

APPENDIX A:

UNITED STATES v. MAGCOBAR, INC.
(FORMERLY NAMED KOBE, INC.), ET AL.,

CIVIL NO. 13460-BH

JUDGMENT ENTERED APR. 6, 1955



FILED

APR 6 - 1955

James M. McGrath, Trial Attorney
Edward R. Minor, Trial Attorney
Antitrust Division, Department of Justice
1602 U. S. Postoffice & Courthouse
Los Angeles 12, California
Madison 5-7411, Extension 481

EDMUND L. SMITH, Clerk
By _____ Deputy Clerk

Attorneys for the Plaintiff

JUDGMENT
DOCKETED AND ENTERED

APR 7 - 1955

EDMUND L. SMITH, Clerk
IN THE UNITED STATES DISTRICT COURT
BY _____ Deputy Clerk
SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAGCOBAR, INC.
(formerly named Kobe, Inc.)
DRESSER INDUSTRIES, INC. and
CLARENCE J. COBERLY,

Defendants,

DRESSER EQUIPMENT COMPANY,
KOBE, INC.

Additional
Defendants.

CIVIL ACTION

NO. 13460-BH

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 10, 1951, and its supplemental complaint herein on August 16, 1954, and the original defendants, Magcobar, Inc. (formerly named Kobe, Inc.), Dresser Industries, Inc., and Clarence J. Coberly, having appeared and filed their answers to such complaint denying the substantive allegations thereof, and Dresser Equipment Company, and Kobe, Inc. (a new corporation incorporated on April 29, 1954,) having been made parties defendant herein and appeared, and all original and additional defendants having filed their answers to such supplemental complaint denying the substantive allegations thereof, and plaintiff and all defendants, by their attorneys herein, having severally

1 consented to the entry of this Final Judgment without trial or
 2 adjudication of any issue of fact or law herein and without admission
 3 by any party in respect of any such issue.

4 NOW, THEREFORE, before any testimony has been taken herein and
 5 without trial or adjudication of any issue of fact or law herein, and
 6 upon the consent of the parties hereto, it is hereby

7 ORDERED, ADJUDGED AND DECREED as follows:

8 I

9 This Court has jurisdiction of the subject matter herein and of
 10 the parties hereto. The complaint states a cause of action against
 11 defendants Magcohar, Inc., Dresser Industries, Inc., and Clarence J.
 12 Coberly, and the supplemental complaint states a cause of action
 13 against defendants Dresser Equipment Company and Kobe, Inc. (a new
 14 corporation incorporated on April 29, 1954) under Sections 1 and 2 of
 15 the Act of Congress of July 2, 1890, entitled "An Act to protect trade
 16 and commerce against unlawful restraints and monopolies," commonly
 17 known as the Sherman Act as amended.

18 II

19 As used in this Final Judgment:

20 (A) "Hydraulic oil well pump" means an assembly consisting of a
 21 pump and a fluid actuated motor, which assembly is adapted to be
 22 positioned below or partially below the well fluid level of an oil
 23 well, and the purpose of which is to pump oil to the surface, and all
 24 component parts used or usable in connection therewith;

25 (B) "Patents" means

26 (1) any United States Letters Patent issued on
 27 or before June 30, 1954;

28 (2) applications for United States Letters Patent
 29 made on or before such date and patents
 30 issued after such date on said applications
 31 or on any divisions or continuances thereof;
 32

(3) reissues or extensions of any of the foregoing patents; and

(4) rights under any of the foregoing patents or applications,

relating to the manufacture, installation or use of hydraulic oil well pumps;

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

III

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

IV

(A) Defendant Kobe, Inc. (incorporated on April 29, 1954) is ordered and directed:

(1) Insofar as it has the power or authority to do so, to grant to any applicant making written request therefor, a non-exclusive, unrestricted and unconditional license to make, use and vend, in connection with hydraulic oil well pumps or pumping, for the life of the patents, under any, some or all of the patents owned or controlled by it on June 30, 1954, including, but not limited to, those patents and applications for patents listed in Exhibit A attached hereto, without any limitation or condition whatsoever except that:

(a) a reasonable and nondiscriminatory royalty may be charged and collected;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount

1 of the royalty due and payable and no other infor-
2 mation;

3 (c) the license may be nontransferable;

4 (d) reasonable provision may be made for
5 cancellation of the license upon failure of the
6 licensee to pay the royalties or to permit the
7 inspection of its books and records as provided
8 in this Section IV;

9 (e) the license must provide that the licensee
10 may cancel the license at any time by giving thirty
11 (30) days' notice in writing to the licensor;

12 (2) Upon any application for a license in accordance
13 with the provisions of subsection (1) of this Section IV,
14 to advise the applicant of the royalty it deems reasonable
15 for the patent or patents to which the application pertains.
16 If the defendant and the applicant are unable to agree upon
17 what constitutes a reasonable royalty, the defendant may
18 apply to this Court for a determination of a reasonable
19 royalty, giving notice thereof to the applicant and the
20 Attorney General, and shall make such application forthwith
21 upon request of the applicant. In any such proceeding the
22 burden of proof shall be upon the defendant to establish
23 a reasonable royalty. Pending the completion of any such
24 court proceeding, the applicant shall have the right to
25 make, use and vend under the patents to which its applica-
26 tion pertains, without the payment of royalty or other
27 compensation, subject, however, to the following provisions:
28 The defendant may, with notice to the Attorney General,
29 apply to this Court to fix an interim royalty rate pending
30 final determination of what constitutes a reasonable
31 royalty. If this Court fixes such interim royalty rate, a
32 license shall then issue to the applicant providing for the

1 periodic payment of royalties at such interim rate from
2 the date of the making of such application by the appli-
3 cant; and whether or not such interim rate is fixed, any
4 final order may provide for such readjustments including
5 retroactive royalties as this Court may order after final
6 determination of a reasonable and nondiscriminatory
7 royalty; if the applicant fails to accept a license
8 under this Section IV or fails to pay the royalties agreed
9 upon or established by the Court, such action shall be
10 ground for the dismissal of his application, and his
11 rights under this subsection (A) shall terminate;

12 (3) To refrain from instituting, or threatening to
13 institute, or maintaining any action or proceeding against
14 any person for acts of infringement of any patents owned or
15 controlled by the defendant and required to be licensed
16 under this Section IV, unless such person has failed or
17 refused to accept a license as provided for in this Section
18 IV after being requested in writing so to do by the
19 defendant.

20 (B) Nothing herein shall prevent any applicant from at any time
21 attacking the validity or scope of any of the aforesaid patents nor shall
22 this Final Judgment be construed as importing any validity or value to
23 any of the said patents.

24 V

25 Defendant Kobe, Inc. (incorporated on April 29, 1954) is enjoined
26 and restrained from:

27 (A) Making any disposition of any patents, patent applications, or
28 rights with respect thereto, or any other arrangement which deprives it
29 of the power or authority to grant the licenses provided for in Section
30 IV hereof, unless it requires, as a condition of such disposition, or
31 arrangement, that the purchaser, transferee, assignee, licensee, or other
32 party, as the case may be, shall observe the requirements of Section IV

1 hereof and such purchaser, transferee, assignee, licensee or other party
2 shall file with this Court, prior to the consummation of said transaction,
3 an undertaking to be bound by the said provisions of this Final Judgment;

4 (B) Instituting, threatening to institute or maintaining any suit
5 or counterclaim for infringement of, or for collection of damages or
6 other compensation for any infringement of any patent to which Section IV
7 of this Final Judgment relates, for acts alleged to have occurred prior
8 to the date of entry of this Final Judgment;

9 (C) Issuing or conditioning any license under any patent which
10 directly or indirectly limits or restricts the price or terms of sale
11 or any other disposition of any licensed product.

12 VI

13 (A) Defendants Magcohar, Inc., Dresser Industries, Inc., and
14 Dresser Equipment Company are, for a period of ten years from the date of
15 the entry of this Final Judgment, jointly and severally enjoined and re-
16 strained from acquiring, directly or indirectly, any of the assets (ex-
17 cept goods or products bought in, or incidental to, the ordinary course
18 of business), business or good will of, or any of the shares of stock or
19 other financial interest in, Kobe, Inc. (incorporated on April 29, 1954)
20 or any successor thereto;

21 (B) In the event any defendant intends, at any time after the date
22 of this Final Judgment, to acquire, directly or indirectly, any of the
23 assets (except goods or products bought in, or incidental to, the ordinary
24 course of business), business or good will of, or any of the shares of
25 stock or other financial interest in, any person engaged in the manufacture,
26 sale or distribution of hydraulic oil well pumps, such defendant is ordered
27 and directed to give to the Attorney General notice of such intention not
28 less than sixty (60) days prior to the consummation of any such acquisition.

29 VII

30 Defendant Kobe, Inc. (incorporated on April 29, 1954) is ordered and
31 directed:
32

1 (A) To notify all persons known by it to be engaged in the manu-
2 facture of hydraulic oil well pumps or parts thereof, of the entry of
3 this Final Judgment by mailing a copy of this Final Judgment to each of
4 such persons;

5 (B) To insert, in at least two trade journals of general circula-
6 tion, in each of them three times, in the first, third, and fifth months
7 following the date of the entry of this Final Judgment, a notice that,
8 pursuant to this Final Judgment, it is required to grant licenses under
9 its patents relating to hydraulic oil well pumps on a reasonable royalty
10 basis and that a list of such patents and a copy of this Final Judgment
11 will be furnished on request.

12 VIII

13 For the purpose of securing compliance with this Final Judgment
14 and for no other purpose, duly authorized representatives of the Depart-
15 ment of Justice shall, upon written request of the Attorney General, or
16 the Assistant Attorney General in charge of the Antitrust Division, and
17 on reasonable notice to any defendant, made to its principal office, be
18 permitted;

19 (A) Access during the office hours of said defendant to all books,
20 ledgers, accounts, correspondence, memoranda and other records and docu-
21 ments in the possession or under the control of said defendant relating
22 to any matters contained in this Final Judgment, and

23 (B) Subject to the reasonable convenience of said defendant and
24 without restraint or interference from it, to interview officers or em-
25 ployees of said defendant, who may have counsel present, regarding any
26 such matters. Upon request such defendant shall submit such reports in
27 writing to the Department of Justice with respect to matters contained
28 in this Final Judgment as may from time to time be necessary to the en-
29 forcement of this Final Judgment. No information obtained by the means
30 provided in this Section VIII shall be divulged by any representative
31 of the Department of Justice to any person other than a duly authorized
32

representative of such Department, 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 is retained 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 thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: *April 6, 1955*

BEN HARRISON
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ STANLEY N. BARNES
Assistant Attorney General

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ William D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Max Freeman
MAX FREEMAN

/s/ Marcus A. Hollabaugh
MARCUS A. HOLLABAUGH

/s/ James M. McGrath
JAMES M. McGRATH

/s/ Edward R. Minor
EDWARD R. MINOR

For the Defendants:

/s/ Rufus S. Day, Jr.
RUFUS S. DAY, JR.

/s/ Ford Harris, Jr.
FORD HARRIS, JR.

EXHIBIT AUnited States Letters Patent

<u>Number</u>	<u>Inventor</u>	<u>Issued</u>	<u>Title</u>
2,119,736	Coberly	June 7, 1938	Governed Fluid Operated Pump
2,119,737	Coberly	June 7, 1938	System of Operating Fluid Operated Pumps
2,133,272	Coberly	Oct. 18, 1938	Means for Draining Oil Well Tubing
2,134,174	Coberly	Oct. 25, 1938	Valve for Fluid-Operated Motors
2,147,766	Coberly	Feb. 21, 1939	Fluid-Operated Pump Piston Device
2,152,802	Harris	April 4, 1939	Pumping Mechanism
2,154,727	Coberly	April 18, 1939	Fluid Operated Pump
2,172,636	Coberly	Sept. 12, 1939	Apparatus for Deep Well Pumping
2,179,480	Coberly	Nov. 14, 1939	Apparatus for Introducing Fluid into a Deep Well Pump
2,179,481	Coberly	Nov. 14, 1939	Pump Inlet Means
2,179,482	Coberly	Nov. 14, 1939	Fulcrum Gas Anchor and Method of Operating
2,180,400	Coberly	Nov. 21, 1939	Method and Apparatus for Controlling Fluid Operated Pumps
2,191,093	Coberly	Feb. 20, 1940	Flow Governor for Fluid Operated Pumps
2,194,740	Coberly	Mar. 26, 1940	Deep Well Pumping Device
2,204,120	Coberly	June 11, 1940	Liquid Operated Motor
2,224,216	Coberly	Dec. 10, 1940	Liquid Flow Governor
2,230,787	Swain	Feb. 4, 1941	Fluid Actuated Pump
2,230,830	Coberly	Feb. 4, 1941	Deep Well Pump and Method of Installing and Removing the Same

<u>Number</u>	<u>Inventor</u>	<u>Issued</u>	<u>Title</u>
2,242,777	Coberly	May 20, 1941	Fluid Operated Pump
2,257,107	Coberly	Sept. 30, 1941	Centrifugal Separator
2,260,876	Wagner	Oct. 28, 1941	Slip Tool
2,266,356	Coberly	Dec. 16, 1941	Automatically Governed Pump
2,268,543	Coberly	Jan. 6, 1942	Method of Assembling Fluid Operated Pumps
2,268,544	Coberly	Jan. 6, 1942	Lubricated Piston
2,268,956	Mestas	Jan. 6, 1942	Electric Gauge
2,291,880	Coberly	Aug. 4, 1942	Single-Acting Hydraulic Pump
2,293,426	Coberly	Aug. 18, 1942	Apparatus and Method for Liner Assemblies
2,307,451	Coberly	Jan. 5, 1943	Hydraulic Pump with Mechanically Actuated Intake Valve
2,310,757	Wagner	Feb. 9, 1943	Means of Preventing Pitting of Well Pumps
2,311,157	Coberly	Feb. 16, 1943	Fluid Operated Pump With Built-in Governor
2,311,212	Coberly	Feb. 16, 1943	Bleeder Construction
2,327,503	Coberly	Aug. 24, 1943	Well Pump Construction
2,338,903	Coberly	Jan. 11, 1944	Fluid Operated Pump Assembly
2,340,609	Mestas	Feb. 1, 1944	Apparatus for Determining Displacements
2,355,316	Mestas	Aug. 8, 1944	Home Gauging Device
2,368,346	Coberly	Jan. 30, 1945	Fluid-Operated Pumping Mechanism
2,369,909	Mestas	Feb. 20, 1945	Electric Gauge
2,397,032	Mestas	Mar. 19, 1946	Method and Apparatus for Analyzing Motion or Other Phenomena
2,408,524	Mestas	Oct. 1, 1946	Electric Gauge
2,473,864	Coberly	June 21, 1949	Heavy Oil and Sand Pump

<u>Number</u>	<u>Inventor</u>	<u>Issued</u>	<u>Title</u>
2,499,356	Coberly	Mar. 7, 1950	Fluid-Operated Pumping Device with Hydraulic Lift
2,499,357	Coberly	Mar. 7, 1950	Two-Zone Pumping System with Control Valve
2,499,665	Nestas	Mar. 7, 1950	Electric Gauge Head
2,499,849	Coberly	Mar. 7, 1950	Two-Zone Pumping System with Gas Anchor
2,506,790	Thrig et al	May 9, 1950	Startling Filter for Hydraulic Pumps
2,568,320	Coberly	Sept. 18, 1951	Fluid-Operated Pump System with Parallel Tubing
2,571,836	Coberly	Oct. 16, 1951	Fluid Operated Pumping Device
2,576,923	Coberly	Dec. 4, 1951	Fluid Operated Pump with Shock Absorber
2,576,924	Coberly	Dec. 4, 1951	Fluid Operated Pump with Hydraulic Shock Absorber
2,580,657	Coberly	Jan. 1, 1952	Pilot-Controlled Distributing Valve for Fluid-Operated Motors
2,589,668	Coberly	Mar. 18, 1952	Control Governor for Fluid-Operated Pumps
2,589,669	Coberly	Mar. 18, 1952	Closed Fluid-Operated Free-Pump System with Three Concentric Tubings
2,589,670	Coberly	Mar. 18, 1952	Closed Fluid-Operated Free-Pump System with Two Parallel Tubings One of which Encloses a Third Tubing
2,589,671	Coberly	Mar. 18, 1952	Closed Fluid-Operated Free-Pump System with Three Parallel Tubings
2,589,672	Coberly	Mar. 18, 1952	Closed Fluid-Operated Free-Pump System with Two Parallel Tubings Within a third Tubing
2,592,791	Coberly	April 15, 1952	Turbine Clamp Having Opposite Identical Jaws

<u>Number</u>	<u>Inventor</u>	<u>Issued</u>	<u>Title</u>
2,593,729	Coberly	April 22, 1952	Closed System Hydraulic Pump
2,620,739	Coberly	Dec. 9, 1952	Fluid Operated Pump Head
2,625,109	Coberly	Jan. 13, 1953	Rotary Hydraulic Pump
2,628,562	Coberly	Feb. 17, 1953	Fluid-Operated Pump with Tandem Booster Pumps
2,628,563	Coberly	Feb. 17, 1953	Fluid-Operated Pump with Double-Acting Direct-Connected Booster Pump
2,637,276	Coberly	May 5, 1953	Method of and Apparatus for Hydraulic Pumping
2,638,115	Coberly	May 12, 1953	Fluid Operated Pump Control
2,643,612	Coberly	June 30, 1953	Fluid Operated Pump with Single-Acting Direct-Connected Booster Pump
2,646,752	Slater	July 28, 1953	Pump with Inlet Strainer
2,652,779	McArthur	Sept. 22, 1953	Fluid-Operated Free Pump with Packing Device
2,658,522	Coberly	Nov. 10, 1953	Flow Metering Device
2,664,049	Coberly	Dec. 29, 1953	Fluid-Operated Pump with Pneumatic Shock Absorber
2,664,102	Coberly	Dec. 29, 1953	Hydraulic Pumping System and By-Pass Valve Therefor
2,670,685	Coberly	Mar. 2, 1954	Fluid-Operated Well Pumping Apparatus with Hydraulic Shock Absorber
2,674,126	Coberly	April 6, 1954	Fluid-Operated Free Pump with Formation Pressure Tester
2,674,192	Coberly	April 6, 1954	Well Pumping System with Gas Separator
2,676,546	Coberly	April 27, 1954	Fluid Operated Pump Having Concentric and Parallel Tubings
2,682,225	Coberly	June 29, 1954	Fluid Operated Pump with Booster

Applications for
United States Letters Patent

<u>Serial Number</u>	<u>Inventor</u>	<u>Filed</u>	<u>Title</u>
73,122	Coberly	Jan. 27, 1949	Tubing System for Fluid Operated Pumps
130,533	Coberly	Dec. 1, 1949	Single-Acting Fluid- Operated Pump
166,008	Coberly	June 3, 1950	Fluid-Operated Pumping System and Pressure Pulsation Indicator Therefor
185,435	Brown	Sept. 18, 1950	Corrosion-Inhibiting Soluble Plug
351,311	McArthur et al	April 27, 1953	Apparatus for Inserting Soluble Plugs in Fluid Lines
389,715	Coberly	Nov. 2, 1953	Hydraulic Pumping System
416,731	Coberly	Mar. 16, 1954	Closed Fluid Operated Free Pump System with Three Parallel Tubings
435,026	Coberly	June 7, 1954	Well Pump