

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

BAKER HUGHES INCORPORATED;
HUGHES TOOL COMPANY;
NORTON COMPANY; and
EASTMAN CHRISTENSEN COMPANY,

Defendants.

Civil Action No. 90-0825

Filed:

Entered: August 22, 1990

FILED

AUG 22 1990

FINAL JUDGMENT

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on April 10, 1990, and plaintiff and defendants, 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, defendants have 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 defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants 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 defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "BHI" means defendant Baker Hughes Incorporated; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "EC" means defendant Eastman Christensen Company; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "HTC" means Hughes Tool Company, which is a wholly-owned subsidiary of BHI; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "BHI's Diamond Bit Business" means all assets owned or controlled by BHI, including all assets owned or controlled by HTC, that are either necessary or predominately used to research, develop, test, manufacture, service, finance or market, domestically and internationally, its diamond bit products. Whether an asset not designated by defendants as within BHI's diamond bit business is necessary or predominately used by BHI to research, develop, test, manufacture, service, finance or market, domestically and internationally, its diamond bit products shall be determined by plaintiff in its sole discretion. Plaintiff may exclude an asset from BHI's diamond bit business if, in its sole discretion, plaintiff determines the asset is unnecessary to the competitive effectiveness of a proposed purchaser. BHI's diamond bit business includes all real property, material, equipment, supplies, customer lists, contracts and accounts, patents, copyrights, copyright registrations and applications,

trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other tangible and intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by BHI in the research, development, testing, manufacture, servicing, financing, or marketing of any diamond bit products that BHI has in the past manufactured or sold, currently manufactures or sells, or is considering manufacturing or selling. BHI's diamond bit business shall include a Diamond Technology Center containing equipment necessary to research, develop and test BHI's diamond bit products. This equipment includes, but is not limited to, each of the following items or the functional equivalent thereof: Boring Mill; EDM; EWAG; Scanning Electron Microscope; X-Ray Diffraction; X-Ray Fluorescence; Light Microscope; DEC Station 3100; Stereo Microscope; Tukon MicroHardness; Surface Grinder; Engineering PC. BHI's diamond bit business shall also include access without charge for two years following the date of divestiture to HTC's Bottom Hole Simulator and High Pressure Rig for up to 30 percent of their total available time. Also included in BHI's diamond bit business is a copy of all data in the possession of BHI or EC at any time between April 6, 1990 and the date of divestiture, such as bit records or off-set well information, which record the performance of any diamond bits manufactured or sold by BHI, EC, or any other producer of diamond bits. BHI's diamond bit business shall also include its diamond bit manufacturing

facilities, and all equipment, supplies, data, documents and inventories contained within, used to research, develop, test or manufacture diamond bit products. BHI's diamond bit business shall not include any rights, including trademarks and service marks, associated with the use of the tradenames or commercial names of "Baker Hughes Incorporated" and "Hughes Tool Company"; provided, however, that in the marketing of its diamond bit products the purchaser of BHI's diamond bit business will possess the right for one year following the date of divestiture to identify its diamond bit products as formerly having been sold under the tradename "Hughes Diamond Bit Products." BHI's diamond bit business also shall not include any real property owned by BHI in Argentina or any obligations assumed by BHI under the May 8, 1980 Agreement between HTC and the China National Machinery Import and Export Corporation, or any addenda thereto; provided, however, that nothing herein shall imply that BHI retains any right to use the patents or technology of the BHI diamond bit business to satisfy its obligations under said Agreement without the express permission of the purchaser of the divested assets and the consent of plaintiff.

E. "Diamond bits" means natural diamond drill bits, polycrystalline diamond compact drill bits and thermally stable polycrystalline drill bits.

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

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. 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 ASSETS

A. Defendants are hereby ordered and directed to divest to a purchaser prior to August 6, 1990 all of their direct and indirect ownership and control of BHI's diamond bit business. The obligation to divest shall be satisfied if, by August 6, 1990, defendants enter into a binding contract for sale of

BHI's diamond bit business to a purchaser according to terms approved by plaintiff that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than October 5, 1990, and if sale is completed pursuant to the contract.

B. If defendants have not accomplished the required divestiture prior to August 6, 1990, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed three months, if defendants request such an extension and demonstrate to plaintiff's satisfaction that they are then engaged in negotiations with a prospective purchaser that are likely to result in the required divestiture but that the divestiture cannot be completed prior to August 6, 1990.

C. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. In carrying out their obligation to divest BHI's diamond bit business, defendants may divest these operations alone, or may divest along with these operations any other assets of BHI or EC.

D. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of BHI's diamond bit business, for sale as an ongoing business. The defendants 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 defendants shall also offer to furnish to all bona fide prospective purchasers of BHI's diamond bit business, subject to customary confidentiality assurances, all pertinent information regarding BHI's diamond bit business. Defendants shall provide such information to the plaintiff no later than the time they furnish such information to any other person. Defendants shall permit prospective purchasers of BHI's diamond bit business to have access to personnel at BHI's diamond bit 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 of BHI's diamond bit business. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to EC's diamond bit business, except to the extent included in BHI's diamond bit business.

E. Divestiture required by Section IV of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that BHI's diamond bit business can and will be operated by the purchaser as a viable, ongoing business engaged in the manufacture and sale of diamond bits in the United States. 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 manufacture and sale of diamond bits in the United States, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of diamond bits in the United States.

F. Divestiture required by Section IV of the Final Judgment shall not be made to Diamant Boart Stratabit, Camco, Inc., or Smith International, Inc., or any of their affiliates or subsidiaries.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to BHI or EC, and (2) any contractual commitments or obligations (such as patent or technology license agreements or supply contracts) to BHI or EC existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of the divested operations wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

V.

APPOINTMENT OF TRUSTEE

A. If defendants have not accomplished the divestiture required by Section IV of the Final Judgment by July 6, 1990, defendants 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 defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants 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 defendants, 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 defendants, 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 defendants. 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 defendants have not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified in Section IV(A) or IV(B) of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of BHI's diamond bit business; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VI of this Final Judgment of a proposed divestiture of BHI's diamond bit business and plaintiff has not filed a written notice that it objects to said proposed divestiture. When the appointment of the trustee becomes effective, BHI's diamond bit business will include for five years following the date of divestiture exclusive use of the tradename "Hughes Diamond Bit Products" and any and all rights specified in Section X(C) of the Final Judgment.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any business as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish 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 VI of this Final Judgment, and shall have such other

powers as this Court shall deem appropriate. Defendants shall not object to a sale of BHI's diamond bit business by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, 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 BHI's diamond bit 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 defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture and shall use their 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 the business the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the business to be divested as the trustee may request.

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 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 BHI's diamond bit 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 V 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 any 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 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 Section IV or V of this Final Judgment, defendants 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 defendants. 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 BHI's diamond bit business, 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. Defendants 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 defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section V(C). Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(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, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV 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 BHI's diamond bit business, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII.

FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without plaintiff's prior consent.

IX.

PRESERVATION OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. The defendants shall take all steps necessary to assure that HTC will be maintained as a separate and independent, economically viable, ongoing business with its assets (including proprietary technology, management, operations, and books and records) separate, distinct and apart from those of EC. The defendants shall use all reasonable efforts on behalf of HTC to maintain and increase sales of diamond bits, continue its current plans for development and testing of diamond bits, and otherwise maintain the business as a viable and active competitor in the United States.

B. The defendants 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 or substitutes therefore), assets required to be divested pursuant to Sections IV(A) and V(B), 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 defendants shall provide capital and provide and maintain sufficient working capital to maintain HTC, including BHI's diamond bit business, as a viable, ongoing business consistent with the requirements of Section IX(A).

D. The defendants shall preserve the assets required to be divested pursuant to Section IV(A) and V(B), 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. Defendants shall preserve the documents, books and records of HTC and of BHI's diamond bit business until the date of divestiture.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section X, the defendants 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 HTC, and shall refrain from transferring any employee so employed without the prior approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of BHI's diamond bit business.

X.

EMPLOYMENT OFFERS

A. Defendants are hereby enjoined and restrained until one year following the date of divestiture from employment of, or making offers of employment to, any person who currently is an executive, managerial, sales, marketing, engineering, research and development, or other technical employee of BHI, the preponderance of whose duties relate to BHI's diamond bit business ("BHI diamond bit employees".) This provision, however, does not apply to any employee who is terminated by the purchaser of the divested assets. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that exist which may deter such employees from accepting employment with the purchaser of BHI's diamond bit business, including, but not limited to, the payment of all bonuses to which such employees would otherwise have been entitled had they remained in the employment of BHI until the end of fiscal year 1990.

B. The purchaser of the divested assets, whether from the defendants or the trustee, shall also have the right to hire any person who is currently a sales, marketing, or research and development employee of HTC, the preponderance of whose duties do not relate to BHI's diamond bit business. Any persons so hired shall be paid by BHI any bonuses to which such employees would otherwise have been entitled had they remained in the

employment of BHI until the end of fiscal year 1990. Such offers of employment and acceptances thereof, contingent upon the consumation of the purchase of the assets, may be made prior to the consumation of the divestiture. Defendants shall provide any prospective purchaser with cooperation and assistance in its efforts to determine which, if any, such HTC employees it seeks to hire. Such cooperation and assistance shall include making available for consultation purposes to any prospective purchasers of BHI's diamond bit business all BHI diamond bit employees, and providing information sufficient to enable a prospective purchaser to assess the relative performance of all HTC sales, marketing and research and development employees. The defendants may, prior to the time the appointment of the trustee becomes effective pursuant to Section V, take any lawful steps they deem appropriate to retain the services of any HTC employees the preponderance of whose duties do not relate to BHI's diamond bit business.

C. Should the appointment of a trustee become effective pursuant to Section (V), the trustee shall, in its sole discretion, following consultation with plaintiff, select such sales, marketing and research and development employees of HTC as are necessary to fill the positions listed in Attachment A hereto, who thereafter shall be included as BHI diamond bit employees, subject to the provisions of Section-X(A). To facilitate the trustee's selection of HTC employees, defendants

shall make available all BHI diamond bit employees for consultation with the trustee, and shall provide personnel files and other information that the trustee may request to assess the relative performance of all sales, marketing and research and development employees of HTC.

XI.

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 any 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 any 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 XI 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 any defendant to plaintiff, such 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 such 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 defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII.

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.

XIII.

TERMINATION

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

XIV.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: August 22, 1990¹²
2:10 P.M.

Louis F. Oberdorfer
United States District Judge

ATTACHMENT A

U.S. SALES & MARKETING PERSONNEL

U.S. Operations Manager

Houston, TX

Sales Manager
Sales Representative
Application Engineer
Marketing Clerk

Corpus Christi, TX

Sales Supervisor
Sales Representative
Marketing Clerk

New Orleans, LA

Sales Supervisor
Sales Representative
Application Engineer
Marketing Clerk

Denver, CO

Sales Supervisor
Application Engineer
Marketing Clerk

Alaska

Sales Representative
Marketing Clerk

Oklahoma City, OK

Sales Representative
Marketing Clerk

Bakersfield, CA

Sales Representative
Marketing Clerk

Lafayette, LA

Sales Representative
Marketing Clerk

Laurel, MS

Sales Representative
Marketing Clerk

Traverse City, MI
Sales Representative
Marketing Clerk

Farmington, MI
Sales Representative

Casper, WY
Sales Representative
Marketing Clerk

INTERNATIONAL SALES & MARKETING PERSONNEL

International Operations Manager
Executive Sales Support Assistant
Technical Sales Manager

Latin America
District Manager

Far East
District Manager

Europe/Africa
District Manager

Holland
Sales Representative

W. Africa
Sales Representative

Norway
Sales Representative

Nigeria
Sales Representative

RESEARCH AND DEVELOPMENT PERSONNEL

Research and Development Engineer (three positions)