

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED

MAY 8 1995

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff;

v.

SABRELINER CORPORATION,

Defendant.

Civil Action No. 95 0241

Filed: February 6, 1995

Entered: May 5, 1995

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on February 6, 1995, 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 such issue;

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement, and defendant has represented to plaintiff that the divestiture required below 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 the subject matter of this action and over each of the parties hereto. 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. "TWA" means Trans World Airlines, Inc., each of its predecessors, successors, divisions, subsidiaries, and affiliates, each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it, and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Midcoast" means Midcoast Aviation, Inc., each of its predecessors, successors, divisions, subsidiaries, and affiliates, each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it,

and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "Sabreliner" means defendant Sabreliner Corporation, each of its predecessors, successors, divisions, subsidiaries, and affiliates, each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it, and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "Sabreliner's Transient Fuel Service Business" means the following assets, owned or controlled by Sabreliner, that are or have been used at Lambert Field to provide fuel and other services to general aviation customers:

1. 5,000 square feet of ramp space located west of Hangar 6;
2. Office space (with associated office equipment), which includes pilot's lounge/flight planning room and access to lobby area, restrooms, conference facilities and canteen;
3. Space on the north side of Hangar 6 sufficient to park any fueling trucks required by the purchaser; and
4. Non-discriminatory access to the Fuel Delivery Cabinet on the west end of Sabreliner's fuel farm, the right to draw from Sabreliner's jet fuel tanks at least

2500 gallons of jet fuel per day, and the right to purchase that jet fuel directly from the fuel supplier from whom Sabreliner obtains its fuel.

E. "Sabreliner's Cargo and General Aviation Business" means the following assets, owned or controlled by Sabreliner, that are or have been used at Lambert Field to provide fuel and other services to general aviation and based cargo customers:

1. Sabreliner's entire leasehold interest in its tank farm, and all improvements and assets used in the business, including five fuel tanks, truck loading cabinet, and associated equipment;
2. All rolling stock, including the fuel trucks, deicing vehicle, ramp tugs, auxiliary power unit and courtesy van;
3. Office space (with associated office equipment), including pilot's lounge/flight planning room and access to lobby area, restrooms, conference facilities and canteen; and
4. The entire ramp area around and west of hangers 6 and 7, comprising approximately eleven (11) acres, subject to access easements of any subtenants in Hangars 6 and 7.

F. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

G. "Lambert Field" means Lambert St. Louis International Airport.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to the defendant, to defendant's successors and assigns, to defendant's subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to 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. The provisions of Sections IV through VIII of this Final Judgment shall be applicable only upon the consummation of the acquisition of Midcoast by Sabreliner.

C. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, or of the assets required to be divested herein, that the acquiring party agree to be bound by the provisions of this Final Judgment.

D. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

DIVESTITURE OF SABRELINER'S TRANSIENT FUEL BUSINESS

A. Defendant is hereby ordered and directed to divest, to an eligible purchaser, all of its direct and indirect ownership and control of Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business. Nothing contained herein shall preclude Sabreliner from dealing with or contracting for services from the divested entity in the ordinary course of business.

B. Divestiture of Sabreliner's leasehold interest in any of the assets of Sabreliner's Transient Fuel Service Business or Sabreliner's Cargo and General Aviation Business may be by transfer of the entire leasehold interest or by sublease. If divestiture of any or all of the assets is by sublease, each such sublease shall be for the entire term of Sabreliner's lease, including the same rights for renewal Sabreliner has, and the sublease shall specify, for the entire period of the sublease:

1. the price, or a formula for computing the price, for each and every payment due from the purchaser to Sabreliner pursuant to the sublease, including rent, and any uplift or other service charge for the use of Sabreliner's fuel tanks; and

2. the terms and conditions under which Sabreliner may evict the purchaser or exercise any other rights for breach of the sublease; and

3. that the airport authority must specifically approve any action by Sabreliner to exercise any rights under the sublease against the purchaser, unless such approval is arbitrarily and unreasonably withheld in the event of a breach of the sublease by the purchaser, in which case defendant must give a minimum of thirty (30) days notice to plaintiff prior to exercising any rights against the purchaser.

C. If defendant has not accomplished the required divestiture prior to May 1, 1995, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed two months.

D. Defendant agrees to take all reasonable steps to accomplish quickly said divestiture. In carrying out its obligation to divest the Sabreliner's Transient Fuel Business, defendant may divest these operations alone, or may divest along with these operations any other assets of Sabreliner.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendant promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of Sabreliner's Transient Fuel Business for sale as an ongoing business. The defendant shall notify any person making an inquiry regarding the possible purchase of this operation that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final

Judgment. The defendant shall also offer to furnish to all bona fide prospective purchasers of Sabreliner's Transient Fuel Business, subject to customary confidentiality assurances, all pertinent information regarding Sabreliner's Cargo and General Aviation Business, including Sabreliner's Transient Fuel Business except such information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendant shall permit prospective purchasers of Sabreliner's Transient Fuel Business to have access to personnel at Sabreliner's Cargo and General Aviation Business, including Sabreliner's Transient Fuel Business, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale required by this Final Judgment.

F. Unless the plaintiff otherwise consents, divestiture under Section IV.A., or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business can and will be operated by the purchaser as a viable, ongoing business engaged in the provision of fuel and other services to general aviation and cargo customers at Lambert Field. Divestiture shall be made to a purchaser for whom it is

demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the provision of fuel and other services to general aviation customers at Lambert Field; (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of fuel and other services to general aviation customers at Lambert Field; and (3) none of the terms of any sublease between the purchaser and Sabreliner give Sabreliner the ability artificially to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to provide fuel and other services to general aviation customers at Lambert Field. If the divestiture is of Sabreliner's Transient Fuel Business, it must be demonstrated to plaintiff's satisfaction that the purchaser can operate a transient fueling business on a stand-alone basis with costs and efficiency comparable to those achieved by Sabreliner's current integrated general aviation and cargo business.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and liens to Sabreliner or TWA.

V.

APPOINTMENT OF TRUSTEE

A. If defendant has not accomplished the divestiture

required by Section IV of the Final Judgment by March 15, 1995, defendant shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section IV(B), whichever is later, plaintiff shall provide defendant with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendant shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendant. The Court may hear the parties as to the qualifications of the nominees and

shall appoint one of the nominees as the trustee.

B. If defendant has not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified in Section IV(C), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of Sabreliner's Transient Fuel Service Business. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the assets of Sabreliner's Cargo and General Aviation Business.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell Sabreliner's Transient Fuel Service Business and Sabreliner's General Aviation and Cargo Business. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VIII of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale of Sabreliner's Transient Fuel Service Business or any or all Sabreliner's Cargo and General Aviation Business by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant of the

proposed sale in accordance with Section VIII of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of Sabreliner's Cargo and General Aviation Business and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant and the trust shall then be terminated.

E. Defendant shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of Sabreliner's Transient Fuel Service Business or any or all of Sabreliner's Cargo and General Aviation Business and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of Sabreliner's overall business, and defendant shall develop such financial or other information relevant to Sabreliner's Cargo and

General Aviation Business.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of Sabreliner's Transient Fuel Service Business or any or all of Sabreliner's Cargo and General Aviation Business as contemplated under this Final Judgment; 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. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in Sabreliner's Cargo and General Aviation Business, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section VI of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations;

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 thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the term of the trustee's appointment.

VI.

NOTIFICATION

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendant 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 desire to, acquire any ownership interest in the business that is the subject of the

binding contract, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendant or the trustee), 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/or 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 the provisions in Sections VI(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section V shall not be consummated. Upon objection by plaintiff, or by defendant under the proviso in Sections VI(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include 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 ownership interest in Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business, and shall describe in detail each contact with any such person during that period. Defendant shall maintain full records of all efforts made to divest these operations.

VIII.

FINANCING

With prior 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 assure that Sabreliner's Cargo and General Aviation Business will be maintained as separate and independent, economically viable, ongoing businesses with Midcoast's assets required for the provision of Midcoast's transient fuel services (including leaseholds, contracts, management, operations, and books and records) separate, distinct and apart from those of Sabreliner. The defendant shall use all reasonable efforts on behalf of Sabreliner's Cargo and General Aviation Business to maintain and increase sales of transient fuel and other services to general aviation customers at Lambert Field, and otherwise maintain the business as a viable and active competitor at Lambert Field.

B. The defendant shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements of substitutes therefore), assets required to be divested pursuant to Sections IV or V except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendant shall provide capital and provide and maintain sufficient working capital to maintain Sabreliner's Cargo and General Aviation Business, as viable, ongoing businesses consistent with the requirements of Section IX(A).

D. The defendant shall preserve the assets required to be divested pursuant to Section IV and V, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendant shall preserve the documents, books and records of Midcoast until the date of divestiture of Sabreliner's Transient Fuel Business and shall preserve the documents, books and records of Sabreliner's Cargo and General Aviation Business until the date of divestiture of that business.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section IX, the defendant shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more executive, managerial, sales, marketing, engineering, or other technical personnel of Sabreliner's Cargo and General Aviation Business, including its Transient Fuel Business, and shall refrain from transferring any employee so employed without the prior approval of plaintiff.

F. Defendant shall refrain from taking any action that would jeopardize the sale of Sabreliner's Cargo and General Aviation

Business.

X.

COMPLIANCE INSPECTION

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 Department of Justice shall, 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 office, be permitted:

1. access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, 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 office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice 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) 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

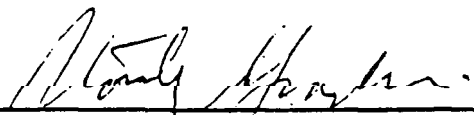
This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:


United States District Judge