

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 36032
v.)	
)	Entered: July 1, 1968
GENERAL MOTORS CORPORATION,)	
)	
Defendant.)	

FINAL JUDGMENT

Plaintiff, the United States of America, filed its complaint in this action on October 16, 1959, and the defendant having appeared and filed its answer denying the material allegations of the complaint; 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, before the taking of any testimony, and without this Final Judgment constituting any evidence or admission by any party in respect to any such issue:

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter

herein and of the parties hereto. The complaint states a claim for relief against the defendant under Section 7 of

entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Off-highway earthmoving equipment" shall mean rear dumps, side dumps, bottom dumps, coal haulers, log haulers, scrapers, crawlers, front-end loaders, which are designed primarily for operation on natural terrain, and wheel-type tractors used in any of the foregoing.

(B) "Transferred Products" shall mean rear dumps, side dumps, bottom dumps, coal haulers, log haulers, and two-axle wheel-type tractors used in the foregoing, heretofore manufactured by defendant's Euclid Division and/or The Euclid Road Machinery Co.

(C) "Retained Products" shall mean off-highway earthmoving equipment manufactured or marketed by defendant's Euclid Division other than Transferred Products.

(D) "Transferred Assets" shall mean those

assets (including the real estate and plants of defendant's Euclid Division located in Euclid, Ohio) used in the design and manufacture of Transferred Products, as described on Appendix A hereto.

(E) "Buyer" shall mean White Motor Corporation.

(F) "Assigned Patent Rights" shall mean all patents, applications or rights therein acquired by defendant from The Euclid Road Machinery Co.

(G) "Person" shall mean an individual, partnership, corporation, association or any other business or legal entity.

III

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, employees, and agents acting for such defendant, its United States subsidiaries, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

Defendant is ordered and directed, upon terms and conditions in accordance with those set forth in Appendix B:

(A) To divest itself of the Transferred Assets;

(B) To transfer all rights of defendant in and to the trade name and mark "Euclid" and associated marks there listed;

(C) To assign the Assigned Patent Rights; and

(D) To grant license or immunity rights to the Buyer as set forth therein; .

provided, that any of such terms and conditions may be modified by mutual agreement of defendant and Buyer with the consent of plaintiff.

V

Defendant is ordered and directed to offer to sell and sell engines and transmissions made by persons other than defendant as optional equipment on those models of the Retained Products being sold by defendant where such options were available as of January 1, 1967.

VI

Defendant is enjoined and restrained from:

(A) Acquiring, or holding after such acquisition, any of the physical assets of, or more than 1% of the stock or other ownership interest in, any person engaged in the

of off-highway earthmoving equipment without the prior approval of plaintiff or of this Court after an appropriate showing by defendant, provided, however, that this provision shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other credit transaction and disposed of within a reasonable period of time.

(B) For a period of three (3) years following its reentry into the business of manufacturing and selling products in the Transferred Product categories (but in no event beyond the period of time when this Judgment is in full force and effect), (1) selling or offering to sell any such products to any of its franchised dealers on the condition, agreement or understanding that such dealer shall not deal in any such products of the Buyer, and (2) in cases where a dealer is selling a comparable model of both defendant and Buyer in off-highway earthmoving equipment, construing or enforcing defendant's dealer agreement so as to determine that the dealer's performance is unsatisfactory with respect to sales of such model of defendant's equipment without giving fair and reasonable consideration to the fact that the dealer is also selling such comparable model of Buyer's equipment.

(C) For a period of one (1) year following its reentry into the business of manufacturing and selling products in the Transferred Product categories (but in no event shall such period extend beyond the fifth anniversary of the date of

entry of this Judgment) refusing to continue to offer Retained Products, not then offered by Buyer, to any dealer then, or who had within three months prior to such reentry been, franchised by both defendant and Buyer to handle off-highway earthmoving equipment, provided, that this paragraph VI (C) shall not require defendant to supply products to any dealer whose selling agreement has been terminated during such three-month period or such one-year period for the dealer's failure to perform its obligations thereunder with respect to any of defendant's products the dealer was then handling.

VII

This Final Judgment shall remain in full force and effect for a period of ten (10) years from the date of its entry.

VIII

For the purpose of determining and securing compliance with this Final Judgment, and for no other purposes:

(A) Duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant's General Counsel, be permitted, subject to any legally recognized privilege:

(1) Reasonable access, during the office hours of defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant regarding the subject matters contained in this Final Judgment; and

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

(B) Upon such written request and such notice, defendant shall submit such reports in writing in respect to any such matters as may from time to time be requested for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section 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 United States, except in the course of a legal proceeding in 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 of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment 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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

Dated: July, 1968

/ s/ _____
United States District Judge

Appendix A

Transferred Assets

1. Land and buildings at St. Clair Plant No. 1, 22800 St. Clair Avenue, Euclid, Ohio.

2. Land and buildings at St. Clair Plant No. 2, 22221 St. Clair Avenue, Euclid, Ohio (subject to a two year lease from Buyer to Seller, cancellable by either party on six months' notice, of portions of said plant not used solely in manufacture of Transferred Products).

3. All items of machinery and equipment at St. Clair Plant No. 1, except (a) items used solely or primarily in the manufacture of Retained Products, (b) hydraulic equipment (which is used primarily in the manufacture of Retained Products) and (c) special and expensed tools, equipment and maintenance supplies which are related to and used with such excepted items.

4. All items of machinery and equipment at St. Clair Plant No. 2, except (a) test equipment used in the test area of the plant and (b) special and expensed tools, equipment and maintenance supplies which are related to and used with such excepted items.

5. All items of machinery and equipment located at the Hudson, Ohio plant of defendant's Euclid Division (the "Hudson plant") relating solely to manufacture of Transferred Products.

6. All items of special tooling located at St. Clair Plants Nos. 1 and 2 and at the Hudson plant relating solely to, or utilized primarily in the manufacture (in conjunction with items of transferred machinery and equipment) of, Transferred Products, and all rights in Special Tooling made to specifications of and paid for by defendant's Euclid Division which are at plants of suppliers to such division and are used solely in connection with manufacture of components or parts for Transferred Products.

7. Inventories (up to an amount agreed to be purchased by Buyer) of (a) unused current model Transferred Products manufactured within one year prior to the divestiture of the Transferred Assets (referred to herein as "the closing date") (except those under lease, in transit to or on hand at defendant's branch locations or on order for export); (b) replacement components and parts of defendant's Euclid Division (other than those supplied by defendant's Detroit Diesel Engine Division), 100% in the case of items used solely in Transferred Products and up to 50% in the case of items common to Transferred Products and Retained Products and (c) all raw materials, work in process and components and parts, used solely in manufacture of current models of Transferred Products and components and parts therefor,

production schedules and up to 50% of such items common to Transferred Products and Retained Products.

8. Technical assistance, if requested by Buyer, in connection with Buyer's manufacture, production and servicing of two-axle scrapers (including single axle tractors used therewith) of a type marketed by defendant's Euclid Division and which are production models at or within one year after the closing date, in the form of blueprint copies of engineering drawings, and availability of qualified Euclid Division personnel (to the extent that in the judgment of that division it will not interfere with the division's activities) for a period of up to six months commencing and ending at any time within one year after the closing date; and a nonexclusive license under all United States and foreign patents owned by defendant at or within one year after the closing date covering Euclid Division inventions embodied in, or used in manufacture of, such two-axle scrapers as made by defendant's Euclid Division. Such copies, information imparted by such personnel and such license shall be furnished, and defendant shall be entitled to payment for the services of such personnel and to payment of a royalty on sales of two-axle scrapers and components and parts thereof, on terms to be agreed upon by defendant and Buyer.

Appendix B

1. Defendant shall assign to Buyer the trademarks "EUCLID," "EUC," AND "PIONEER" used by defendant's Euclid Division in selling Transferred Products, subject to (a) rights of defendant to phase out use of its marks in an orderly transition (six months domestically and one year abroad, in the case of each mark standing alone; one year domestically and two years abroad, in the case of use of the name EUCLID in direct association with another symbol (such as "GM" or "General Motors" or some new name or mark used by defendant in connection with Retained Products); and two years domestically and four years abroad with respect to inventory repurchased pursuant to obligations to dealers); and (b) the right of subsidiaries, dealers, distributors, branches or licensees of defendant to continue to (i) use EUCLID as a trade name or (ii) use the assigned marks in connection with their businesses, to the extent that defendant is permitted to do so.

2. Defendant shall:

(a) Assign to Buyer all unexpired United States and foreign patents which it acquired from The Euclid Road Machinery Co., and all United States patent rights to inventions made prior to the date of its divestiture of Transferred Assets (referred to herein as "the closing date") by personnel of defendant's Euclid Division relating solely to the Transferred Products and all unexpired United States patents

issued for such inventions, subject to a covenant of Buyer (and any assignee of Buyer) not to assert such patents against defendant, its subsidiaries, suppliers, vendors, vendees, dealers, users, assignees or licensees;

(b) Grant to Buyer a royalty-free nonexclusive license to make, use and sell throughout the world Transferred Products under all patents covering inventions made prior to the closing date by personnel of defendant's Euclid Division to the extent that such inventions would be useful or advantageous in the manufacture, use or sale of Transferred Products made by Buyer; and

(c) Covenant not to assert against Buyer, its subsidiaries, suppliers, vendors, dealers, users or any subsequent owner of Buyer's business relating to the manufacture, use or sale of Transferred Products, for the manufacture, use or sale of Transferred Products, any patent which covers anything manufactured prior to the closing date by defendant's Euclid Division comprising a Transferred Product or for use as a part therefor or any method or process used prior to the closing date by defendant's Euclid Division in the manufacture by such division of a Transferred Product or of anything for use as a part therefor.

3. Defendant shall covenant not to manufacture in the United States or sell for delivery or lease or rent in the United States to anyone other than Buyer during the

four year period commencing as of the closing date

(a) products in the Transferred Product categories or

(b) components or parts used solely in such products which were prior to the closing date made by defendant's Euclid Division, made pursuant to Euclid Division's detailed drawings defining components and parts designed by Euclid Division and sold to defendant by other parties, or made for defendant's Euclid Division with tooling paid for by such division and made to its detailed drawings, subject to such provisions as to nonapplicability of such covenant as defendant and Buyer may agree upon including among others provisions permitting (a) development, design, testing (at defendant's facilities in the United States), tooling for or building of prototypes of Transferred Products or components, parts or other products; (b) transactions by branches of defendant's Euclid Division in the usual course of business with respect to products purchased from Buyer or others; and (c) manufacture or sale outside the United States.

4. Defendant shall furnish Buyer, to the extent that in the judgment of defendant's Euclid Division it will not interfere with such division's activities, qualified Euclid Division personnel who will provide Buyer with assistance and advice, including such engineering advice as may be required, in production and servicing of Transferred Products produced by Buyer, for a period of up to six months commencing as of the closing date, on terms agreed to by defendant and Buyer.

5. So long as any franchisee is a party to both a dealer selling agreement with defendant covering the sale of Retained Products and a franchise agreement with Buyer covering the sale of Transferred Products, defendant shall cause its subsidiary General Motors Acceptance Corporation to offer to provide such franchisee with whole-sale and retail financing on Transferred Products on the same basis as it provides such financing to the franchisee on Retained Products.