

FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA 27

U.S. DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DOMTAR INC.;
DOMTAR INDUSTRIES, INC.;
DOMTAR GYPSUM AMERICA, INC.;
THE FLINTKOTE COMPANY, INC.; AND
GENSTAR GYPSUM PRODUCTS COMPANY,

Defendants.

Civil Action No.

Filed: 87-0689 RFP

ENTERED IN CIVIL DOCKET -5-13, 1987

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on February 25, 1987 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, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

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

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

10 ORDERED, ADJUDGED AND DECREED as follows:

11 I.

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

16 II.

17 As used in this Final Judgment:

18 A. "Defendants" means Domtar Inc.; Domtar Industries,
19 Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.;
20 and Genstar Gypsum Products Company, each division, subsidiary
21 or affiliate of any of them, and each officer, director,
22 employee, attorney, agent or other person acting for or on
23 behalf of any of them.

24 B. "Domtar" means Domtar Inc.; Domtar Industries, Inc.;
25 Domtar Gypsum America, Inc.; and Genstar Gypsum Products

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1 Company, each division, subsidiary or affiliate of any of them,
2 and each officer, director, employee, attorney, agent or other
3 person acting for or on behalf of any of them.

4 C. "Gypsum board" means material that consists primarily
5 of a solid, flat core of processed gypsum between two sheets of
6 paper surfacing, and which is used principally for constructing
7 interior walls and ceilings of commercial and residential
8 buildings.

9 D. "Pacific Southwest Operations" means the gypsum board
10 plant and gypsum quarry, real property, capital equipment, and
11 any other interests, assets or improvements owned by Genstar
12 Gypsum Products Company, located in or near Las Vegas, Nevada;
13 that company's sales and marketing organization in California,
14 Arizona and Nevada; and that company's warehouse and sales
15 office in Vernon, California. The assets of the Pacific
16 Southwest Operations, as they currently exist, are generally
17 described in Schedule A of the Stipulated Hold Separate Order
18 which is attached hereto as Attachment I and incorporated by
19 reference in Section IX of this Final Judgment.

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

23 III.

24 A. The provisions of this Final Judgment shall apply to
25 the defendants, their successors and assigns and to all other

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1 persons in active concert or participation with any of them who
2 shall have received actual notice of this Final Judgment by
3 personal service or otherwise.

4 B. Nothing herein contained shall suggest that any
5 portion of this Final Judgment is or has been created for the
6 benefit of any third party and nothing herein shall be
7 construed to provide any rights to any third party.

8 IV.

9 A. Domtar is hereby ordered and directed to divest all of
10 its direct and indirect ownership in and control over the
11 Pacific Southwest Operations within six (6) months of the date
12 of filing of this Final Judgment, but in no event later than
13 September 1, 1987.

14 B. Unless plaintiff otherwise consents, divestiture of
15 the Pacific Southwest Operations shall be accomplished in such
16 a way as to satisfy plaintiff that, as of the time of
17 divestiture, the Pacific Southwest Operations can and will be
18 operated by the purchaser or purchasers as a viable, on-going
19 business engaged in the manufacture and sale of gypsum board.
20 Divestiture shall be made to a purchaser or purchasers for whom
21 it shall be demonstrated to the plaintiff that (i) the purchase
22 is for the purpose of competing effectively in the manufacture
23 and sale of gypsum board, and (ii) the purchaser or purchasers
24 have the managerial, operational and financial capability to
25 compete effectively in the manufacture and sale of gypsum

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1 board. Nothing in this Final Judgment shall preclude plaintiff
2 from approving a divestiture by means of a "spin-off,"
3 "leveraged buy-out," or public offering.

4 C. In accomplishing the divestiture ordered by this Final
5 Judgment, Domtar promptly shall make known in the United
6 States, by usual and customary means, the availability of the
7 Pacific Southwest Operations for sale as an on-going business.
8 Domtar shall notify any person making an inquiry regarding the
9 possible purchase of the Pacific Southwest Operations that the
10 sale is being made pursuant to this Final Judgment and provide
11 such person with a copy of this Final Judgment. Domtar shall
12 also furnish to all bona fide prospective purchasers who so
13 request, subject to customary confidentiality assurances, all
14 pertinent information regarding the Pacific Southwest
15 Operations. Domtar shall provide such information to the
16 plaintiff at the same time that it furnishes such information
17 to any other person. Domtar shall permit such prospective
18 purchasers to make such inspection of the facility and of all
19 financial, operational, or other documents and information as
20 may be relevant to the sale of the facility.

21 D. Domtar agrees to take all reasonable steps to
22 accomplish quickly said divestiture.

23 V.

24 A. If Domtar has not accomplished the divestiture
25 required by Section IV of this Final Judgment by September 1,

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1 1987, the Court shall, upon application of plaintiff, appoint a
2 trustee to effect the divestiture. Such appointment shall
3 become effective on September 1, 1987 or as soon thereafter as
4 the Court appoints the trustee. After the trustee's
5 appointment becomes effective, only the trustee, and not
6 Domtar, shall have the right to sell the Pacific Southwest
7 Operations. The trustee shall be a business broker or a member
8 of the investment banking community with experience and
9 expertise in acquisitions and divestitures. The trustee shall
10 have the power and authority to accomplish the divestiture at
11 such price and on such terms as are then obtainable upon a
12 reasonable effort by the trustee, to a purchaser acceptable to
13 the plaintiff, subject to the provisions of Section VI of this
14 Final Judgment. The trustee shall have such other powers as
15 the Court deems appropriate. Defendants shall use all
16 reasonable efforts to assist the trustee in accomplishing the
17 required divestiture. Defendants shall not object to a sale by
18 the trustee on any grounds other than malfeasance. Any such
19 objection by the defendants must be conveyed in writing to the
20 plaintiff and the trustee within fifteen (15) days after the
21 trustee has notified the defendants of the proposed sale.

22 B. If Domtar has not divested all of its ownership
23 interest in the Pacific Southwest Operations by July 1, 1987,
24 Domtar shall notify plaintiff of that fact. If Domtar still
25 has not divested all of its ownership interest in the Pacific

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1 Southwest Operations within ten (10) days thereafter, the
2 plaintiff shall provide Domtar with written notice of the names
3 and qualifications of not more than two (2) nominees for the
4 position of trustee for the required divestiture. Domtar will
5 notify plaintiff within ten (10) days thereafter whether either
6 or both of such nominees are acceptable. If either or both of
7 such nominees are acceptable to Domtar, plaintiff shall notify
8 the Court of the person or persons upon whom the parties have
9 agreed and the Court shall appoint one of the nominees as the
10 trustee. If neither of such nominees is acceptable to Domtar,
11 it shall furnish to the plaintiff, within ten (10) days after
12 the plaintiff provides the names of its nominees, written
13 notice of the names and qualifications of not more than two
14 (2) nominees for the position of trustee for the required
15 divestiture. Plaintiff shall furnish the Court the names and
16 qualifications of its proposed nominees and the names and
17 qualifications of the nominees proposed by Domtar. The Court
18 may hear the parties as to the qualifications of the nominees
19 and shall appoint one of the nominees as the trustee.

20 C. The trustee shall serve at the cost and expense of
21 Domtar, on such terms and conditions as the Court may
22 prescribe, and shall account for all monies derived from a sale
23 of the Pacific Southwest Operations and all costs and expenses
24 so incurred. After approval by the Court of the trustee's
25 accounting, including fees and expenses for its services, all

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1 remaining monies shall be paid to Domtar, and the trust shall
2 be terminated. The compensation of such trustee shall be based
3 on a fee arrangement providing the trustee with an incentive to
4 accomplish the required divestiture quickly at the best price
5 and terms reasonably obtainable.

6 D. The trustee shall have full and complete access to the
7 personnel, books, records and facilities of the defendants
8 relevant to the business or assets to be divested, and the
9 defendants shall develop such financial or other information
10 relevant to the business or assets to be divested as the
11 trustee may request. Defendants shall take no action to
12 interfere with or impede the trustee's accomplishment of the
13 divestiture.

14 E. After its appointment, the trustee shall file monthly
15 reports with the plaintiff and Domtar setting forth the
16 trustee's efforts to accomplish divestiture as contemplated
17 under this Final Judgment. The reports shall include, but not
18 be limited to, the name, address and telephone number of each
19 person who was contacted, or who offered or expressed an
20 interest or desire to acquire any ownership interest in the
21 Pacific Southwest Operations, together with full details of
22 such contact or interest. If the trustee has not accomplished
23 such divestiture within six (6) months after the trustee's
24 appointment, the trustee shall thereupon promptly file with the
25 Court a report setting forth (1) the trustee's efforts to

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1 accomplish the required divestiture, (2) the reasons, in the
2 trustee's judgment, why the required divestiture has not been
3 accomplished, and (3) the trustee's recommendations. The
4 trustee shall at the same time furnish such report to the
5 plaintiff and Domtar, who shall each have the right to be heard
6 and to make additional recommendations consistent with the
7 purpose of the trust. The Court shall thereafter enter such
8 orders as it shall deem appropriate in order to carry out the
9 purpose of the trust, which shall, if necessary, include
10 extending the term of the trust and the term of the trustee's
11 appointment.

12 -VI.

13 At least thirty (30) days prior to the scheduled closing
14 date of any proposed divestiture pursuant to Section IV or V of
15 this Final Judgment, Domtar or the trustee, whichever is then
16 responsible for effecting the divestiture required by this
17 Final Judgment, shall notify the plaintiff of the proposed
18 divestiture. If a trustee is responsible, it shall similarly
19 notify defendants. The notice shall set forth the details of
20 the proposed transaction and for each person not previously
21 identified who offered or expressed an interest or desire to
22 acquire any ownership interest in the Pacific Southwest
23 Operations, the name, address, and telephone number of that
24 person together with full details of that person's interest or
25 desire to acquire such ownership interest. Within fifteen (15)

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1 days after receipt of notice of the proposed divestiture, the
2 plaintiff may request from the defendants and the proposed
3 purchaser additional information concerning the proposed
4 divestiture. Defendants and the proposed purchaser shall
5 furnish the additional information requested from them within
6 fifteen (15) days of the receipt of the request, unless
7 plaintiff shall agree to extend the time. Until plaintiff
8 certifies in writing that it is satisfied that defendants and
9 the proposed purchaser have provided the additional information
10 requested from them, the divestiture shall not be consummated.
11 Within thirty (30) days after receipt of the notice or within
12 fifteen (15) days after receipt of the additional information
13 from defendants and the proposed purchaser, whichever is later,
14 unless defendants shall agree to extend the time, plaintiff
15 shall notify defendants and the trustee, if there is one, in
16 writing, if it objects to the proposed divestiture. If
17 plaintiff fails to object within the period specified, or if
18 plaintiff notifies defendants and the trustee, if there is one,
19 in writing, that it does not object, the divestiture may be
20 consummated, subject only to defendants' right to object to the
21 sale under Section V.A. Upon objection by the plaintiff, a
22 divestiture proposed under Section IV shall not be
23 consummated. Upon objection by the plaintiff, a divestiture
24 proposed under Section V shall not be consummated unless
25 approved by the Court. Upon objection by defendants under
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1 Section V.A., the proposed divestiture shall not be consummated
2 unless approved by the Court.

3 VII.

4 Domtar shall not finance all or any part of the purchase of
5 the Pacific Southwest Operations pursuant to the divestiture
6 required by Section IV or V of this Final Judgment without
7 plaintiff's permission.

8 VIII.

9 Thirty (30) days from the date of filing of the Complaint
10 in this civil action and every thirty (30) days thereafter
11 until the divestiture required by Section IV or V has been
12 completed, Domtar shall submit in writing to the plaintiff a
13 verified written report setting forth in detail the fact and
14 manner of compliance with Section IV or V, as the case may be,
15 of this Final Judgment. Each such report of compliance with
16 Section IV shall include, for each person who, during the
17 preceding thirty (30) days, made an offer to acquire, expressed
18 an interest or desire to acquire, entered into negotiations to
19 acquire, or made an inquiry about acquiring any ownership
20 interest in the Pacific Southwest Operations, the name,
21 address, and telephone number of that person and a detailed
22 description of each contact with that person during that
23 period. Domtar shall maintain full records of all efforts made
24 to divest the Pacific Southwest Operations.

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IX.

The terms of the Stipulated Hold Separate Order entered into by the plaintiff and the defendants, filed with the Court, and attached hereto as Attachment I, are incorporated herein by reference.

X.

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 any defendant made to its principal offices, be permitted:

- (1) Access during office hours of that defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of that defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of that defendant and without restraint or interference from them, to interview officers, employees and agents of that defendant, who may have counsel present, regarding any such matters.

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

7 C. No information or documents obtained by the means
8 provided in this Section X shall be divulged by any
9 representative of the Department of Justice to any person other
10 than a duly authorized representative of the Executive Branch
11 of the United States, except in the course of legal proceedings
12 to which the United States is a party (including grand jury
13 proceedings), or for the purpose of securing compliance with
14 this Final Judgment, or as otherwise required by law.

15 D. If at the time information or documents are furnished
16 by a defendant to plaintiff, such defendant represents and
17 identifies in writing the material in any such information or
18 documents to which a claim of protection may be asserted under
19 Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said
20 defendant marks each pertinent page of such material, "Subject
21 to claim of protection under Rule 26(c)(7) of the Federal Rules
22 of Civil Procedure," then ten (10) days notice shall be given
23 by plaintiff to such defendant prior to divulging such material
24 in any legal proceedings (other than a grand jury proceeding).

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XI.

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and the defendants 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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

This Final Judgment will expire on the third anniversary of the completion of the divestiture required herein.

XIII.

Entry of this Final Judgment is in the public interest.

UNITED STATES DISTRICT JUDGE

Dated: May 12, 1987

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