

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL DYNAMICS CORPORATION,

Defendant.

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This cause having been heard and the Court having fully considered the evidence, arguments and briefs and being fully advised herein; the Court having filed its Opinion, Findings of Fact and Conclusions of Law on August 26, 1966; and the parties having agreed to the plan of divestiture set forth in this Final Judgment, it is hereby

1. The acquisition by defendant General Dynamics Corporation of The Liquid Carbonic Corporation, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and constitutes a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. Defendant is directed to comply with the plan of divestiture set forth in this Final Judgment. To accomplish that result defendant shall take all necessary steps as are

appropriate in the premises and, among other things, shall take the steps set out in paragraphs 4 through 10 below.

4. Defendant shall use its best efforts to complete the following steps by April 3, 1967:

(a) Create the New Liquid Carbonic Corporation (hereinafter sometimes referred to as New Corporation);

(b) Cause New Corporation to file with this Court its agreement to be bound by any order of the Court necessary to effectuate the provisions of this Final Judgment entered after due notice and hearing at any time prior to the accomplishment of divestiture under paragraph 6 of this Final Judgment;

(c) Transfer to New Corporation all the domestic assets and obligations and liabilities of Liquid Carbonic Division, a list of which is set forth in Exhibit A hereto;

(d) Transfer to New Corporation such amounts of cash, securities, accounts receivable and indebtedness for borrowed money and such other obligations as are appropriate for the conduct of its business, said assets and liabilities to be agreed upon by the parties after entry of this Final Judgment and to be set forth hereafter as Exhibit B hereto, or, failing agreement, to be determined by the Court. Pursuant to this subparagraph (d), defendant may (i) transfer to New Corporation a portion of defendant's unsecured long-term debt under an agreement whereby New Corporation will be obligated to make payments on such debt directly to the holder thereof or to make comparable payments to defendant, or (ii) accept debt securities of New Corporation as partial consideration

for the transfers referred to in subparagraphs (c) and (d) of this paragraph 4, or (iii) lease (on ordinary commercial terms) rather than transfer to New Corporation assets having a substantially equal value, provided that defendant shall not continue to be liable, directly or contingently, for any such debt, or continue as a creditor, nor shall it continue as lessor of such assets, for more than a reasonable time after the effective date of any sale, exchange or distribution of New Corporation's stock or assets pursuant to paragraph 6 of this Final Judgment (other than as permitted by subparagraph 6(a)), except with the consent of plaintiff or the approval of the Court, and

(e) Upon the completion of the foregoing steps, defendant shall be the owner of all the outstanding stock of New Corporation.

Defendant's stocks in foreign companies engaged in the production, distribution and sale of carbon dioxide or other industrial gases (hereinafter sometimes referred to as the "Foreign Stocks") shall be transferred to New Corporation prior to any divestiture to be accomplished under subparagraphs (b), (c) or (d) of paragraph 6 of this Final Judgment.

5. Until divestiture is accomplished pursuant to the provisions of paragraph 6 of this Final Judgment, the Board of Directors of New Corporation shall be composed of persons selected by defendant. If any divestiture pursuant to paragraph 6 of this Final Judgment shall involve a public offering of the stock of New Corporation required to be

registered under the Securities Act of 1933, as amended, not later than 60 days prior to the date of such public offering defendant shall cause New Corporation to file an appropriate registration statement under said Act and shall thereafter amend said registration statement and use its best efforts to cause the same to become effective at or prior to the date of such public offering. Not less than 60 days prior to any divestiture pursuant to subparagraphs (b), (c) or (d) of paragraph 6 of this Final Judgment defendant shall present to plaintiff a list of the persons whom it intends to have serve on the Board of Directors of New Corporation between the date of such divestiture and the first annual meeting of the shareholders thereafter. This list shall identify each person listed, his address, current business or professional positions, and any financial interests in or business affiliations with defendant. A majority of the persons on said list shall be persons who shall not be management employees of New Corporation. No person who will be, after such divestiture, a director, officer or employee of defendant, or otherwise under the control of defendant, shall be included in such list. Except with the approval of the Court, defendant shall not cause any person so to serve to whom plaintiff objects in writing, specifying the basis of such objection, within two weeks of the receipt of the name of that person.

6. Upon completion of the transfers referred to in subparagraphs (c) and (d) of paragraph 4 of this Final Judgment, defendant shall make a bona fide effort to divest itself of New Corporation as it is then operating, and (subject to the provisions of paragraph 8) the Foreign Stocks, and thereafter

shall accomplish such divestiture by one of the following methods:

(a) Sale or exchange of the stock or all the assets (subject to the liabilities and obligations) of New Corporation as an operating entity to an Eligible Purchaser (as defined herein) on terms and conditions that are satisfactory to defendant; provided, however, that defendant may not acquire any long-term debt obligations or capital stock of, or any equity interest in, the purchaser except on such terms as may be approved by plaintiff or, failing such approval, by the Court. An "Eligible Purchaser" is any person who is not:

(i) Ineligible by virtue of paragraph 10(a) of this Final Judgment,

(ii) A United States company which in 1965 was included in the six largest sellers (other than defendant) in the United States market for industrial gas,

(iii) A United States company which in 1965 sold more than 4,000 tons of carbon dioxide in the United States market, exclusive of sales to defendant or any company covered by subparagraph 6(a)(ii) above,

(iv) A United States company which in 1965 was included in the four largest sellers of oxy-acetylene welding equipment in the United States,

(v) A United States company which in 1965 purchased in the merchant market (the market excluding dedicated capacity sources), for purposes other than resale, more than 1% of total sales in the entire United States industrial gas market for (a) any of

the following industrial gases: oxygen, nitrogen or carbon dioxide, or (b) all the following industrial gases: argon, helium, hydrogen, nitrous oxide and acetylene for nonchemical uses,

(vi) A United States company primarily engaged in manufacturing chemicals and allied products whose total sales of all products in 1965 were in excess of \$800 million,

(vii) A United States company primarily engaged in the production and distribution of petroleum and petroleum products whose total sales of all products in 1965 were in excess of \$1.25 billion,

(viii) A United States company primarily engaged in the manufacture and distribution of food products whose total sales of all products in 1965 were in excess of \$1 billion,

(ix) A United States company primarily engaged in the national production and distribution of carbonated soft drinks whose total sales of all products in 1965 were in excess of \$500 million,

(x) A person which controls, or is controlled by, or is under common control with, any of the foregoing, or

(xi) Disapproved by the Court in the event of objection by plaintiff pursuant to paragraph 7(b);

(b) Distribution of the stock of New Corporation
(i) to holders of defendant's common stock on a pro rata basis or (ii) to such holders of defendant's common stock as shall elect to exchange shares of such stock for shares

in New Corporation or (iii) to holders of transferable rights to purchase the stock of New Corporation distributed to holders of defendant's common stock on a pro rata basis;

(c) Sale of the stock of New Corporation by one or more sales to the public through an underwriter or underwriters; or

(d) A combination of subparagraphs (b) and (c) hereof.

If such divestiture is not accomplished under any of the provisions of this paragraph 6 within one year from April 3, 1967 (or within such additional time as may be required to accomplish a sale or exchange for which defendant is seeking approval in accordance with paragraph 7(b) of this Final Judgment at the expiration of such year), then defendant shall accomplish such divestiture within an additional period of fifteen months from April 3, 1968, and shall do so under the methods specified in subparagraphs (b), (c) or (d) hereof.

7. (a) If defendant considers effecting a sale or exchange under paragraph 6(a) of this Final Judgment, defendant shall make known the availability, for sale or exchange, of the stock or assets of New Corporation and the Foreign Stocks by ordinary and usual means for the sale of such a business and such stocks. Defendant shall furnish to bona fide prospective purchasers all appropriate information regarding New Corporation and the Foreign Stocks, and shall permit them to make such inspection of the operations of New Corporation as is reasonably necessary for the above purposes.

(b) If defendant shall determine to effect a sale or exchange under paragraph 6(a) of this Final Judgment, defendant

shall, not less than 30 days in advance of such proposed sale or exchange, notify plaintiff of the name and address of each proposed purchaser, together with a summary of the terms of purchase, including a description of any stock or assets that may be transferred to defendant in exchange for the stock or assets of New Corporation. At any time prior to consummation of the proposed sale or exchange, plaintiff may file with this Court and serve upon defendant a statement of its objection to the proposed sale or exchange, and in such event the proposed sale or exchange shall not be consummated unless approved by the Court.

8. In soliciting offers under paragraph 6(a) of this Final Judgment, defendant shall use its best efforts to obtain offers to purchase both the stock or assets of New Corporation and the Foreign Stocks. Defendant may also entertain offers under said paragraph 6(a) from persons desiring to purchase the stock or assets of New Corporation without the Foreign Stocks; provided, however, that no such sale or exchange shall be consummated unless approved by plaintiff or, failing such approval, by the Court. The Court shall approve such sale or exchange only if no person has offered to purchase both the stock or assets of New Corporation and the Foreign Stocks on terms and conditions that are satisfactory to defendant. If the Court approves such sale or exchange, defendant shall thereafter sell or exchange the Foreign Stocks to any person or persons approved by plaintiff or, failing such approval, by the Court, before April 3, 1968, or within six months from the date on which the Court approves such sale or exchange of the stock or assets of New Corporation, whichever is later; pro-

vided, however, that defendant shall be entitled to such additional time as may be required to accomplish a sale or exchange of the Foreign Stocks for which defendant is seeking approval in accordance with this paragraph 8 at the expiration of either such period.

9. Upon completion of the divestiture of the stock or assets of New Corporation and the Foreign Stocks as provided in paragraphs 6 and 8 of this Final Judgment, defendant shall be relieved of any further obligation to divest under this Final Judgment; provided, however, that should defendant, by enforcement or settlement of any security arrangement, thereafter regain ownership or control of the business of New Corporation, defendant shall again divest itself as provided in this Final Judgment.

10. (a) Except with the consent of plaintiff or the approval of the Court, no material amount of the stock or assets divested under paragraphs 6(a) or 6(c) of this Final Judgment shall knowingly be disposed of to:

(i) Any person who is an officer or director of defendant;

(ii) Any person in which defendant owns any material amount of capital stock or other material financial interest, except as may arise out of divestiture under the provisions of paragraph 6(a) of this Final Judgment; or

(iii) Any person beneficially owning or having unrestricted discretionary power to vote common stock of defendant in excess of 2 percent of the total shares outstanding, but this provision shall

not apply to an institutional investor acting on behalf of its own members, depositors or shareholders, or to a brokerage or underwriting firm acting in its capacity as underwriter or dealer for purposes of resale in a public sale pursuant to paragraph 6(c) of this Final Judgment.

(b) Defendant shall use its best efforts to assure that any sale of New Corporation's stock pursuant to paragraph 6(c) of this Final Judgment shall be accomplished in such a manner that the stock will be as widely distributed as is consistent with the effective and economic accomplishment of the sale.

11. For the purpose of securing compliance with this Final Judgment and for no other purpose:

(a) 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 made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of defendant related to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of defendant, who may have counsel

present, regarding any such matters.

(b) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested;

provided, however, that no information obtained by the means provided in this paragraph 11 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 securing compliance with this Final Judgment, or as otherwise required by law.

12. 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.

13. Defendant shall pay all taxable costs herein.

Dated: New York, New York

December 1, 1966.

JOHN M. CANNELLA

United States District Judge

EXHIBIT A

LIST OF PROPERTIES TO BE TRANSFERRED BY GENERAL DYNAMICS CORPORATION TO NEW LIQUID CARBONIC CORPORATION

(1) The real property and the buildings and improvements situated thereon, and the furniture, fixtures, machinery, equipment, tools, supplies, raw materials, work in process, and inventories of finished or semi-finished products, owned or leased by General Dynamics and used in connection with the operation of the plants of the Liquid Carbonic Division in the United States. These properties and assets, as of November 21, 1966, were at the following locations:

Carbon Dioxide Plants

Los Angeles, Cal.
Oakland, Cal.
Denver, Colo.
Jacksonville, Fla.
Atlanta, Ga.
New Orleans, La.
Cambridge, Mass.
Pine Bend, Minn.
Belleville, N. J.
Philadelphia, Pa.
Cincinnati, Ohio
Cleveland, Ohio
Urbana, Ohio
Memphis, Tenn.
Dallas, Tex.
Houston, Tex.
Seattle, Wash.

Industrial Gas Plants

Fresno, Cal.
Oakland, Cal.
San Carlos, Cal.
Dania, Fla.
East Chicago, Ind.
Calumet City, Ill. (Under construction)
La Grange, Ill.
Detroit, Mich.
Lewiston, Me.
Tewksbury, Mass.
Harrison, N. J.
Kearny, N. J.

Buffalo, N. Y.
Laurel Run, Pa.
Wilkes-Barre, Pa.
Canton, Ohio
Cincinnati, Ohio
Cleveland, Ohio
Dallas, Tex.
Seattle, Wash.

(2) The real property and the buildings and improvements situated thereon, and the furniture, fixtures, machinery, equipment, tools, supplies, work in process and inventories of finished or semi-finished products, owned or issued by General Dynamics and used in connection with the operation of the depots, warehouses and offices of the Liquid Carbonic Division of the United States. These properties and assets, as of November 21, 1966, were at the following locations:

Phoenix, Ariz.
Fresno, Cal.
Los Angeles, Cal.
Oakland, Cal.
Sacramento, Cal.
San Carlos, Cal.
San Diego, Cal.
Groton, Conn.
Orange, Conn.
Washington, D. C.
Miami, Fla.
Tampa, Fla.
Chicago, Ill.
Peoria, Ill.
Springfield, Ill.
Fort Wayne, Ind.
Indianapolis, Ind.
South Bend, Ind.
Louisville, Ky.
New Orleans, La.
Shreveport, La.
Baltimore, Md.
Detroit, Mich.
Grand Rapids, Mich.
Saginaw, Mich.
Austin, Minn.
St. Paul, Minn.
Kansas City, Mo.
St. Louis, Mo.
Omaha, Neb.
Belleville, N. J.
Harrison, N. J.
Albany, N. Y.

Buffalo, N. Y.
Rochester, N. Y.
Utica, N. Y.
Charlotte, N. C.
Raleigh, N. C.
Rocky Mount, N. C.
Canton, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Toledo, Ohio
Oklahoma City, Okla.
Tulsa, Okla.
Portland, Ore.
Altoona, Pa.
Bedford, Pa.
Laurel Run, Pa.
Lamoyne, Pa.
Pittsburgh, Pa.
Wilkes-Barre, Pa.
Providence, R. I.
Knoxville, Tenn.
Forth Worth, Tex.
Freeport, Tex.
Houston, Tex.
San Antonio, Tex.
Norfolk, Va.
Spokane, Wash.
Charleston, W. Va.
Milwaukee, Wisc.

(3) The storage equipment and delivery and distribution equipment owned or leased by General Dynamics and used in connection with the storage, distribution and delivery of Liquid Carbonic's products in the United States, including compressed gas cylinders, customer receiver tanks, trucks, tractors, trailers and railroad cars, whether now in the possession of Liquid Carbonic or in the possession of any of its customers.

(4) The leases and agreements affecting the real and personal property used by the Liquid Carbonic Division in connection with its business in the United States.

(5) The contracts between the Liquid Carbonic Division and others for the supply of products, services, materials, supplies and/or raw material to the Liquid Carbonic Division.

(6) The contracts entered into between the Liquid Carbonic Division and others for the sale of Liquid Carbonic's products in the United States, including the purchase orders issued by such customers to Liquid Carbonic and the contracts and agreements entered into by Liquid Carbonic with its distributors and sales representatives for the distribution and sale of Liquid Carbonic's products in the United States, except, however, the accounts receivable and any other monies or claims for monies which might be receivable under such contracts and agreements, or in connection with the operation of the business of Liquid Carbonic.

(7) The following United States patents and patent applications covering inventions relating to the business of the Liquid Carbonic Division in the United States:

I Patents

| <u>Patent No.</u> | <u>Title</u> | <u>Date of Issue</u> |
|-------------------|--|----------------------|
| 2,503,742 | Bottle Mixer Spinner Drive | April 11, 1950 |
| 2,514,072 | Bottle Filler Valve | July 4, 1950 |
| 2,543,390 | Draft Arm for Carbonated Beverages | February 27, 1951 |
| 2,551,011 | Spinner Brake for Beverage Mixers | May 1, 1951 |
| 2,577,726 | Spinner Brake for Beverage Mixing Machines | December 11, 1951 |
| 2,625,312 | Apparatus for Sealing Containers While Crowning Under Vacuum | January 13, 1953 |
| 2,631,748 | Labeling Machine | March 17, 1953 |
| 2,637,178 | Refrigerated Storage, Dispensing, and Display Cabinets | May 5, 1953 |
| 2,639,063 | Syrup Pump | May 19, 1953 |
| 2,665,046 | Liquid Dispenser | January 5, 1954 |
| 2,670,117 | Apparatus for Crowning Containers | February 23, 1954 |
| 2,493,488 | Two Temperature Refrigerators, including a Humidity Control System | January 3, 1950 |

| <u>Patent No.</u> | <u>Title</u> | <u>Date of Issue</u> |
|-------------------|---|----------------------|
| 2,573,339 | Beverage Mixing Machines | October 30, 1951 |
| 2,607,411 | Hinge System for Refrigerated Cabinets | August 19, 1952 |
| 2,618,290 | Throttling Valve for Refrigeration | November 18, 1952 |
| 2,618,397 | Label Affixing Machine | November 18, 1952 |
| 2,628,825 | Combined Water Cooler and Carbonator | February 17, 1953 |
| 2,675,016 | Two-Way Valve for Compressed Gas | April 13, 1954 |
| 2,681,797 | Heat Exchanger for Cooling Liquids | June 22, 1954 |
| 2,689,057 | Container Handler for Label Affixing Machine | September 17, 1954 |
| 3,063,258 | Method of Flash Cooling Vehicle Cargo Space | November 13, 1962 |
| 2,759,336 | Pressure Fluid Release Device | August 21, 1956 |
| 2,798,145 | Arc Welding Torch with Adjusting Means for Non-Depositing Electrode | July 2, 1957 |
| 2,799,769 | Shielding Gas Supply for Arc Welding Torch | July 16, 1957 |
| 2,893,216 | Method of Refrigerating Finely Divided Material | July 7, 1959 |
| 2,939,255 | Solid Carbon Dioxide Handling Apparatus and System | July 7, 1960 |
| 3,195,557 | Float Actuated Gas Vent | July 20, 1965 |
| 3,219,440 | Method of Metal Purification | November 23, 1965 |
| 3,211,331 | Method and Apparatus for Carbonating Liquids | October 12, 1965 |
| 3,187,739 | Method and Apparatus for Shaping Crystals | June 8, 1965 |
| 3,165,562 | Dispersing Device | January 12, 1965 |
| 3,282,305 | Cylinder Filling Apparatus | November 1, 1966 |
| 3,277,797 | Pump with Temperature Responsive Seal (Assignment of Munson's rights only). | October 11, 1966 |

II Patent Applications

| <u>Application No.</u> | <u>Title</u> | <u>Date of Filing</u> |
|---------------------------------|--|---------------------------|
| 306,294 | Fireproofing of Wood | September 3, 1963 |
| 333,859 | Method and Apparatus for Handling Cryogenic Liquids | December 27, 1963 |
| 341,777 | Aerosol Propellant Composition | January 31, 1964 |
| 494,923 | Improved Epoxy System | October 11, 1965 |
| (Application in preparation) | Gas Sparger | |
| 183,442 | Method and Apparatus For Upgrading Protein | March 29, 1962 |
| 455,448 | Cryogenic Vaporizer | May 13, 1965 |

(8) The trade names and trademarks whether registered or unregistered used by Liquid Carbonic in the United States in connection with the sale of its products in the United States, except for any trade names and trademarks which relate to, or are in any way connected with, the trademarks or trade names of General Dynamics or any of its other Divisions or subsidiaries.

Subject, in the case of each agreement, lease or contract or any other asset or property transferred to New Liquid Carbonic Corporation, to the obtaining of any consents, approvals or agreements of third parties to such transfers, to the extent that any such consents, approvals or agreements may be required, and General Dynamics shall use its best efforts to obtain such consents, approvals or agreements.

The assets, property and business to be transferred by General Dynamics to New Liquid Carbonic Corporation shall, at the option of General Dynamics, not include any assets or property, whether real, personal or mixed, or any machinery, equipment, contracts, leases, patents, patent applications,

trademarks, trade names, plans, formulae, know-how, confidential or proprietary information, which relate to, or are in any way connected with, any product or development which originated from a Division or subsidiary of General Dynamics other than its Liquid Carbonic Division. General Dynamics represents that as of the date hereof it has knowledge of only the following products or developments which fall within this category:

(a) Decontaminating or descaling or cleaning fluids and compounds, including any and all processes and machinery used in connection therewith, and including such fluids which are known as RD 16, RD 17 and RD 18, or any derivative thereof or improvement thereon;

(b) Industrial mist eliminators including those marketed under the name "Dynapure Filter";

(c) Childree oxygen/fuel/air burner or any part thereof; and

(d) Plasma and pulse arc welding processes.

Should any other product or development which falls within this category not be transferred to New Corporation, General Dynamics will notify plaintiff in writing of such other product or development.

General Dynamics shall, whenever and as often as requested so to do by New Liquid Carbonic Corporation, do, execute, acknowledge and deliver, at the expense of General Dynamics, any and all such other and further acts, deeds, assignments, transfers, conveyances, confirmations, powers of attorney and any instruments of further assurance, approvals and consents, as New Liquid Carbonic Corporation may reasonably require in order to complete, insure and perfect the conveyance and transfer

to New Liquid Carbonic Corporation of all the right, title and interest of General Dynamics in and to any and all properties and assets hereby assigned, conveyed, transferred and delivered or intended so to be.

New Liquid Carbonic Corporation shall assume, and shall pay and discharge, all obligations and liabilities of General Dynamics, present or future, in connection with, or related to, the assets, properties assigned, conveyed, transferred and delivered or intended so to be, or in connection with, or related to, its business, including without limitation, any and all obligations and liabilities arising out of its relationships with its employees and for local, state or federal taxes, present or future.