

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEENAH ENTERPRISES, INC.

U.S. HOLDINGS, INC.,

and

U.S. FOUNDRY AND
MANUFACTURING CORPORATION

Defendants.

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order (“Stipulation and Order”):

A. “NEI” means Defendant Neenah Enterprises, Inc., a Delaware corporation with its headquarters in Neenah, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “US Foundry” means Defendant U.S. Foundry and Manufacturing Corporation, a Florida corporation with its headquarters in Medley, Florida, its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “U.S. Holdings” means Defendant U.S. Holdings, Inc., a Florida corporation with its headquarters in Hialeah, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “D&L Foundry” means D&L Foundry, Inc., a Washington corporation with its headquarters in Moses Lake, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Acquirer” means D&L Foundry or another entity approved by the United States in its sole discretion to which Defendants divest the Divestiture Assets.

F. “Divestiture Patterns” means the patterns listed in Appendix A of the proposed Final Judgment.

G. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to the Divestiture Patterns, wherever located, including the following:

1. the Divestiture Patterns;
2. all drawings, measurements, and materials specifications relating to or used in connection with the Divestiture Patterns; and
3. all licenses, permits, certifications, approvals, consents, registrations, waivers, authorizations, and all pending applications or renewals for the same, relating to or used

in connection with the Divestiture Patterns, including those issued or granted by any governmental entity or organization.

H. “Divestiture Date” means the date on which the Divestiture Assets are divested to Acquirer pursuant to this Final Judgment.

I. “Including” means including, but not limited to.

J. “Transaction” means the proposed acquisition by NEI of certain assets from U.S. Holdings, pursuant to a purchase agreement dated March 9, 2021, between NEI and U.S. Holdings.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the design, production, and sale, including distribution, of gray iron municipal castings in order to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of certain assets from U.S. Holdings by NEI. This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets remain economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over the parties to it. Venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and Defendants, may be filed with and entered by the Court as the Final Judgment, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by Defendants until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XIII of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. Defendants agree to arrange, at their expense, publication of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged as quickly as possible and, in any event, no later than three business days after Defendants' receipt of (1) the text of the notice from the United States and (2) the identity of the newspaper within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and filed with the Court.

F. Defendants represent that the divestiture ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION

From the date of the signing of this Stipulation and Order by Defendants and until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must take all actions necessary to preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) maintaining the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the gray iron municipal castings made from the Divestiture Assets and must maintain at 2021 or previously approved levels for 2022, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, and merchandising support for the products made from the Divestiture Assets.

C. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. Defendants must maintain, in accordance with sound accounting principles, accurate, and complete financial ledgers, books, or other records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

E. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operability of the Divestiture Assets and must maintain the Divestiture Assets in compliance with all regulatory obligations and requirements.

F. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition, with the same level of quality, functionality, access, and customer support, and must, consistent with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

G. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

H. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Within 20 days after the entry of this Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestiture required by the proposed Final Judgment or unless otherwise ordered by the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: October 14, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

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ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, _____.

United States District Judge