

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES OF AMERICA, :  
Plaintiff, : Civil No. 67-C-1621  
-against- : FINAL JUDGMENT  
PEABODY COAL COMPANY, et al., :  
Defendants. : Entered: October 23, 1967  
- - - - - X

Plaintiff, United States of America, having filed its complaint herein on September 21, 1967, 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 or admission by either party hereto with respect to any such issue;

Now, therefore, without any testimony having been taken, without trial or adjudication of or finding on any issue of fact or law, and on consent of the parties hereto, it is hereby

Ordered, adjudged and decreed:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted under Section 7 of the Clayton Act, 15 U.S.C. § 18.

## II.

As used in this Final Judgment:

A. "Peabody" means the defendant Peabody Coal Company, an Illinois corporation, and any other person owned or controlled by defendant Peabody or owned or controlled by any person owning 50% or more of the voting stock of defendant Peabody;

B. "Stock" means capital stock and any other share capital;

C. "Person" means any individual, partnership, corporation, association or other business or legal entity;

D. "Eastern Interior Coal Province" means the bituminous coal field which underlies approximately 67% of the State of Illinois and a substantial portion of southwestern Indiana and western Kentucky;

E. "Eastern Interior Coal Province Sales Area" means the area of the State of Illinois, western Indiana, western Kentucky, western Tennessee, eastern Missouri, eastern Iowa, southwestern and central Wisconsin, and southeastern Minnesota;

F. "Operating Coal Company" means any person operating one or more bituminous coal mines, or selling any bituminous coal, in the eastern interior coal province sales area;

G. "Coal Reserves" means fee ownership of, or leasehold interest in, or rights to mine under royalty arrangements, or options or contracts to acquire, strip or underground bituminous coal reserves located in the eastern interior coal province sales area.

### III.

The provisions of this Final Judgment applicable to any defendant shall also be applicable to each of its officers, directors, agents, and employees and to each of its subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV.

A. After two years from the date of entry of this Final Judgment, defendant Peabody is enjoined and restrained from having as an officer or director any person who is at the same time an officer or director of Southwestern Illinois Coal Corporation, an Indiana corporation.

B. Defendant Peabody is enjoined and restrained from having as an officer or director any person who is at the same time an officer or director of any other operating coal company. This provision shall not apply to separately organized joint ventures to which defendant Peabody is a party.

### V.

Defendant Peabody is enjoined and restrained for a period of ten years from acquiring, except upon prior approval of the plaintiff, (a) any part of the stock of, or any financial or managerial interest in, any operating coal company, or (b) any coal mine located in the eastern interior coal province sales area.

VI.

Defendant Peabody is hereby enjoined and restrained for a period of five years from the date of entry of this Final Judgment from acquiring in any year commencing on said date or the first four anniversaries thereof, more than five million tons of coal reserves from any other operating coal company or companies except upon prior approval of the plaintiff. The swapping or exchange of coal reserves for coal reserves, without any other payment or consideration, shall be disregarded for purposes of this provision.

VII.

A. Defendant Peabody is ordered and directed, within six months after the entry of this Final Judgment, to organize a separate, viable operating coal business (with adequate strip and/or underground coal mine or mines and coal reserves in the eastern interior coal province, mining and processing machinery and equipment and all facilities used in connection therewith, and managerial, supervisory, technical and other personnel and customer accounts) either as a subsidiary corporation or as a separate division of defendant Peabody, and defendant Peabody is further ordered and directed within two years after the date of entry of this Final Judgment to divest itself, absolutely and in good faith, of said coal business and any financial or managerial interest therein, by one of the following methods:

a. Sale thereof as a viable operating business to a purchaser or purchasers approved by the plaintiff, or

b. Sale of all of the stock thereof by one or more sales to the public through an underwriter or underwriters.

B. The operating coal business required to be established and divested by defendant Peabody under Paragraph A hereof shall, at the time of such divestiture, actually be engaged in the production and sale of bituminous coal at the rate of not less than six million tons per annum, and shall have sufficient assets and earning power, and shall have or shall reasonably be expected to be able to obtain sufficient coal reserves for continued production and sale of bituminous coal at said rate of not less than six million tons per year for twenty years.

C. Plaintiff, prior to the final divestiture of said coal business as provided for in the foregoing Paragraph A, shall have opportunity to approve or disapprove of the assets thereof and, in the event of disagreement with defendant Peabody with respect thereto, plaintiff may petition the Court to determine the matter and enter such order as the Court may deem appropriate to insure fulfillment of the above requirements.

#### VIII.

A. Defendant Peabody shall make known the availability of said coal business for sale by ordinary and usual means for a sale of a business. Defendant Peabody shall furnish bona fide prospective purchasers all necessary information, including pro forma statements, regarding the same and the operation thereof and shall permit them to make such inspections as may be necessary for the above purpose.

B. Defendant Peabody shall not acquire any long-term debt obligation or stock of, or any equity interest in, the purchaser or purchasers of said coal business except on such terms as may be approved by the plaintiff.

C. At the election of the purchaser or purchasers and with the prior approval of the plaintiff, defendant Peabody may lease, rather than sell or transfer absolutely, the coal reserves to be included in the assets of said coal business.

D. Without the prior approval of the plaintiff, none of the stock of said coal business shall knowingly be disposed of to any person who is an officer, director or executive employee of defendant Peabody, any person in which defendant Peabody owns any material amount of stock or other material financial interest or any person beneficially owning or having unrestricted discretionary power to vote common stock of Peabody in excess of two percent of the shares outstanding, except for an institutional investor acting on behalf of its own members, depositors or shareholders or an underwriter or dealer acting as such.

#### IX.

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Peabody made to its principal office, be permitted (1) reasonable access during the office hours of Peabody to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody and control of defendant Peabody relating to any of the matters contained in this Final Judgment, and (2) subject to th-

reasonable convenience of defendant Peabody, but without restraint or interference from it, to interview officers, directors, agents or employees of defendant Peabody, who may have counsel present, regarding any such matters; and, upon such request, defendant Peabody shall submit such reports in writing to the Department of Justice with respect to the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section IX 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 plaintiff, except in the course of legal proceedings in which the Department of Justice is a party for the purpose of determining or securing compliance with this Final Judgment, or as otherwise required by law.

X.

Jurisdiction of this cause is retained by this Court for the purpose of enabling any party 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 modification, termination, construction or carrying out of the provisions of this Final Judgment and for the enforcement of compliance therewith and punishment of violation thereof.

/s/ Julius J. Hoffman

United States District Judge

Dated: October 23, 1967