

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA, :
Plaintiff, :
-against- : 67 Civ. 4506
SIMMONDS PRECISION PRODUCTS, INC., : Entered: June 24, 1970
Defendant. :
- - - - - x

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its complaint herein on November 15, 1967; a motion by plaintiff for preliminary injunction against the further commingling or transfer of certain of the assets acquired from The Liquidometer Corporation having been granted after a hearing thereon; defendant Simmonds Precision Products, Inc. having filed its answer denying the substantive allegations of the complaint; and the parties 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 in respect to any such issue.

NOW, THEREFORE, without trial or the taking of testimony or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

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

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Fuel gauging systems" means instruments and systems (and components for such instruments and systems) which are used to measure, display and/or control quantities of fuel, oil and other fluids in aircraft, helicopters, missiles or spacecraft;

(C) "Capacitance type fuel gauging systems" means fuel gauging systems which consist of sensors or transmitters which are located within the liquid tanks and which, as their length is exposed to varying liquid levels, act as variable capacitors which display the resultant changes in capacitance as expressed in liquid quantity on an indicator.

(D) "Float type fuel gauging systems" means fuel gauging systems which consist of mechanical float

sensors which rise and fall as liquid level varies within the tank. This motion is then transmitted, either mechanically or electrically, to an indicator, which displays resultant changes in liquid level.

(E) "Engine instruments" means devices which display electrical signals received from sensors monitoring engine performance and its associated functions in aircraft, helicopters, missiles or spacecraft.

(F) "The Long Island City Division business" means all existing contracts, programs, orders, proposals and quotations, including future follow-on contracts, of defendant's Long Island City Division for the production and sale of the Division's capacitance fuel gauging systems, together with existing tangible and intangible assets of the Division peculiar to such production and sale, including inventories, tooling, tradenames, patents, patent applications, know-how, licenses, drawings, blueprints, goodwill and customer lists. It shall not mean the AAFSS (Lockheed AH-56) contract, inventories and termination claim.

(G) "Engine instrumentation business of the Long Island City Division" means the existing contracts, programs, orders, proposals and quotations, including future follow-on contracts, of the Long Island City Division for the production and sale of the Division's engine instruments, together with existing tangible and intangible assets of the Division peculiar to such production and sale, including inventories, tooling, tradenames, patents, patent applications,

know-how, licenses, drawings, blueprints, goodwill and customer lists. It shall not mean the AAFSS (Lockheed AH-56) contract, inventories and termination claim.

III

The provisions of this Final Judgment shall apply to defendant, its successors, subsidiaries and assigns, and to each of their respective officers, directors, agents, employees, successors and assigns, and to those 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) Defendant is ordered and directed within four (4) years from the date of entry of this Final Judgment to divest itself of the Long Island City Division business. Such divestiture shall be accomplished by immediate sale of the Long Island City Division business, if such sale can be made, or in accordance with the following schedule:

(1) By the end of the second year following the entry of this Final Judgment, so much of the Long Island City Division business which represents no less than approximately thirty-three (33) percent of the dollar volume of shipments accounted for by the Long Island City Division business in the first year immediately following entry of this Final Judgment;

(2) By the end of the third year following the entry of this Final Judgment, so much of the Long Island City Division business which represents no less than approximately fifty (50) percent of the dollar volume of shipments accounted for by the Long Island City Division business in the second year following entry of this Final Judgment, exclusive of dollar volume accounted for by such business as is divested pursuant to Paragraph IV(A)(1) above; and

(3) By the end of the fourth year following the entry of this Final Judgment, the remainder of the Long Island City Division business.

(B) In the event that defendant is unable to comply with the provisions of Paragraph IV(A) above by sale to a purchaser who will purchase the Long Island City Division business exclusively, defendant is further ordered and directed to offer to sell and to sell so much of the engine instrumentation business of the Long Island City Division as is necessary to induce prospective purchasers to purchase the Long Island City Division business required to be divested pursuant to Paragraph IV(A), above.

(C) The order of this Court, entered January 15, 1968, prohibiting the transfer or commingling of the assets acquired from the Liquidometer Corporation is hereby vacated.

V

Not less than thirty-five (35) days prior to the closing date in any contract for sale made pursuant to Section IV, defendant shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale and other pertinent information. Not more than thirty (30) days after its receipt of such information, plaintiff shall advise defendant in writing of any objection it may have to the consummation of the proposed sale. If no such objection is made known to defendant within such period, plaintiff shall be deemed to have approved such sale. If such an objection is made by plaintiff, then the proposed sale shall not be consummated unless approved by this Court or unless plaintiff's objection is withdrawn. The respective time periods set forth in Section IV shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed sale which delays the consummation of the divestiture transaction proposed by defendant.

VI

Defendant is enjoined:

(1) For a period of ten (10) years following the entry of this Final Judgment from acquiring any assets or stock of any person engaged in the manufacture or sale in the United States of capacitance type or float type fuel gauging systems;

(2) For a period of five (5) years following the entry of this Final Judgment from acquiring any assets or stock of any person engaged in the manufacture or sale in the United States of any other type of fuel gauging systems; and

(3) For a period of five (5) years from and after the period stated in Paragraph 2 above, from acquiring any assets or stock of any person engaged in the manufacture or sale in the United States of any other type of fuel gauging system; except upon sixty (60) days prior written notice to the plaintiff of such proposed acquisition.

Provided, however, that defendant may accept and enforce a security interest in all or part of any divested assets given for the purpose of securing to defendant payment of any unpaid portion of the purchase price or performance of the sale transaction as therein provided or as provided by law. In the event that defendant as a result of the enforcement of such security interest, reacquires any of the divested assets, then it shall divest such assets within one (1) year from the date of repossession thereof.

VII

For the purpose of securing or determining compliance with this Final Judgment:

(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, subject to any legally recognized privilege:

(1) Access during the office hours of 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 which relate to any matters contained in this Final Judgment;

(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) Upon such 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 any matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VII shall be divulged by a 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 plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction of this cause 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 or directions as may be necessary or appropriate for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: June 24, 1970

/s/ LLOYD F. MacMAHON
U.S.D.J.