

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
)
and)
)
STATE OF TEXAS)
)
Plaintiffs,)
)
v.)
)
MARTIN MARIETTA MATERIALS, INC.)
)
and)
)
TEXAS INDUSTRIES, INC.)
)
Defendants.)

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" means the entity to whom Defendants divest the Divestiture Assets.

B. "Martin Marietta" means Defendant Martin Marietta Materials, Inc., a North Carolina corporation with its headquarters in Raleigh, North Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Texas Industries” means Defendant Texas Industries, Inc., a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Divestiture Assets” means:

1. the aggregate quarry, including the portable plant, located at 12310 W. Holder Road, Mill Creek, Oklahoma 74856 (the “North Troy Quarry”);
2. the rail yard located at 1760 Z Street Office, Dallas, Texas 75229 (the “Dallas Yard”);
3. the rail yard located at 6601 Eubanks Street, Frisco, Texas 75034 (the “Frisco Yard”);
4. all tangible assets used at or for the North Troy Quarry and the Dallas and Frisco Yards, including, but not limited to, all manufacturing equipment, tooling, and fixed assets, real property (leased or owned), mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, and on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization; all contracts, agreements, leases (including renewal rights), commitments, and understandings, including sales agreements and supply agreements; all customer lists, contracts, accounts, and credit records; all other records; and, at the option of the Acquirer, a number of trucks, rail cars, and other vehicles usable at each of the North Troy Quarry and the Dallas and Frisco Yards, (limited, with respect to rail cars, to those that are used to serve the Dallas and Frisco Yards from the North Troy Quarry), equal to the average number of vehicles of each type used at the North

Troy Quarry and the Dallas and Frisco Yards per month during the months of operation between January 1, 2013, and December 31, 2013 (calculated by averaging the number of each type of vehicle that was used at the North Troy Quarry and the Dallas and Frisco Yards at any time during each month of operation); and

5. all intangible assets used in the production and sale of aggregate produced at the North Troy Quarry or related to the Dallas and Frisco Yards, including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including dispatch software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided by Defendants to their own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the North Troy Quarry and the Dallas and Frisco Yards; provided, however, that with respect to any intellectual property, software, and systems used primarily for assets other than the Dallas and Frisco Yards and the North Troy Quarry, the Divestiture Assets shall include instead a perpetual royalty-free, non-exclusive license to all such intellectual property, software, and systems.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the North Troy Quarry and the Dallas and Frisco Yards for the purpose of establishing a

viable competitor in the production and sale of Texas DOT-qualified aggregate in order to remedy the effects that the Plaintiffs allege would otherwise result from Martin Marietta's acquisition of Texas Industries. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the ordered divestiture.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business

days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall 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 within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court 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, then the parties are released from all

further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Martin Marietta's other operations. Defendants shall not coordinate their production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants shall inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the production and sale of Texas DOT-qualified aggregate; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making

concerning production, distribution or sales of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold by the Divestiture Assets, and shall maintain at 2014 or previously approved levels for 2015, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the North Troy Quarry and the Dallas and Frisco Yards listed above.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing business concerns, consistent with the requirements of Paragraphs V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and 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.

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

I. Defendants' employees with primary responsibility for operation of or production at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendant shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI.

DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS


Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the

Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: June 26, 2014

Respectfully submitted,

FOR PLAINTIFF UNITED STATES


Jay D. Owen
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530
(202) 598-2987
jay.owen@usdoj.gov

FOR PLAINTIFF STATE OF TEXAS:

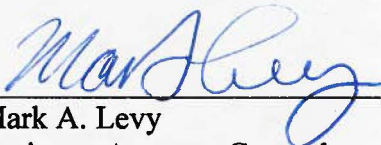
GREG ABBOTT
Attorney General

DANIEL HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JOHN T. PRUD'HOMME
Chief, Consumer Protection Division

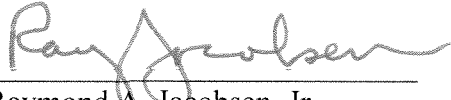
KIM VAN WINKLE
Chief, Antitrust Section
Consumer Protection Division



Mark A. Levy
Assistant Attorney General
Texas Bar No. 24014555
300 W. 15th Street, 7th Floor
Austin, Texas 78701
Ph: 512-936-1847
Fax: 512-320-0975
Mark.Levy@texasattorneygeneral.gov

Dated: June 26, 2014

FOR DEFENDANT MARTIN MARIETTA MATERIALS, INC.



Raymond A. Jacobsen, Jr.
Warren A. Rosborough
McDermott, Will & Emery
The McDermott Building
500 North Capitol Street, N.W.
Washington, DC 20001
Ph: 202-756-8348
wrosborough@mwe.com

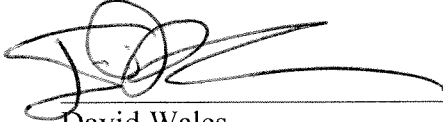
FOR DEFENDANT TEXAS INDUSTRIES

David Wales
Jones Day
51 Louisiana Ave, N.W.
Washington, DC 20001
Ph: 202-879-5451
dpwales@jonesday.com

FOR DEFENDANT MARTIN MARIETTA MATERIALS, INC.

Raymond A. Jacobsen, Jr.
Warren A. Rosborough
McDermott, Will & Emery
The McDermott Building
500 North Capitol Street, N.W.
Washington, DC 20001
Ph: 202-756-8348
wrosborough@mwe.com

FOR DEFENDANT TEXAS INDUSTRIES



David Wales
Jones Day
51 Louisiana Ave, N.W.
Washington, DC 20001
Ph: 202-879-5451
dpwales@jonesday.com

O R D E R

IT IS SO ORDERED by the Court, this ____ day of _____, 2014.

United States District Judge