGE
MICHAEL D. BILLIEL
MATTHEW O. SCHAD

BERNARD M. HOLLANDER
Senior Trial Attorney

325 7th Street, N.W., Suite 500
Washington, D.C. 20530
Telephone: 202/307-6410
Facsimile: 202/307-2784

Attorneys for the United States