

4-1-1970

Complaint, United States v. Ling-Temco-Vought, Inc.

Recommended Citation

Complaint, United States v. Ling-Temco-Vought, Inc., 3 Loy. L.A. L. Rev. 219 (1970).
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**COMPLAINT, UNITED STATES v.
LING-TEMCO-VOUGHT, INC.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|------------------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| v. |) | Civil Action No. 69-438 |
| LING-TEMCO-VOUGHT, INC., |) | |
| JONES & LAUGHLIN STEEL |) | Filed: April 14, 1969 |
| CORPORATION, and |) | |
| JONES & LAUGHLIN INDUSTRIES, INC., |) | Equitable Relief Sought |
| Defendants. |) | |

COMPLAINT

The United States of America, by its attorneys, brings this action against the defendants named herein, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. §18), and for equitable relief, including:

(a) an order requiring Ling-Temco-Vought, Inc. and its subsidiary, Jones & Laughlin Industries, Inc., to divest themselves of all ownership interest in the Jones & Laughlin Steel Corporation, and

(b) a preliminary injunction implementing the terms of the Memorandum of Agreement concluded by the parties hereto on March 26, 1969, as amended by letter agreement dated March 27, 1969, copies of which are attached as Exhibits A and B to this complaint.

2. Each of the defendants is found and transacts business within the Western District of Pennsylvania.

II. THE DEFENDANTS

3. Ling-Temco-Vought, Inc. is hereby made a defendant herein. Ling-Temco-Vought, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its corporate headquarters in Dallas, Texas. As used herein, "LTV" means Ling-Temco-Vought, Inc. and any corporation which it controls, directly or indirectly, except Jones

& Laughlin Steel Corporation and Jones & Laughlin Industries, Inc.

4. Jones & Laughlin Steel Corporation is hereby made a defendant herein. Jones & Laughlin Steel Corporation is a corporation organized and existing under the laws of the State of Pennsylvania and maintains its corporate headquarters in Pittsburgh, Pennsylvania. As used herein, "J&L Steel" means Jones & Laughlin Steel Corporation and any corporation which it controls, directly or indirectly.

5. Jones & Laughlin Industries, Inc. is hereby made a defendant herein. Jones & Laughlin Industries, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its corporate headquarters in Glenshaw, Pennsylvania. As used herein, "J&L Industries" means Jones & Laughlin Industries, Inc. and any corporation which it controls, directly or indirectly, except J&L Steel. As of March 17, 1969, J&L Industries was a wholly owned subsidiary of LTV.

6. On May 14, 1968, LTV offered to purchase the outstanding common stock of J&L Steel for \$85 per share. As a result of that offer, LTV acquired, in June 1968, 5,011,836 shares of J&L Steel common stock, approximately 63 per cent of the shares outstanding, for about \$428,500,000.

7. On January 21, 1969, LTV caused J&L Industries to be incorporated under the laws of the State of Delaware. One of the purposes for which J&L Industries was formed was to carry out the transactions described in this and the next succeeding paragraph. On March 13, 1969, LTV exchanged all of the shares of the common stock of J&L Steel owned by it for 6,023,672 shares of the common stock of J&L Industries, \$170,000,000 principal amount of 6 3/4 per cent subordinated debentures of J&L Industries due 1994, and warrants to purchase two million shares of common stock of J&L Industries at \$37.50 per share. As a result of this and other transactions, LTV was on March 17, 1969 the owner of all of the outstanding stock of J&L Industries.

8. On March 17, 1969, J&L Industries offered the holders of common stock of J&L Steel to exchange for each share of J&L Steel common stock the following securities: \$42.50 principal amount of 6 3/4 per cent subordinated debentures of J&L Industries due 1994, 1/10 share of common stock of J&L Industries, and 1/2 warrant expiring April 1, 1979 to purchase J&L Industries common stock at \$37.50 a full share. The exchange offer expires on April 21, 1969 at 5:00 p.m., New York Time, unless extended. All shares of common stock of J&L Steel tendered pursuant to the exchange offer will be accepted as of the close of business on the eighth business day after the expiration date of the offer. If the exchange offer is accepted by all holders of J&L Steel common stock, J&L Industries will increase its ownership of J&L Steel common stock from approximately 63 per cent to 100 per cent, and LTV's ownership of J&L Industries common stock will be reduced from 100 per cent to 91 per cent.

III. TRADE AND COMMERCE

A. *The Business of the Defendants*

9. LTV, through its operating subsidiaries, is a highly diversified company. It is a major manufacturer of jet fighter planes and aerospace equipment; in 1968, it was the eighth largest prime defense contractor, with over \$750 million in contracts. It is one of the largest non-integrated manufacturers of copper wire, and has begun the production of aluminum wire. It is the largest seller of sporting goods in the United States. It is the nation's third largest meatpacker. It is the nation's seventh largest commercial airline and the nation's third largest car rental firm. It is a substantial manufacturer and seller of loudspeakers and sound equipment, electronic controls, chemicals, aircraft parts and carpeting products.

10. Since 1961, LTV and its predecessor firms have acquired the stock or assets of 33 corporations, including J&L Steel. In 1965, LTV was the nation's 256th largest industrial corporation, with sales of about \$336 million. By the end of 1968, following its acquisition of The Okonite Company, Wilson & Co., Inc., Allied Radio Corporation, Greatamerica Corporation, J&L Steel, and a number of smaller firms, LTV was among the 14 largest industrial corporations in the nation. The 1967 revenues of all companies controlled by Ling-Temco-Vought, Inc. at the end of 1968 (exclusive of J&L Steel) totaled about \$1.9 billion.

11. The companies which LTV has acquired are organized into a number of corporate subsidiaries. The major LTV subsidiaries, in addition to J&L Steel, are: LTV Aerospace Corp.; LTV Ling Altec, Inc. (sound equipment); LTV Electrosystems, Inc. (electronic surveillance and guidance systems); The Okonite Company (wire and cable and carpeting products); Wilson & Co., Inc. (meat packing); Wilson Sporting Goods Co.; Wilson Pharmaceutical & Chemical Corp.; Braniff Airways, Inc.; and National Car Rental Systems, Inc.

12. Ling-Temco-Vought, Inc., the central holding corporation in the LTV complex, provides management services, financial aid and other assistance to its subsidiaries. It has directed its subsidiaries to develop their own acquisition and diversification programs, but all proposed actions of significance are reviewed and subject to approval by Ling-Temco-Vought, Inc.

13. J&L Steel is a fully integrated steel corporation which produces most basic steel products, including hot and cold rolled sheet, tinplate, bar products, tubular products, wire products, and stainless steel. J&L Steel is the sixth largest steel producer in the United States, with 1968 sales of over \$1 billion and assets of over \$1.15 billion. In 1967 it accounted for between 5 per cent and 10 per cent of national production of most of the steel products it manufactured.

14. Steel is one of the most important and widely-used products in the nation's economy. The eight largest steel producers account for about 75 per cent of production. The barriers to entry into steel production are high. The identity and ranking of the eight largest firms have remained virtually unchanged during the past twenty years.

15. J&L Steel is one of the nation's 100 largest industrial firms in sales and among the 80 largest in assets. LTV is one of the 35 largest industrial firms in sales. LTV and J&L Steel maintain offices and manufacturing plants in numerous cities and states, and each distributes and sells its products throughout the United States. Each of the defendants is engaged in interstate commerce.

B. *The Merger Movement and Concentration in Manufacturing*

16. In 1967, the 175,000 manufacturing corporations in the United States had sales of \$575 billion and assets of \$437 billion. Ownership of manufacturing assets in the United States is becoming increasingly concentrated. The proportion of the total assets of the nation's manufacturing corporations held by the 200 largest firms increased from 48.1 per cent in 1948 to 54.2 per cent in 1960 and 58.7 per cent in 1967. The great bulk of this increase in concentration has resulted from mergers and acquisitions.

17. In the last twenty years, an accelerating merger movement in the United States has eliminated the independent existence of an increasing number of very large firms. This trend has reduced the number of potential entrants into many of the nation's concentrated industries and the number of sources of competitive technological innovation. From 1948 to 1966, some 912 manufacturing and mining concerns, with combined assets of \$31 billion, were absorbed by other firms through merger and acquisition; concerns which accounted for nearly half of these assets were acquired during the last five years of the period.

18. The scale and pace of merger activity is increasing rapidly. Acquisitions of mining and manufacturing concerns with assets of more than \$10 million rose from 101 in 1966 to 169 in 1967, and to 192 in 1968; the total assets involved in such acquisitions rose even more steeply, from \$4.1 billion in 1966 to \$8.2 billion in 1967, and to \$12.6 billion in 1968. To an increasing extent these mergers have involved large firms which rank among the leading firms in concentrated markets. Acquisitions by the approximately 200 industrial companies having assets of more than \$250 million accounted for over 70 per cent of manufacturing and mining assets acquired in 1968. In 1967, six firms with assets of more than \$250 million were absorbed by merger or acquisition; in 1968, twelve such firms were absorbed.

C. *Potential Competition*

19. LTV plans to continue to grow by internal expansion and by acquisition in coming years, largely in areas where it is not presently engaged. The business areas most specifically considered by LTV for future acquisitions include: aluminum; auto parts; building construction; building materials (including cement, asbestos, forest products, gypsum wallboard); chemicals; containers; drugs and cosmetics; electronics and electrical equipment; home furnishings; insurance; agricultural machinery; industrial machinery; paper; publishing; rubber fabricating; soft drinks; television broadcasting; and trucking.

20. LTV has projected substantial growth by its various subsidiaries within their general areas of competence, to be achieved by internal expansion and by acquisition. Among the contemplated acquisitions were the following: LTV Aerospace Corp. was to make one or more acquisitions in the fields of private and business aircraft, helicopters, automobiles, and oceanographic systems. LTV Electrosystems, Inc. was to make one or more acquisitions in the fields of industrial tools, undersea warfare equipment, and industrial controls. LTV Ling Altec, Inc. was to make one or more acquisitions in fields such as laboratory equipment, paging systems, electrical and electronic components, power conversion products, and mobile radios. The Okonite Company was to make one or more acquisitions in the fields of electrical machinery, lighting fixtures, electrical instruments, printing trades machinery, food products machinery, and fabricated rubber and plastic products. Wilson Sporting Goods Co. formulated plans to expand by acquisition into the fields of ski and other snow sport equipment, fishing tackle and supplies, gymnasium equipment, pleasure boats and equipment, bicycles, billiards and pool tables and supplies, and firearms and supplies. Wilson Pharmaceutical & Chemical Corp. suggested the possible branching out from its present specialty in bulk, animal-derived pharmaceuticals by acquiring companies that make petro-chemicals, activated carbon, finished pharmaceuticals, high purity chemicals, medical disposable products, gelatin capsules, confectionary products, and shortening products. Wilson & Co., Inc. considered acquisitions in areas such as frozen foods, cryodried foods, spices, restaurants, packaging film, processing equipment, land, and livestock.

21. In addition to those companies it has already acquired, LTV in recent years has considered the acquisition of about 50 other corporations. These firms are in industries into which LTV was generally considering expansion and also in a variety of additional industries such as shipbuilding, swimming pool filters, drilling barges and platforms, real estate, refrigerated semi-trailers, frames for trailers and mobile homes, and special railroad car equipment.

22. Before it acquired J&L Steel, LTV entertained a particular in-

terest in entering the steel industry and considered acquiring several steel companies, including one or more basic steel producers and some manufacturers of specialty steel products.

23. By September 1967, the management of J&L Steel had decided that the company should pursue a large-scale acquisition and diversification program. To implement this decision, it established an Acquisitions Committee and a screening committee to investigate various industries and companies with a view to acquisition. The screening committee concluded that between 1969 and 1977 J&L Steel could generate at least \$243 million in cash that could be made available for diversification; that J&L Steel could obtain over \$107 million of borrowed capital between 1969 and 1973 for use in diversification without adversely affecting its debt-equity ratio; and that common stock of J&L Steel could also be used to finance diversification. The screening committee developed criteria for considering the relative attractiveness of entering various industries and acquiring various companies, recommended undertaking a series of acquisitions rather than a single acquisition, and projected "a Jones & Laughlin of 1978 which has become less dependent upon iron and steel."

24. Pursuant to this program, J&L Steel and its merger advisor, Lazard Freres & Co., studied the possibility of the company's entering various areas including non-ferrous metals, mining and construction, with particular emphasis on aluminum, coal, building materials (including cement and gypsum), and specialized businesses servicing the construction industry. J&L Steel also considered entry into high alloy and specialty steel products, light steel and aluminum construction, metal fabrication, copper products, machine tools (particularly cutting tools and abrasives), industrial and scientific controls and instruments, oil and gas exploration, chemicals, trailer and mobile home frames and equipment, and plastic pipe. J&L Steel's interest in, and consideration of, potential areas for entry by acquisition was reflected in a substantial number of studies of specific industries and companies in 1967-1968. J&L Steel had not yet made acquisitions pursuant to this program when, in June 1968, LTV acquired approximately 63 per cent of J&L Steel's common stock.

25. Before it acquired J&L Steel, LTV was a potential competitor in various product lines in which J&L Steel was and is a substantial factor, including various sectors of the steel industry, such as cold rolled sheet, stainless steel, and steel wire.

26. Before it was acquired by LTV, J&L Steel was a potential competitor in various product lines in which LTV was and is engaged, including particularly copper and aluminum wire and cable, in which LTV is a significant factor.

27. Before LTV acquired J&L Steel, each of these companies was a

potential competitor in various industries, including high alloy or specialty steels; primary aluminum; light steel and aluminum construction; building materials, including cement, asbestos, and gypsum; machine tools; and industrial and scientific instruments and industrial automation processes. Many of these industries are substantially or highly concentrated. For example, the four largest firms in primary aluminum account for 93 per cent of the market and the eight largest firms in gypsum account for 96 per cent of the market. LTV and J&L Steel were among the relatively few potential entrants in some of these industries.

D. Reciprocity

28. "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company. A firm's reciprocity power and ability to benefit from reciprocity effect grow as its purchasing requirements and product diversity are increased.

29. J&L Steel has actively engaged in reciprocity for many years.

30. There are a number of markets in which the relationship between LTV and J&L Steel is likely to give rise to significant opportunities for reciprocal dealing and to reciprocity effects upon their suppliers. For example, J&L Steel's sales of steel may be benefited by reason of LTV's substantial position as a purchaser of automobiles, and by LTV's position as a large shipper by rail. Similarly, The Okonite Company's sales of mining cable may be benefited by reason of J&L Steel's position as a substantial purchaser of mining products.

31. LTV and J&L Steel together purchase and sell a much wider range of products than does either of them separately. LTV operates in more than 50 product markets and J&L Steel in some 22. Many of these markets are highly concentrated, with LTV or J&L Steel ranking among the leading firms. LTV and J&L Steel make substantial purchases of a wide variety of goods and services from a large number of suppliers. The acquisition of J&L Steel by LTV significantly enhances the ability of the combined company and its suppliers to increase their sales through reciprocity and reciprocity effects, to the detriment of competition.

IV. OFFENSE CHARGED

32. In 1968, LTV acquired a controlling stock interest in J&L Steel, and in 1969 LTV transferred its J&L Steel common stock to its subsidiary, J&L Industries. On March 17, 1969, J&L Industries offered to acquire the remaining outstanding common stock of J&L Steel. The aforesaid transactions are more fully described in paragraphs 6 through 8 of this complaint.

33. The effect of the acquisition by LTV and J&L Industries of the common stock of J&L Steel may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) Potential independent competition by LTV and J&L Steel may be diminished in the steel industry, in other markets in which only one of them presently competes, and in certain other markets in which neither of them presently competes;
- (b) The power of LTV and J&L Steel, and of their suppliers, to employ and to benefit from reciprocity and reciprocity effects in the sale of their products will be substantially enhanced, and the markets for their competitors' goods will be correspondingly narrowed;
- (c) Concentration of control of manufacturing assets will be substantially increased, and the trend to further concentration by merger will be encouraged, thereby (i) reducing the number of firms capable of entering concentrated markets; (ii) reducing the number of firms with the capability and incentive for competitive innovation; (iii) increasing the barriers to entry in concentrated markets; and (iv) diminishing the vigor of competition by increasing actual and potential customer-supplier relationships among leading firms in concentrated markets.

34. The offense alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the acquisition by defendants LTV and J&L Industries of the common stock of J&L Steel be adjudged a violation of Section 7 of the Clayton Act.

2. That defendants LTV and J&L Industries be ordered to divest themselves of all ownership interest in J&L Steel.

3. That, pending a final adjudication of the merits of this complaint, a preliminary injunction issue against the defendants implementing the terms of the Memorandum of Agreement concluded by the parties hereto on March 26, 1969, as amended by letter agreement dated March 27, 1969, copies of which are attached as Exhibits A and B to this complaint.

4. That plaintiff have such other and further relief as the court may deem just and proper.

5. That plaintiff recover the costs of this action.

EXHIBIT A

MEMORANDUM OF AGREEMENT

March 26, 1969

The United States of America and Ling-Temco-Vought, Inc., Jones & Laughlin Industries, Inc., and Jones & Laughlin Steel Corporation hereby agree, by their respective counsel, that a preliminary injunction without findings of fact and without taking of any testimony may be entered by consent in a civil action to be filed by the United States of America alleging that the acquisition by Ling-Temco-Vought, Inc. and Jones & Laughlin Industries, Inc. of the common stock of Jones & Laughlin Steel Corporation violates Section 7 of the Clayton Act. It is further agreed that said consent preliminary injunction, after appropriate recitals, shall contain the injunctions set forth hereinafter, provided, however, that if the complaint is not filed prior to April 15, 1969 then in such event this agreement shall have no force or effect.

1. If, as a result of the March 17, 1969 exchange offer by Jones & Laughlin Industries, Inc., including any extension thereof, Jones & Laughlin Industries, Inc. shall hold in excess of 81% of the outstanding shares of the common stock of Jones & Laughlin Steel Corporation, Jones & Laughlin Industries, Inc. will promptly sell or otherwise dispose of such number of shares of the common stock of Jones & Laughlin Steel Corporation owned by it as will reduce its holdings of such common stock to an amount constituting not more than 81% of the common stock outstanding.

2. Pending the final adjudication of this litigation, Ling-Temco-Vought, Inc. and Jones & Laughlin Industries, Inc. shall not, directly or indirectly, otherwise than pursuant to the March 17, 1969 exchange offer, including any extension thereof, acquire any shares of the common stock of Jones & Laughlin Steel Corporation except that if as a result of any other circumstances Jones & Laughlin Industries, Inc.'s holdings of the common stock of Jones & Laughlin Steel Corporation would fall below 81%, Jones & Laughlin Industries, Inc. may acquire such additional number of shares as will be necessary to maintain its holding at 81% of the outstanding common stock of Jones & Laughlin Steel Corporation.

3. Pending the final adjudication of this litigation, no officer, employee or director of Ling-Temco-Vought, Inc. or Jones & Laughlin Industries, Inc. shall serve as an officer or director of Jones & Laughlin Steel Corporation, except that not more than three persons nominated by the Board of Directors of Jones & Laughlin Steel Corporation may serve as directors but not employees of Ling-Temco-Vought, Inc. and not more than four persons nominated by the Board of Directors of Jones & Laughlin Steel Corporation may serve as directors but not employees of Jones & Laughlin Industries, Inc.

4. Pending the final adjudication of this litigation, the common stock of Jones & Laughlin Steel Corporation now owned by Jones & Laughlin Industries, Inc. and any common stock of Jones & Laughlin Steel Corporation hereafter acquired in accordance with the terms of paragraphs 1 and 2 above shall be placed in a voting trust, the terms and conditions of which shall be essentially the same as those contained in the Voting Trust Agreement dated July 25, 1968 relating to the outstanding common stock of Jones & Laughlin Steel Corporation then owned by Ling-Temco-Vought, Inc., except that no person shall serve as a voting trustee unless he shall have been appointed by the Board of Directors of Jones & Laughlin Steel Corporation and no officer, employee or director of Ling-Temco-Vought, Inc. or Jones & Laughlin Industries, Inc. (other than a person who is also a director or officer of Jones & Laughlin Steel Corporation) shall be eligible to serve as a voting trustee.

5. Pending the final adjudication of this litigation, the business and financial operations of Jones & Laughlin Steel Corporation shall be maintained completely separate and independent from those of Ling-Temco-Vought, Inc., Jones & Laughlin Industries, Inc., and subsidiaries of Ling-Temco-Vought, Inc.; and Ling-Temco-Vought, Inc. and Jones & Laughlin Industries, Inc. shall take no action which would impair their ability to comply with any court order that required divestiture, in whole or in part, of their equity ownership interest in Jones & Laughlin Steel Corporation; provided, however, that the provisions of this paragraph shall not prevent Ling-Temco-Vought, Inc. and/or Jones & Laughlin Industries, Inc. from disposing of all or any portion of the common stock of Jones & Laughlin Steel Corporation owned by Jones & Laughlin Industries, Inc., or all or any portion of the common stock or warrants of Jones & Laughlin Industries, Inc., in either case by way of either (a) a public offering, or (b) an exchange for publicly held equity securities or debt securities issued or assumed by Ling-Temco-Vought, Inc., or any of its other subsidiaries.

6. Pending the final adjudication of this litigation, Ling-Temco-Vought, Inc., shall provide or cause to be provided to Jones & Laughlin Industries, Inc. whatever funds shall be necessary to enable Jones & Laughlin Industries, Inc. to make payment of the interest on its 6 3/4 per cent Subordinated Debentures due 1994 in the event Jones & Laughlin Industries, Inc. shall not have the necessary funds for this purpose from other sources.

7. In the event a final judgment is entered in this case adjudging that the acquisition and holding of the common stock of Jones & Laughlin Steel Corporation by Ling-Temco-Vought, Inc. and Jones & Laughlin Industries, Inc. violates Section 7 of the Clayton Act, the defendants agree that divestiture is the appropriate form of relief and the defendants will completely and absolutely divest themselves of all their holdings of

the common stock of Jones & Laughlin Steel Corporation in accordance with the terms and conditions of an appropriate plan incorporated in a final judgment.

EXHIBIT B
March 27, 1969

Lewis Bernstein, Esquire
Chief, Special Litigation Section
Antitrust Division
Department of Justice
Washington, D.C. 20530 .

Dear Mr. Bernstein:

This refers to the Memorandum of Agreement dated March 26, 1969, between the United States of America and Ling-Temco-Vought, Inc., Jones & Laughlin Industries, Inc., and Jones & Laughlin Steel Corporation, executed by their respective counsel.

It is understood and agreed that Paragraph 3 of that Memorandum of Agreement will be amended to read as follows:

"3. Pending the final adjudication of this litigation, no officer, employee, director or designee of Ling-Temco-Vought, Inc. shall serve as an officer or director of Jones & Laughlin Steel Corporation, except that not more than three persons nominated by the Board of Directors of Jones & Laughlin Steel Corporation may serve as directors, but not employees of Ling-Temco-Vought, Inc., and not more than four persons nominated by the Board of Directors of Jones & Laughlin Steel Corporation may serve as directors, but not employees of Jones & Laughlin Industries, Inc., and not more than six persons nominated by the Board of Directors of Jones & Laughlin Steel Corporation may serve as officers of Jones & Laughlin Industries, Inc."

This letter is signed on behalf of Ling-Temco-Vought, Inc., Jones & Laughlin Industries, Inc., and Jones & Laughlin Steel Corporation by Arnold & Porter. Please have this letter signed on behalf of the United States of America, indicating its agreement to this amendment.

Very truly yours,
LING-TEMCO-VOUGHT, INC.
JONES & LAUGHLIN INDUSTRIES, INC.
JONES & LAUGHLIN STEEL CORPORATION