

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN SHIP BUILDING COMPANY
and LITTON SYSTEMS, INC.

Defendants.

Civil Action No. C72-859

Judge Ben C. Green

Filed: December 4, 1972

Entered: January 8, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 16, 1972, seeking to enjoin an alleged violation of Section 7 of the Clayton Act (15 U.S.C. § 18); and defendants, American Ship Building Company and Litton Systems, Inc., having appeared, and the plaintiff and the defendants, by their respective attorneys, having each consented to the making and entry of this Final Judgment;

NOW, THEREFORE, without trial or adjudication of any issue of law or fact herein, and without constituting any evidence or any admission by any party with respect to any such issue and upon the consent of plaintiff and defendants, the Court being advised and having considered the matter, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;
- (B) "American" shall mean The American Ship Building Company, a New Jersey corporation, and any of its subsidiaries;
- (C) "Kinsman" shall mean The Kinsman Marine Transit Company, a Delaware corporation, a subsidiary of American;
- (D) "LSI" shall mean Litton Systems, Inc., a Delaware corporation, and any of its subsidiaries;
- (E) "Litton" shall mean Litton Industries, Inc., a Delaware corporation, and any of its subsidiaries;
- (F) "Wilson" shall mean the Wilson Marine Division of LSI;
- (G) "Acquired Vessels" shall mean the Str. Thomas Wilson, Str. Ben Moreell, Str. A. T. Lawson, Str. J. Burton Ayers, Str. J. H. Hillman, Jr., and Str. Frank R. Denton;
- (H) "Bulk Cargo Vessel" shall mean a self-propelled boat of United States Registry engaged in, or capable of being engaged in, the transportation of dry bulk cargoes such as iron ore, grain, coal, stone, cement, etc., between United States Great Lakes ports;
- (I) "Non-Captive Fleet" shall mean one or more bulk cargo vessels owned or operated by any person except United States Steel Corporation, Bethlehem Steel Corporation, Inland Steel Company and Ford Motor Company;
- (J) "Vessel Trip Capacity" shall mean the tonnage carrying capacity of any bulk cargo vessel as disclosed in Greenwood's Guide to Great Lakes Shipping or, if Greenwood's Guide to Great Lakes Shipping shall at such time not be published, by any other recognized reporting agency, at such time as such tonnage carrying capacity shall be determinable;

(K) "Fleet Trip Capacity" shall mean the sum of the Vessel Trip Capacity of each bulk cargo vessel owned and/or operated by a particular person.

III

The provisions of this Final Judgment applicable to defendants American and LSI shall apply, also, to LSI's parent, Litton, and shall also apply to each of American's and LSI's respective subsidiaries, successors and assigns, and their respective officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment, by personal service or otherwise. Any person not a party hereto who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be successor or an assign of American or Kinsman and shall not thereby be bound by the terms hereof.

IV

(A) American and Kinsman shall sell, by December 15, 1975, any three of the Acquired Vessels as they may select (i) to such persons not presently owning or operating bulk cargo vessels on the Great Lakes or (ii) to persons owning or operating Non-Captive Fleets in the manner hereinafter provided, who will acquire them for purposes of operating the same on the Great Lakes between United States ports. Such divestiture shall be accomplished as follows:

(1) Such sale may be made by American or Kinsman to any such person then owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman without the consent of plaintiff or this Court. Such sale may also be made to any such

person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity greater than the Fleet Trip Capacity of Kinsman only with the consent of the plaintiff. Any person(s) qualified to purchase pursuant to this Section shall herein be referred to in this Section IV as "eligible purchaser(s)".

(2) During the period from the date of entry of this Final Judgment through December 15, 1973, American and Kinsman, in furtherance of their divestiture obligations hereinbefore provided, shall actively and in good faith attempt to sell such three of the acquired Vessels as they may select to any eligible purchaser(s).

(3) If, after December 15, 1973, American and Kinsman shall not have divested themselves of three of the Acquired Vessels, as hereinbefore provided, the United States Maritime Administration ("MARAD") shall be requested to determine the fair market value of each of the Acquired Vessels which have not been sold and to furnish in writing to American, Kinsman and the United States Assistant Attorney General in charge of the Antitrust Division its determination of such fair market values. Thereafter, and until December 15, 1974, American and Kinsman, in furtherance of their divestiture obligations as hereinbefore provided, and in good faith, shall attempt to sell such of the Acquired Vessels as they may select to any eligible purchaser(s) at a price not to exceed the fair market value of such vessel(s) as shall have been determined by MARAD.

(4) If, after December 15, 1974, American and Kinsman shall not have divested themselves of three of the Acquired Vessels as hereinbefore provided, they shall thereafter and until December 15, 1975, actively and in good faith, in furtherance of their divestiture obligations as hereinbefore provided, attempt to sell such of the Acquired Vessels as they may select to any eligible purchaser(s) for the best price obtainable.

(5) If, after December 15, 1975, American and Kinsman shall not have divested themselves of three of the Acquired Vessels, as hereinbefore provided, a recognized ship's broker shall be selected by mutual agreement between American, Kinsman and the United States Assistant Attorney General in charge of the Antitrust Division. In the event the parties cannot agree upon such ship's broker, the selection of the same will be made by this Court. Such ship's broker shall thereafter and until December 15, 1976, actively and in good faith, attempt to sell to any eligible purchaser(s) any of the Acquired Vessels not then sold at any price obtainable until such time as there shall have been sold a total of three of the Acquired Vessels from and after the date of entry of this Final Judgment.

(B) For a period of five (5) years following the date of entry of this Final Judgment, American and Kinsman shall:

(1) Report to the United States Assistant Attorney General in charge of the Antitrust Division every six (6) months as to the status of the Kinsman Fleet disclosing, with pertinent identification, the bulk cargo vessels in that fleet acquired, disposed of or scrapped.

(2) Promptly advise the United States Assistant Attorney General in charge of the Antitrust Division of any proposed sale or offer to purchase of an Acquired Vessel. As to any disposal for which the consent of the plaintiff shall be required, as hereinbefore provided, the United States Assistant Attorney General in charge of the Antitrust Division shall advise American or Kinsman in writing that he objects to such sale within thirty (30) days after the giving of such notice, or he will be deemed to have consented to such sale.

V

For a period of five (5) years following the date of entry of this Final Judgment, American and Kinsman shall not acquire any interest in any bulk cargo vessel then or theretofore operated between United States Great Lakes ports, or acquire the stock of any person owning any such bulk cargo vessel, without the prior approval of the plaintiff, except as hereinafter specifically provided.

Notwithstanding the foregoing:

(a) During such five (5) year period American or Kinsman may acquire any bulk cargo vessel then or theretofore operated between Great Lakes ports for purposes solely of replacement of bulk cargo vessel(s) owned by Kinsman. Such acquisition may be made by American or Kinsman from any person then owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity greater than the Fleet Trip Capacity of Kinsman without the consent of plaintiff or this Court. Such acquisition may also be made from a person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman only with the consent of the plaintiff. In the event of such acquisition, American and Kinsman shall, within a reasonable period of time after such acquisition, dispose of a bulk cargo vessel or vessels with a Vessel

Trip Capacity approximately equivalent to the Vessel Trip Capacity of the vessel or vessels so acquired.

(b) In the event that, during such five (5) year period, American or Kinsman shall dispose of a bulk cargo vessel or vessels, it may acquire a bulk cargo vessel or vessels of approximately equivalent Vessel Trip Capacity from such persons and subject to the same limitations as are provided in Subsection (a) of this Section V for the acquisition of replacement bulk cargo vessels.

(c) In the event that, during such five (5) year period, American or Kinsman shall lose a bulk cargo vessel or vessels through actual or constructive loss, it may acquire a bulk cargo vessel or vessels of approximately equivalent Vessel Trip Capacity from such persons and subject to the same limitations as are provided in Subsection (a) of this Section V for the acquisition of replacement bulk cargo vessels; provided, however, that in the event such acquisition, under such circumstances, shall be made from a person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman, such acquisition shall be made only with the consent of the plaintiff.

(d) Nothing in this Final Judgment shall be deemed to permit American or Kinsman to replace, by acquisition, the Str. B. F. Jones and Str. Edward S. Kendrick and those three (3) vessels which are to be sold pursuant to Section IV above.

(e) Within one (1) year following the date of entry of this Final Judgment, American and Kinsman shall dispose of the Str. B. F. Jones and Str. Edward S. Kendrick.

VI

(A) For three (3) years from the date of entry of this Final Judgment, LSI will make a good-faith effort to utilize Hull 102 in the transportation of bulk commodities on the Great Lakes; provided, however, that during this three-year period LSI may bare boat charter Hull 102 for a term of no more than five (5) years.

(B) LSI retains the right to petition the Court, for good cause, for relief from this provision.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, American, Kinsman, LSI, Litton and Wilson shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to American, Kinsman, LSI, Litton and Wilson at their respective principal offices subject to any legally recognized privilege:

(1) Access during the office hours of American, Kinsman, LSI, Litton and Wilson, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of American, Kinsman, LSI, Litton and Wilson, respectively, which relate to any matters which are provided for in this Final Judgment;

(2) Subject to the reasonable convenience of American, Kinsman, LSI, Litton and Wilson and without restraint or interference from it, to interview officers or employees of American, Kinsman, LSI, Litton and Wilson, respectively, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, American, Kinsman, LSI, Litton and Wilson shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section VII of this Final Judgment 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

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 or modification of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ BEN. C. GREEN
UNITED STATES DISTRICT JUDGE

Dated: January 8, 1972