

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 3-80-596
)	
v.)	FINAL JUDGMENT
)	
BEATRICE FOODS CO. and)	Filed: January 11, 1982
)	
FIBERITE CORPORATION,)	Entered: April 19, 1982
)	
Defendants.)	

Plaintiff, United States of America, having filed its complaint herein on October 28, 1980, and defendants having filed their answers and plaintiff and defendants by their respective attorneys having consented to the entry of this Final Judgment:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the said parties thereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

II.

As used in this Final Judgment:

(A) "Beatrice" means the defendant, Beatrice Foods Co., and its subsidiaries and divisions, excluding, however, the division or divisions which will conduct the business of the Fiberite Corporation created either by the total or partial liquidation of the Fiberite Corporation.

(B) "Fiberite" means the defendant, the Fiberite Corporation, a wholly-owned subsidiary of Beatrice, and the division or divisions of Beatrice which will conduct the business of the Fiberite Corporation created either by the total or partial liquidation of the Fiberite Corporation.

(C) "Department" means the United States Department of Justice, Antitrust Division.

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

(E) "Transferee" means the purchaser of the business and assets required to be divested under the terms of this Final Judgment and for the purposes of this Final Judgment means Miller Waste Mills, Inc., a Minnesota corporation, with offices at Winona, Minnesota.

(F) "Thermoplastic compounding business" means the formulation, production, processing, marketing or sale of compounds (in pellet, powder or granular form or in packages, bags or other containers thereof, including transportation in bulk) consisting of any thermoplastic resin to which any reinforcement, filler, lubricant, flame retardant, colorant or conductive material has been added. It shall include any compound consisting of a combination of thermoplastic resins or of any combination of thermoplastic resins with any of the additives listed above or combination of such additives.

III.

The provisions of this Final Judgment shall apply to Beatrice and Fiberite, their respective successors and assigns, to each of their respective officers, directors, agents and employees and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a defendant herein who acquires by purchase, transfer or otherwise any assets pursuant to this Final Judgment shall not solely by such acquisition be considered to be a successor bound by this Final Judgment.

IV.

Within ten (10) days of entry of this Final Judgment, Beatrice and Fiberite shall divest themselves absolutely, permanently and in good faith of the thermoplastic compounding business of Fiberite to the transferee so as to create a new, independent and viable competitor in that business. The divestiture shall be carried out by the defendants pursuant to the Agreement made as of the 8th day of January, 1982 and executed by Beatrice, Fiberite and the transferee, a copy of which will be filed with the Court. Defendants shall make a good faith effort to transfer all personnel listed in Exhibit B of said Agreement to the transferee.

V.

Following the completion of such divestiture to the transferee, each and every respective officer, director, agent, representative and employee of Beatrice and Fiberite having responsibility for or participating in the thermoplastic compounding business of Beatrice (including its subsidiaries and divisions) is enjoined and restrained from:

(a) exercising or attempting to exercise, directly or indirectly, any control, supervision, or influence over the policies, management, operations or acts of the transferee, or any successor in interest to the transferee;

(b) directly or indirectly consulting with or communicating to the transferee, or any officer, director, agent, representative, or employee of the transferee, concerning the thermoplastic compounding business of Beatrice;

(c) directly or indirectly soliciting any knowledge or information from, or communicating with, the transferee, or any officer, director, agent, representative, or employee of the transferee, concerning the thermoplastic compounding business of the transferee.

VI.

Beatrice and Fiberite are enjoined and restrained for a period of ten (10) years from the effective date of the Final Judgment and without the prior approval of the Department, from acquiring, directly or indirectly, any interest in or any of the assets of any person engaged in the reinforced thermoplastic compounding business. Solely for the purposes of this Section VI, "reinforced thermoplastic compounding business" means the production, processing, marketing and sale of compounds (sold in pellet, powder or granular form or in packages, bags or other containers thereof, including transportation in bulk), consisting of a thermoplastic resin or combination of thermoplastic resins to which a reinforcing agent or combination of reinforcing agents has been added. The term "reinforcing agent" shall include fibrous materials, such as fibrous glass, synthetic organic fibers, carbons and/or graphite fibers; any reinforcing mineral materials, including mica, talc or calcium carbonate; metallic powders or oxides; glass in any form; or any combination of

the foregoing. The addition to any reinforced thermoplastic compound of any additional ingredient or ingredients shall not exclude that compound from the reinforced thermoplastic compounding business.

VII.

Fiberite is hereby directed for a period of ten years from the date of the entry of this Final Judgment to cease and desist from engaging in any thermoplastic compounding business as defined in Section II (F). Beatrice and Fiberite are further hereby directed to issue a public announcement acceptable to plaintiff within 10 days after the completion of the divestiture to the transferee that Fiberite's entire thermoplastic compounding business has been sold to the transferee as the successor to Fiberite's thermoplastic compounding business and to publish the announcement in the Wall Street Journal and the Modern Plastics magazine. While Beatrice owns or controls the business of Fiberite, for a period of 10 years from the date of entry of this Final Judgment, Beatrice shall maintain Fiberite as a distinct and ongoing entity or entities, either in the form of a corporation or one or more divisions.

VIII.

Beatrice and Fiberite shall submit to the Department within ninety (90) days of the entry of this Final Judgment a report in writing setting forth its efforts and progress in carrying out the requirements of this Order.

IX.

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

(A) 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 a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX 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.

X.

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 or compliance herewith, and for the punishment of violations hereof.

XI.

Entry of this Final Judgment is in the public interest.

Entered: April 19, 1982

/s/ Judge Devitt
United States District Judge

Dated: April 19, 1982