

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 10 1988

CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTINGHOUSE ELECTRIC CORPORATION;
CHALLENGER ELECTRICAL EQUIPMENT
CORPORATION; AND AMERICAN
PROPERTIES CORPORATION,

Defendants.

Civil No. 87-3528

Filed:

Antitrust

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, has filed its Complaint herein on December 30, 1987, and plaintiff and defendants, by their respective attorneys, have 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 the 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.

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.

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; 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. "Challenger" means defendant Challenger Electrical Equipment Corporation; 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. "American" means defendant American Properties Corporation; 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. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

E. "Circuit breaker" means an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload.

F. "Residential circuit breaker" means a circuit breaker, ranging in rating from 15 amperes to about 100 amperes, that is used in a load center in a residential dwelling or a small commercial building.

III.

A. The provisions of the Final Judgment shall apply to Westinghouse, Challenger, and American, each of their successors and assigns, 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. Nothing contained in this Final Judgment 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.

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

IV.

A. Westinghouse having committed itself to acquire Challenger pursuant to a Stock Purchase Agreement dated October 1, 1987, (1) Westinghouse is hereby ordered and directed prior to that acquisition to release the shareholders of American from the covenant not to compete contained in Section 5.10 of that agreement, as the covenant relates to the residential circuit breaker business of Challenger located at Albemarle, North Carolina, (2) Challenger is hereby ordered and directed prior to that acquisition to transfer to American its circuit breaker business located at Albemarle, North Carolina, and all of its other assets (excluding receivables), wherever located, related solely to its residential circuit breaker business at that location, and (3) American is hereby ordered and directed thereafter to sell through a trustee all of its stock or assets. Only the trustee, and not American, shall have the right to sell American, and neither it nor the other defendants shall take any action to interfere with or impede the trustee's accomplishment of the required sale.

B. Sale of American shall be accomplished in such a way as to satisfy plaintiff that American's assets can and will be operated by the purchaser as a viable, ongoing business, engaged in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Sale 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 promptly and effectively in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing and (2) the purchaser has the managerial, operational, and financial capability to compete promptly and effectively in the manufacture and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing.

C. Wheeler Financial Services of Malvern, Pennsylvania is hereby appointed trustee to sell American pursuant to this Final Judgment. The trustee shall have the full power and authority to accomplish the sale 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 the Court deems appropriate. American shall use all reasonable efforts to assist the trustee in accomplishing the required sale. American shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by American must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified American of the proposed sale.

D. The trustee shall serve at the cost and expense of Westinghouse, pursuant to the fee agreement between them dated December 29, 1987, and shall account for all monies derived from

the sale of American and all costs and expenses incurred. After the accounting is completed to the parties' and the trustee's satisfaction, or upon Court approval if the parties and the trustee cannot agree, all monies derived from the sale shall be paid to American or its shareholders and the trust shall be terminated.

E. The trustee shall have full and complete access to the personnel, books, records, and facilities of American, and it shall develop such financial or other information relevant to the sale as the trustee may request. At the trustee's option and subject to customary confidentiality assurances, prospective purchasers shall have full and complete access to such personnel, facilities, and information.

F. The trustee shall file monthly reports with plaintiff, Westinghouse, American, and the Court setting forth the trustee's efforts to accomplish the sale ordered by this Final Judgment. If the trustee has not accomplished such sale within six (6) months after the trustee's appointment, the trustee shall thereupon 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. The trustee shall at the same time furnish such report to plaintiff, Westinghouse, and American, but only plaintiff and American shall 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 term of the trust and the term of the trustee's appointment.

V.

Until the sale of American is completed pursuant to this Final Judgment, American shall: (A) take no steps with respect to the operation of its residential circuit breaker business, except in the ordinary course of business, that negatively would impact the operation of the Albemarle residential circuit breaker business as a profitable business; (B) refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel of American's residential circuit breaker business, except in the ordinary course of business, or unless reasonably comparable alternative benefits are provided, without prior approval of plaintiff; (C) maintain normal repair maintenance schedules for American's residential circuit breaker business and at least preserve such schedules as they currently exist; (D) preserve American as a viable producer of residential circuit breakers; (E) refrain from offering or selling any assets of American's residential circuit breaker business, except in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of American's residential circuit breaker business' manufacturing or sales operations, except in the

ordinary course of business, from that existing at the time of the consummation of the acquisition by Westinghouse of Challenger, without the prior approval of the plaintiff; and (F) refrain from taking any action that would jeopardize its sale as a viable producer of residential circuit breakers.

VI.

At least thirty (30) days prior to the scheduled closing date of the proposed sale pursuant to Section IV of this Final Judgment, the trustee shall notify plaintiff and American of the proposed sale. The notice shall set forth the details of the proposed transaction and, for each person not previously identified that offered or expressed an interest or desire to acquire any ownership interest in American, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed sale, plaintiff may request from American and the proposed purchaser additional information concerning the proposed sale. American shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Plaintiff may also require the proposed purchaser to commit to provide periodic reports concerning its efforts promptly and effectively to compete in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly

constructed housing. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, and has committed to provide the periodic reports required of it, the sale shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from American and the proposed purchaser, whichever is later, unless American shall agree to extend the time, plaintiff shall notify in writing American and the trustee if it objects to the proposed sale. If plaintiff fails to object within the period specified, or if plaintiff notifies American and the trustee in writing that it does not object, the sale may be consummated, subject only to American's right to object to the sale under the proviso in Section IV.C. Upon objection by plaintiff, the proposed sale shall not be consummated. Upon objection by American under the proviso in Section IV.C., the proposed sale shall not be consummated unless approved by the Court.

VII.

For the purpose of determining or securing compliance with this 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 the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the 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, the 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 VII shall be divulged by any 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, the 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 the 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 the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII.

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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX.

This Final Judgment will expire on the third anniversary of the completion of the sale required herein.

X.

Entry of this Final Judgment is in the public interest.


UNITED STATES DISTRICT JUDGE

Dated: November 10, 1988