

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUL 29 8 11 AM '96

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGIA-PACIFIC CORPORATION,

Defendant.

Civil No.: 96-164

Filed: March 29, 1996

Entered: July 29, 1996

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on March 29, 1996, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendant has agreed 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 prompt and certain divestiture of assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendant to make certain divestitures for the purpose of establishing viable competition in the production and sale of gypsum board;

AND WHEREAS, defendant has represented to plaintiff that the divestitures ordered herein can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. "Georgia-Pacific" or "defendant" means defendant Georgia-Pacific Corporation, a Georgia corporation headquartered in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "The Northeast Region" means the District of Columbia and the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, Massachusetts, New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia.

C. "Gypsum Board Assets" means:

(1) all rights, titles and interests, including all fee and all leasehold and renewal rights, in Georgia-Pacific's Buchanan, New York gypsum board plant and related warehouses and docking facilities (the "Buchanan Plant") including, but not limited to, all real property, capital equipment, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, trucks and other vehicles, interests, assets or improvements related exclusively to the production, distribution and sale of gypsum board at the Buchanan Plant; and

(2) all rights, titles and interests, including all fee and all leasehold and renewal rights, in Georgia-Pacific's Wilmington, Delaware gypsum board plant and related warehouses and docking facilities (the "Wilmington Plant") including, but not limited to, all real property, capital equipment, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, trucks and other vehicles, interests, assets or improvements related exclusively to the production, distribution and sale of gypsum board at the Wilmington Plant.

D. "Gypsum board" means material that consists primarily of a solid, flat core of processed gypsum between two sheets of paper surfacing, and which is used principally for constructing or repairing interior walls and ceilings of commercial and residential buildings.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of the Gypsum Board Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. DIVESTITURES

A. Georgia-Pacific is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of this Final Judgment, to:

- (i) divest the Gypsum Board Assets to a purchaser or purchasers;
- (ii) enter into a perpetual, non-exclusive license (or licenses, as the case may be) with the purchaser or purchasers, transferrable to any future purchaser of the Wilmington or Buchanan Plants, to use, in manufacturing gypsum board at such Plants, all intangible assets, wherever located, that have been used in the last six (6) months in the manufacture of gypsum board at such Plants, including but not limited to, trade secrets and know-how, but excluding patents

for the DENS products, trademarks, trade names, service marks, and service names; and

(iii) at the option of the purchaser or purchasers, enter into a supply contract for gypsum rock (which may or may not include transportation) and/or gypsum linerboard paper sufficient to meet all or part of the capacity requirements of the Buchanan and Wilmington Plants over a period up to ten (10) years; provided that the terms and conditions of any contractual arrangement meant to satisfy this provision must be related reasonably to market conditions for gypsum rock and/or gypsum linerboard paper.

B. Divestiture of Georgia-Pacific's leasehold interest, if any, in the Gypsum Board Assets shall be by transfer of the entire leasehold interest, which shall be for the entire remaining term of such leasehold, including any renewal rights.

C. Defendant agrees to use its best efforts to accomplish the divestitures as expeditiously and timely as possible. Plaintiff, in its sole discretion, may extend the time period for any divestiture for two additional periods of time not to exceed sixty (60) calendar days in toto.

D. In accomplishing the divestitures ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability of the Gypsum Board Assets and the licenses and supply contracts described in Section IV (A) of this Final Judgment (collectively, the "Divestiture Package"). Defendant shall inform any person making an inquiry regarding a

possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Package that the assets described in Section II (C) and the licenses and supply contracts described in Section IV (A) of this Final Judgment are being offered for sale and that the Buchanan and Wilmington Plants and related assets may be purchased as a two-plant package or sold separately to two different purchasers. Defendant shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Package customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendant shall make available such information to plaintiff at the same time that such information is made available to any other person.

E. Defendant shall not interfere with any negotiations by any purchaser or purchasers to employ any Georgia-Pacific employee who works at, or whose principal responsibility is the manufacture, sale or marketing of gypsum board produced at Georgia-Pacific's Buchanan or Wilmington Plants.

F. Defendant shall permit prospective purchasers of the Divestiture Package to have access to personnel and to make such inspection of the Gypsum Board Assets, the intangible assets relating to the licenses described in Section IV (A) of this

Final Judgment, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV (A), or by the trustee appointed pursuant to Section V of this Final Judgment, shall include the Divestiture Package and be accomplished by selling or otherwise conveying the assets described in Section II (C) and by entering into the licenses and supply contracts described in Section IV (A) of this Final Judgment, to one or two purchasers, in such a way as to satisfy plaintiff, in its sole discretion, that the Divestiture Package can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacture and sale of gypsum board. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) the purchaser or purchasers have the capability and intent of competing effectively in the manufacture and sale of gypsum board in the Northeast Region; (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of gypsum board in the Northeast Region; and (3) none of the terms of any agreement between the purchaser or purchasers and defendant give defendant the ability unreasonably to raise the purchaser's or purchasers' costs, to lower the purchaser's or purchasers' efficiency, or otherwise to interfere

in the ability of the purchaser or purchasers to compete effectively in the Northeast Region.

V. APPOINTMENT OF TRUSTEE

A. In the event that Georgia-Pacific has not divested the Divestiture Package within the time specified in Sections IV (A) or (C) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Package.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Gypsum Board Assets and enter into the licenses and supply contracts described in Section IV (A) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser or purchasers acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate.

Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee 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 Georgia-Pacific and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Package 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.

D. Defendant shall use its 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 defendant, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to

reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly 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; provided, however, that 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 parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, 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. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms

of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Georgia-Pacific or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendant, the proposed purchaser or purchasers, or any other third party additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendant 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. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendant, the proposed purchaser or purchasers, and any third party, whichever is later, plaintiff shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant and the trustee that it does not object, then the divestiture may be consummated, subject only

to defendant's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendant under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Georgia-Pacific shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 Divestiture Package, and shall describe in detail each contact with any such person during that period. Each such affidavit shall further describe in detail any negotiations, including negotiations concerning the terms, conditions and price, between a purchaser or purchasers of the Gypsum Board Assets and Georgia-Pacific for the licenses and supply

contract(s) for gypsum rock and/or gypsum linerboard paper described in Section IV (A) of this Final Judgment.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Georgia-Pacific shall deliver to plaintiff an affidavit which describes in detail all actions Georgia-Pacific has taken and all steps Georgia-Pacific has implemented on an on-going basis to preserve the Gypsum Board Assets pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX (F) of this Final Judgment with respect to Georgia-Pacific's efforts to preserve the Gypsum Board Assets. The affidavit also shall describe, but not be limited to, Georgia-Pacific's efforts to maintain and operate the Gypsum Board Assets as an active competitor, maintain the management, sales, marketing and pricing of the Gypsum Board Assets apart from Georgia-Pacific's gypsum business, maintain and increase sales of gypsum board produced at the Buchanan and Wilmington Plants, and maintain the Gypsum Board Assets in operable condition at current or greater capacity configurations. Georgia-Pacific shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Georgia-Pacific's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall preserve all records of all efforts made to preserve and divest the Divestiture Package.

VIII. FINANCING

With prior written consent of the plaintiff, defendant may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. PRESERVATION OF ASSETS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendant shall take all steps necessary to ensure that the Gypsum Board Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of gypsum board in the Northeast Region; and that, except as necessary to comply with Section IX (B) of this Final Judgment, the management of the Gypsum Board Assets will not be influenced by Georgia-Pacific and the books, records, and competitively sensitive sales, marketing and pricing information associated with the Gypsum Board Assets will be kept separate and apart from Georgia-Pacific's other gypsum board business.

B. Defendant shall use all reasonable efforts to maintain and increase sales of gypsum board produced at its Buchanan and Wilmington Plants, and defendant shall maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support for gypsum board sold from the Buchanan and Wilmington Plants. Georgia-Pacific's sales and marketing employees responsible for sales of gypsum board from the Buchanan and Wilmington Plants

shall not be transferred or reassigned to other plants of defendant.

C. Defendant shall take all steps necessary to ensure that the Gypsum Board Assets are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal maintenance schedules for the Gypsum Board Assets.

D. Defendant shall not, except as part of a divestiture approved by plaintiff, remove, sell or transfer any of the Gypsum Board Assets, including all intangible assets that relate to the licenses described in Section IV (A) of this Final Judgment, other than gypsum board and related products sold in the ordinary course of business.

E. Defendant shall take no action that would jeopardize the divestiture of the Divestiture Package.

F. Defendant shall appoint a person or persons to oversee the Gypsum Board Assets, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

X. COMPLIANCE INSPECTION

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

- (1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to enforcement of this Final Judgment; and
- (2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal offices, defendant shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of plaintiff to any person other than a duly 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 defendant to plaintiff, defendant represents and identifies 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 defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

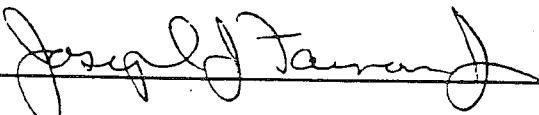
XII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: July 29, 1996


United States District Judge