

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Newmont Mining Corporation, Magma Copper Company, Phelps Dodge Corporation, Plato Malozemoff, Roy C. Bonebrake, Franz Schneider and Kenneth L. Isaacs., U.S. District Court, S.D. New York, 1966 Trade Cases ¶71,709, (Apr. 14, 1966)**

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United States v. Newmont Mining Corporation, Magma Copper Company, Phelps Dodge Corporation, Plato Malozemoff, Roy C. Bonebrake, Franz Schneider and Kenneth L. Isaacs.

1966 Trade Cases ¶71,709. U.S. District Court, S.D. New York. 62 Civil 4227. Entered April 14, 1966. Case No. 1732 in the Antitrust Division of the Department of Justice.

**Clayton Act**

**Acquisitions—Competitors—Copper Products—Consent Judgment.**—A copper company was prohibited by a consent judgment from acquiring, for a period of 10 years, any stock of a specified copper company.

**Acquisitions—Divestiture—Copper Products—Consent Judgment.**—A copper company was required by a consent judgment to divest itself, within three years, of all stock held by it in a specified copper company.

**Interlocking Directorates—Copper Products—Consent Judgment.**—A copper company was prohibited by a consent judgment from having as an officer, director or executive employee any person who is at the same time an officer, director or executive employee of a specified copper company.

For the plaintiff: Donald F. Turner, William D. Kilgore, Jr., Donald F. Melchior, James J. Coyle, Arthur Cantor and Charles F. B. McAleer, attorneys, Department of Justice.

For the consenting defendants: A. Fairsfield Dana for Phelps Dodge Corp.; and Hugh B. Cox for Newmont Mining Corp., Magma Copper Co., Plato Malozemoff, Roy C. Bonebrake, Franz Schneider and Kenneth L. Isaacs.

**Final Judgment**

RYAN, District Judge: Plaintiff United States of America, having filed its complaint herein on December 31, 1962, and each of the defendants having appeared by its attorneys and each having filed its answer to such complaint, and plaintiff and each of the defendants having consented to the entry of this Final Judgment herein, without trial or adjudication of or finding on any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue;

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

Ordered, adjudged, and decreed:

I

[ *Clayton Act* ]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims upon which relief may be granted under Sections 7 and 8 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act.

II

[ *Definitions* ]

As used in this Final Judgment:

(A) "Newmont" means the defendant Newmont Mining Corporation, a Delaware corporation, and each corporation not less than fifty per cent of whose voting stock is owned by Newmont Mining Corporation directly or through any number of intermediate corporations related by successive voting stock interests each of not less than fifty per cent.

(B) "Phelps Dodge" means the defendant Phelps Dodge Corporation, a New York corporation, and each corporation not less than fifty per cent of whose voting stock is owned by Phelps Dodge Corporation directly or through any number of intermediate corporations related by successive voting stock interests each of not less than fifty per cent.

(C) "Stock" means capital stock and any other share capital.

(D) "Executive employee" means any employee who participates in the direction or control of the business of his employer.

(E) "Person" means any individual, partnership, corporation, association or other business or legal entity.

### III

#### [ *Applicability* ]

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

### IV

#### [ *Interlocking Personnel* ]

Newmont is hereby enjoined and restrained:

(A) from having as an officer, director or executive employee any person who is at the same time an officer, director or executive employee of Phelps Dodge;

(B) from voting any stock which it owns or shall own in Phelps Dodge prior to the completion of the divestiture directed by Article VI(A) of this Final Judgment;

(C) from using or attempting to use prior to the completion of the divestiture directed by Article VI(A) of this Final Judgment its stock ownership in Phelps Dodge to influence or control Phelps Dodge in any manner whatsoever, including but not necessarily limited to the selection of officers, directors or employees.

### V

#### [ *Acquisitions* ]

Newmont is hereby enjoined and restrained for a period of ten years from the date of this Final Judgment from, acquiring any Phelps Dodge stock except such stock as may be distributed by Phelps Dodge with respect to Phelps Dodge stock held by Newmont or as may be acquired by the exercise of rights issued with respect to Phelps Dodge stock held by Newmont.

### VI

#### [ *Divestiture* ]

(A) Newmont shall divest itself of all Phelps Dodge stock held by it on the date of this Final Judgment, or thereafter acquired by it pursuant to the provisions of Article V of this Final Judgment, by disposing of all such stock, such divestiture to be completed within three years of the date of this Final Judgment.

(B) In carrying out the divestiture required by paragraph (A) of this Article VI, Newmont shall give written notice to the Assistant Attorney General in charge of the Antitrust Division of any proposed disposition of Phelps

Dodge stock at least twenty-five days in advance thereof, except that no notice shall be required in the case of a disposition by sale on a registered stock exchange. Such notice shall include, to the extent then known by Newmont, the terms and conditions of the disposition, including the number of shares involved, the identity of each prospective purchaser and transferee and, in the case of any sale made by Newmont through, an agent, all instructions given by Newmont with respect to the type or class of purchaser to whom the stock will be offered, provided, however, that in the case of a disposition by distribution or the making of an exchange offer to stockholders, a notice shall be sufficient which includes, to the extent then known by Newmont, the terms and conditions of the distribution or exchange offer, including the number of shares involved, and the identity of the class of stockholders to whom the distribution or exchange offer is to be made. Such notice shall recite that it is being given pursuant to the provisions of this Final Judgment.

(C) If the Assistant Attorney General in charge of the Antitrust Division, within twenty-one days after actual receipt of the notice required by paragraph (B) of this Article VI, makes written objection addressed to Newmont at its principal office, Newmont shall not make the disposition or exchange offer specified in its notice unless it shall have been first approved by the Court on motion of Newmont with notice to plaintiff.

(D) No information as to any proposed disposition or exchange offer supplied to the Assistant Attorney General in charge of the Antitrust Division pursuant to the provisions of paragraph (B) of this Article VI 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 Government of the United States, except in connection with proceedings to which the United States is a party in which objection is made to such proposed disposition or exchange offer, or as otherwise required by law.

(E) Within thirty days after each anniversary date of the date of this Final Judgment until it shall have divested itself of all Phelps Dodge stock as required by paragraph (A) of this Article VI, and within thirty days after the completion of the required divestiture, Newmont shall file with the Clerk of the Court and shall serve upon the Assistant Attorney General in charge of the Antitrust Division a report stating, for the period covered, the number of shares of Phelps Dodge stock (1) acquired by Newmont pursuant to the provisions of Article V of this Final Judgment and (2) disposed of by Newmont, the means employed in making each such acquisition and disposition, and the number of shares of Phelps Dodge stock owned by Newmont at the end of the period covered.

## VII

### [ *Future Relief* ]

This Final Judgment shall be without prejudice to the right of the United States, in any subsequent new proceeding, to challenge and seek relief with regard to any matter not expressly covered by Articles IV, V, or VI of this Final Judgment.

## VIII

### [ *Inspection—Compliance* ]

(A) 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, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Newmont made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of Newmont to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Newmont relating to any of the subject matters contained in this Final Judgment;

(2) subject to the reasonable convenience of Newmont and without restraint or interference from it, to interview officers, directors' or employees of Newmont, who may have counsel present, regarding any such matter.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, Newmont shall submit such written reports with respect to the matters covered in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

(C) No information obtained by the means provided for in this Article VIII 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 Government of the United States, 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.

## IX

### [ *Jurisdiction Retained* ]

Jurisdiction is retained by this Court for the purpose of enabling any party to this action 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, for the modification of any of the provisions thereof, or for the enforcement of compliance therewith and the punishment of violations thereof.