

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Washington, D.C. 20530

Plaintiff,

v.

BROWN & ROOT, INC.,
HALLIBURTON COMPANY, and,
OFFSHORE PIPELINES, INC.

Defendants.

90 1986

Civil Action No:

Entered: November 16, 1990

FILED

NOV 16 1990

Clerk, U. S. District Court
District of Columbia

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on August 17, 1990, and plaintiff and defendants, 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 and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

A. "B&R" means defendant Brown & Root, Inc.; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Halliburton" means defendant Halliburton Company; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "OPI" means defendant Offshore Pipelines, Inc.; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "The divestiture assets" means the marine construction vessels designated the BAR-278 pipelay barge and the LB-282 combination pipelay/pipebury barge.

E. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets

or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

DIVESTITURE OF ASSETS

A. Defendant OPI is hereby ordered and directed to divest to a purchaser prior to March 15, 1991, all of its direct and indirect ownership and control of the divestiture assets. The obligation to divest shall be satisfied if, by March 15, 1991, OPI enters into a binding contract for sale of the divestiture assets to a purchaser approved by plaintiff, according to terms approved by plaintiff, that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than May 15, 1991, and if sale is completed pursuant to the contract.

B. If defendant OPI has not accomplished the required divestiture prior to March 15, 1991, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed three months, if OPI requests such an extension and demonstrates to plaintiff's satisfaction that it has made bona fide efforts to sell the divestiture assets and that there is a reasonable expectation that the assets can be

sold in the requested extended time period, but that the divestiture cannot be completed prior to March 15, 1991.

C. Defendant OPI agrees to take all reasonable steps to accomplish quickly said divestiture. In carrying out its obligation to divest the divestiture assets, OPI may divest these assets alone, or may divest along with these assets any other assets of OPI.

D. In accomplishing the divestiture ordered by this Final Judgment, defendant OPI promptly shall make known in the United States, by usual and customary means, the availability of the divestiture assets, for sale. Defendant OPI shall notify any person making an inquiry regarding the possible purchase of the divestiture assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of the divestiture assets, subject to customary confidentiality assurances, all pertinent information regarding the divestiture assets. Defendants shall provide such information to the plaintiff no later than the time they furnish such information to any other person. Defendants shall permit prospective purchasers of the divestiture assets to have access to personnel knowledgeable about the divestiture assets, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the divestiture assets.

E. Divestiture required by Section IV. of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the divestiture assets can and will be operated by the purchaser as part of a viable, ongoing business providing pipelay and pipebure barge services in the United States Gulf of Mexico. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the provision of pipelay and pipebure barge services in the United States Gulf of Mexico, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of pipelay and pipebure barge services in the United States Gulf of Mexico.

F. Divestiture required by Section IV. of the Final Judgment shall not be made to McDermott Incorporated or Pipe Lines Unlimited Services (PLUS) or any of their affiliates or subsidiaries, or to any company planning to move the assets out of the United States Gulf of Mexico.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and material liens, other than any inchoate statutory, admiralty, maritime, or common law liens for obligations not yet due and payable. Defendant OPI shall indemnify the purchaser of any assets divested pursuant to this Final Judgment for any such outstanding liens.

V.

APPOINTMENT OF TRUSTEE

A. If defendant OPI has not accomplished the divestiture required by Section IV. of the Final Judgment by February 15, 1991, defendants shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section IV. B., whichever is later, plaintiff shall provide defendant OPI with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff will in good faith seek to assure that at least one of the nominees shall be a ship broker engaged primarily in the business of purchasing and selling vessels, including marine construction vessels. Defendant OPI shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant OPI, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant OPI, it shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the

parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of the nominees proposed by plaintiff and defendant OPI. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant OPI has not accomplished the divestiture required by Section IV. of this Final Judgment at the expiration of the time period specified in Section IV. A. or IV. B. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the divestiture assets; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendant OPI has notified plaintiff pursuant to Section VI. of this Final Judgment of a proposed divestiture of the divestiture assets and plaintiff has not filed a written notice that it objects to said proposed divestiture.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, having due regard for the

fair market value of the divestiture assets and the necessity of effectuating a prompt divestiture in order to preserve competition in the pipelay/pipebury market in the Gulf of Mexico, subject to the provisions of Section VI. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant OPI shall not object to a sale of the divestiture assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by OPI must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant OPI of the proposed sale in accordance with Section VI. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant OPI, shall receive compensation based on a fee arrangement providing an incentive based on price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the divestiture assets and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant OPI and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture and shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the divestiture assets, and defendants shall develop such financial or other information relevant to the divestiture assets as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these assets.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section V. of this Final Judgment, the trustee

shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why any required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment, or ordering the divestiture assets to be sold to defendant B&R at a price the Court determines.

VI.

NOTIFICATION

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to Section IV. or V. of this Final Judgment, defendant OPI or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly

notify defendant OPI. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to acquire, or expressed an interest in acquiring or desire to acquire any ownership interest in the divestiture assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant OPI and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant OPI and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant OPI and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant OPI's limited right to object to the sale under the proviso in Section V. C. Upon objection by plaintiff, a divestiture proposed under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendant

OPI under the proviso in Section V. C., a divestiture proposed under Section V. shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V. of this Final Judgment, defendant OPI shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV. of this Final Judgment. Each such affidavit of OPI shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such affidavit, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. Defendant OPI shall maintain full records of all efforts made to divest these operations.

VIII.

FINANCING

With prior consent of the plaintiff, defendant may finance all or any part of any purchase made pursuant to Sections IV. or V. of this Final Judgment.

IX.

PRESERVATION OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant OPI shall take all steps necessary to assure that the divestiture assets are maintained as separate, distinct, and salable assets, apart from other assets of OPI. OPI shall use all reasonable efforts, including utilizing the divestiture assets to perform contractual obligations, to maintain these assets in a condition which makes them usable as part of a viable and active business of providing pipelay and pipebury services.

B. Defendant OPI shall not sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the divestiture assets; provided that the divestiture assets may be mortgaged to secure financing for the acquisition of the divestiture assets as long as the mortgage

is required to be released upon any sale made in compliance with this Final Judgment without regard to the price received therefore.

C. Defendant OPI shall preserve the divestiture assets in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books, and records relating to the divestiture assets until the date of divestiture.

D. Defendants shall refrain from taking any action that would jeopardize the sale of the divestiture assets.

X.

COMPLIANCE INSPECTION

For the purposes of determining or securing compliance with the 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 any 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 any 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.

C. No information or documents obtained by the means provided in this Section X. shall be divulged by a 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 (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject

to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI.

RETENTION OF JURISDICTION

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

XII.

TERMINATION

This Final Judgment will expire on the fifth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest,

SMS.

Dated:

11/16/90

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE