

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 40529
	)	
v.	)	
	)	Entered: May 11, 1967
KIMBERLY-CLARK CORPORATION,	)	
	)	
Defendant.	)	

FINAL JUDGMENT

This cause having been heard and the Court having fully considered the evidence, arguments and briefs and being fully advised herein and the Court having filed its Opinion, Findings of Fact and Conclusions of Law on February 17, 1967, it is hereby

ORDERED, ADJUDGED AND DECREED that:

I

The acquisition by defendant Kimberly-Clark Corporation of the assets and business of Blake, Moffitt & Towne, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the defendant is directed to complete the divestiture ordered herein.

II

As used herein:

- (A) "Defendant" means defendant Kimberly-Clark Corporation;
- (B) "New BMT" means Blake, Moffitt & Towne, Inc., an existing Wisconsin corporation, all of whose issued and outstanding shares of

capital stock on the date hereof are owned by defendant;

(C) "Person" includes individuals, partnerships, corporations, and associations;

(D) "Business of the BMT Division" means all real, personal and intangible property, assets, rights, goodwill, obligations and liabilities, including the right to use the name Blake, Moffitt & Towne and any derivation thereof,

(1) of the Blake, Moffitt & Towne Division of defendant as of February 17, 1967, except such as have been disposed of the normal course of business;

(2) acquired by the Blake, Moffitt & Towne Division of defendant subsequent to February 17, 1967 but prior to the divestiture under this Final Judgment, except such as have been disposed of in the normal course of business; and

(3) acquired by defendant in its acquisition of the assets and business of Blake, Moffitt & Towne on June 30, 1961, which do not form a part of the Blake, Moffitt & Towne Division of defendant, except such as have been disposed of in the normal course of business.

### III

The provisions of this Final Judgment applicable to defendant, new BMT, or any person acquiring new BMT or the business of the BMT Division, shall also apply to each of their respective directors, officers, agents and employees acting on behalf of any one of said principals, their affiliates or subsidiaries, successors or assigns, and to all other persons in active concert or participation with any one or all of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV

(A) Within twenty-seven (27) months from the date of this Final Judgment, defendant shall divest itself of all right, title and interest

in and to the business of the BMT Division;

(B) The divestiture ordered by this Final Judgment shall be made in good faith and shall be absolute and unqualified;

(C) No divestiture under this Final Judgment shall be to a person or persons not approved by the plaintiff;

(D) At least sixty (60) days in advance of the closing date specified in any contract of sale pursuant to this Final Judgment, defendant shall supply plaintiff with the name of the proposed purchaser and with informational material respecting the proposed sale, together with any pertinent additional information plaintiff may request;

(E) The business of the BMT Division shall be divested as a going concern engaged in the wholesale distribution of paper and paper products;

(F) Any contract of sale pursuant to this Final Judgment shall require the purchaser to file with this Court its representation that it intends to continue the business of the BMT Division as a going concern engaged in the wholesale distribution of paper and paper products and its agreement to submit to the jurisdiction of this Court and to be bound by the applicable terms of this Final Judgment.

V

(A) Where necessary, defendant shall seek to obtain the landlord's consent to the full substitution of new BMT or of the purchaser under this Final Judgment to all rights and obligations under leases covering any warehouse, office, or other establishment being used by the Blake, Moffitt & Towne Division of defendant. If any such required consent is not obtained, defendant shall continue as the lessee of those premises with respect to which substitution has been refused, with the right of possession and occupancy in BMT on a reimbursable basis, until relieved thereof by consent of plaintiff or by order of this Court.

(B) In the event that defendant receives, as consideration for the divestiture ordered in this Final Judgment, stock of any other corporation engaged in the manufacture, distribution, or sale of paper

or paper products, or of any corporation owning or controlling new BMT or the purchaser of the business of the BMT Division, defendant shall dispose of such stock within such reasonable period of time as shall be approved by plaintiff, and, pending such disposal, shall cause such stock to be voted by a third person or persons neither employed, engaged, or holding any interest in any company engaged in the manufacture, distribution or sale of paper or paper products; nor directly or indirectly affiliated with defendant, new BMT, or the person owning or controlling the business of the BMT Division, or the officers or directors of any of them; nor directly or indirectly owning any interest in defendant, new BMT, or the person owning or controlling the business of the BMT Division.

#### VI

(A) For a period of ten (10) years beginning six (6) months after the date of divestiture pursuant to this Final Judgment, no person shall serve as an officer, director or executive employee of new BMT, the person acquiring the business of the BMT Division pursuant to this Final Judgment, or any subsidiary or affiliate of such person, or hold more than 1% of the outstanding stock of new BMT or of the person acquiring the business of the BMT Division if, at the same time, such person serves as an officer, director, or executive employee of defendant or if such person, directly or indirectly, holds more than 1% of the outstanding stock of defendant.

(B) In the event that defendant achieves divestiture under this Final Judgment by the distribution to its own shareholders of all or any part of the stock of new BMT or of the person acquiring the business of the BMT Division, any stock which would be distributed to a person disqualified by Subsection (A) of this Section VI shall instead be held in trust and voted by a third person or persons neither employed, engaged in the manufacture, distribution, or sale of paper or paper products; nor directly or indirectly affiliated with defendant, new BMT, or the person owning or controlling the business of the BMT Division.

All stock held in trust pursuant to this Subsection (B) shall be sold or otherwise disposed of within such reasonable period of time as shall be approved by plaintiff, but any person whose stock is or would be held in trust may elect to retain such stock upon removal of the reason or reasons for his disqualification under this Section VI.

#### VII

For a period of ten (10) years from the date of any divestiture pursuant to this Final Judgment, defendant shall have no financial transactions with Blake, Moffitt & Towne, its officers or directors, except as approved by this Court in connection with the divestiture required herein, other than purchases and sales made in the normal course of business between defendant and Blake, Moffitt & Towne.

#### VIII

For a period of ten (10) years from the date of this Final Judgment, defendant is enjoined from directly or indirectly acquiring the stock, assets (except in the normal course of business) or business of any person engaged as a paper merchant in the wholesale distribution of paper or paper products in any state of the United States, without the prior approval of this Court.

#### IX

Plaintiff shall recover its taxable costs from defendant.

#### X

For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the principal office of the defendant, new BMT, or the person acquiring the business of the BMT Division, be permitted, subject to any legally recognized privilege, access during the office hours of defendant, new BMT, or the person acquiring the business of the BMT Division, 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 defendant, new BMT, or the person acquiring the business of the BMT Division, regarding the subject matters contained in this Final Judgment; and, subject to the reasonable convenience of defendant, new BMT, or the person acquiring the business of the BMT Division, and without restraint or any interference from them, to interview officers or employees of any of them, who may have counsel present, regarding any such matters.

Upon such written request, the defendant, new BMT, or the person acquiring the business of the BMT Division, shall submit reports in writing in respect to any such matters as may from time to time be requested.

No information obtained pursuant to this Section X 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 a legal proceeding in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment, new BMT, or the persons acquiring the business of the BMT Division, and their successors and assigns, to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, the modification of any of the provisions thereof, the enforcement of compliance therewith, and the punishment of violations thereof.

Dated: May 11, 1967

/s/ ALFONSO J. ZIRPOLI  
United States District Judge