

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTIN MARIETTA CORPORATION,
et al.,

Defendant.

CIVIL ACTION
NO. 79C-3626

Filed: September 11, 1979

Entered: December 14, 1979

FINAL JUDGMENT WITH RESPECT TO
MARTIN MARIETTA CORPORATION

Plaintiff, United States of America, having filed its complaint herein on August 31, 1979, and Martin Marietta Corporation ("defendant") having appeared, and the plaintiff and defendant, 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 any admission by any party with respect to any issue of fact or law herein;

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:

I.

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

II.

A. The "Oregon plant" means the high-silica sand production facility located in Oregon, Illinois and includes approximately 676 acres of real property owned by defendant in fee and the plant, capital equipment, and any other interests or assets associated with the facility.

B. The "Prairie State plant" means the high-silica sand production facility located near Troy Grove, Illinois and includes approximately 228 acres of real property leasehold interest and the plant, capital equipment, and any other interests or assets associated with the facility.

III.

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors and assigns, and to each of their officers, directors, agents, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Defendant is hereby ordered and directed to divest itself within twelve (12) months of the date of this Final Judgment of all of its interest in the Oregon plant and the Prairie State plant. Divestiture shall be accomplished in such a way as to ensure that each plant will operate, either individually or as a combined unit, as an effective competitor in the production and sale of high-silica sand. Divestiture shall be made to a person or persons approved by the plaintiff or, failing such approval, by the court.

B. In the event defendant has not accomplished said divestiture within twelve (12) months, it may petition the Court, prior to the expiration of said twelve (12) months, for an additional period not to exceed six (6) months within which to consummate said divestiture. If defendant files such a petition, plaintiff may petition the Court at that time

to appoint a trustee to effect said divestiture. The provisions of IV(C) shall apply to a trustee appointed under this paragraph.

C. If a petition by defendant pursuant to IV(B) is granted by the Court and divestiture is not effected within the period allowed, the Court, upon application of the plaintiff, shall appoint a trustee to effect divestiture in accordance with the provisions of this Final Judgment. The trustee shall have full power and authority to dispose of both plants at whatever price and terms obtainable, subject to the approval of this Court. The trustee shall serve at the cost and expense of defendant.

V.

A. Defendant shall promptly report the details of any proposed sale of either the Oregon or Prairie State plants, or both, to the plaintiff.

B. Following the receipt of any plan of sale, plaintiff shall have ten (10) business days in which to object to the proposed sale by written notice to defendant. If plaintiff does not object to the proposed sale, it may be consummated after notice of the proposed sale is given to the Court. If plaintiff does object, the proposed sale shall not

be consummated until defendant obtains the Court's approval of the proposed sale or until plaintiff withdraws its objection.

VI.

Each sixty (60) days from entry of this Final Judgment until divestiture has been completed, defendant shall file with this Court and serve on the plaintiff an affidavit together with relevant documentation (including the names of parties who have been contacted) as to the fact and manner of compliance with Section IV of this Final Judgment.

VII.

For the purpose of securing or determining compliance with this Final Judgment, and subject to any legally recognized privilege:

A. Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant made to its principal office, be permitted:

- (1) Access during the office hours of the defendant, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other

records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and

- (2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

B. No information or documents obtained by the means provided in Sections VI and VII hereof 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said 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 such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VIII.

It is further ordered that defendant shall not cause or permit the destruction, removal or impairment of any of the assets to be divested in accordance with paragraph IV of the Final Judgment except in the ordinary course and operation of defendant's business and except for normal wear and tear.

IX.

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 therewith, and for the punishment of violations thereof.

Entry of this Final Judgment is in the public interest.

/s/ John Powers Crowley
United States District Judge

DATED: 12/14/79