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Proposed LTV Consent Judgment (Official Text)

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**PROPOSED LTV CONSENT JUDGMENT
(OFFICIAL TEXT)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

United States of America,
Plaintiff,

v.

Ling-Temco-Vought, Inc.,
Jones & Laughlin Steel
Corporation, and
Jones & Laughlin Industries, Inc.,
Defendants.

Civil Action
No. 69-438

Entered:

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 14, 1969, and the defendants having filed their answers thereto, 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 or admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the parties aforementioned, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter hereof and of the parties consenting hereto. The complaint states claims upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. 18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;

(B) "Subsidiary" shall mean a company which a person controls or has

power to control, or in which fifty percent (50%) or more of the voting securities is owned or controlled by that person, directly or indirectly;

(C) "LTV" shall mean defendant Ling-Temco-Vought, Inc., and any of its subsidiaries other than J&L and its subsidiaries;

(D) "J&L" shall mean defendant Jones & Laughlin Steel Corporation, and any of its subsidiaries;

(E) "Braniff" shall mean Braniff Airways, Incorporated, and any of its subsidiaries;

(F) "Okonite" shall mean The Okonite Company, and any of its subsidiaries;

(G) "Voting securities" shall mean any common or preferred stock possessing voting rights at the time in question, but shall not include preferred stock entitled to voting rights only upon a future failure to pay dividends or upon any other contingency not then realized;

(H) "Capital expenditures" shall mean disbursements or obligations to make expenditures that add to a defendant's fixed assets, or affect the capacity, efficiency, life span, or economy of operation of a defendant's existing fixed assets.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant.

IV

(A) LTV is ordered and directed to divest, by three (3) years from the date of entry of this Final Judgment, all of its interest, direct and indirect, in Braniff and Okonite, or, in the alternative, all of its interest, direct and indirect, in J&L.

(B) Subject to the limitations set forth in this Section IV, the divestiture directed above may be carried out by any method; provided, however, that if LTV receives in connection with any such divestiture any securities from a person to whom divestiture is made, such securities (other than securities issued by LTV) (1) shall not be voted, if of a voting class, and (2) shall be disposed of no later than two hundred twenty (220) days after receiving such securities, unless plaintiff consents to a longer period, and provided further that if the divestiture is carried out by way of disposition of assets, such divestiture shall be made in the form of one or more going and viable

businesses, each such business to be capable of engaging in substantially the same operations as those previously conducted by such business.

(C) The complete details of any contemplated plan of divestiture intended to implement the provisions of subsection (A) of this Section IV (including the identity of any person, or persons, or class of persons to whom the divested property is to be transferred, and all outstanding contracts involving the properties to be divested to which Ling-Temco-Vought, Inc., or any of its remaining subsidiaries, is a party) shall be submitted to the plaintiff by LTV.

Following the receipt of any such plan, plaintiff shall have thirty (30) days in which to object thereto by written notice to LTV. If plaintiff does not so object to the proposed plan, the plan may be consummated, but if objection is so made, the proposed divestiture shall not be consummated until LTV obtains judicial approval of the plan or until the plaintiff withdraws its objection; provided, however, (1) that in the case of a plan which provides for a pro rata distribution to security holders of LTV, or an exchange with security holders of LTV or any of its subsidiaries, or a public offering not involving a prior understanding or commitment to sell a portion of the securities to any predetermined purchaser (other than an underwriter or selling dealer for the purpose of resale to the general public), prior approval of the plaintiff need not be obtained and the plan may be consummated upon the termination of the thirty (30) day period, so long as the plan prohibits any person known by LTV to own or control beneficially more than one percent (1%) of the voting securities (including securities convertible into voting securities) of LTV from receiving any of the equity interest being divested until he has disposed of his voting securities (including securities convertible into voting securities) of LTV, and (2) that in the case of a plan as to which the plaintiff objects, the time period set forth in subsection (A) of this Section IV within which divestiture must be accomplished shall, unless the Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any proceeding under this Final Judgment relating to the approval of a proposed plan of divestiture.

(D) If the divestiture requirements of subsection (A) of this Section IV have not been met within the time specified therein, LTV shall divest all of its interest in J&L, and for that purpose shall place in the control of a trustee, promptly after his appointment by this Court, upon application of the plaintiff, at the cost and expense of LTV, all of the shares of J&L stock and other securities of J&L owned or controlled by LTV, vesting in the trustee full authority to vote any such security interest and to dispose of such security interest subject to Court supervision after hearing the parties hereto on any issue presented;

(E) Until the divestiture required by this Final Judgment is accomplished, neither LTV nor J&L shall take any action which knowingly impairs the viability of any of the businesses to be divested or LTV's ability to

accomplish such divestiture, and, specifically, shall not cause or permit any of the following as to any company remaining to be divested, except upon consent of the plaintiff:

(1) The payment of any dividends by Braniff Airways, Incorporated, The Okonite Company, or Jones & Laughlin Steel Corporation except out of current earnings, but this restriction shall not prohibit the payment of dividends which are not in excess of the per share rate of the last dividend declaration prior to February 1, 1970;

(2) Other than transactions in the normal course of business, transactions pursuant to which LTV, Braniff, Okonite, or J&L shall become indebted to one another or acquire any equity interest in or assets from one another; provided that this clause shall not apply to (a) the intercorporate payments and obligations arising out of, or in connection with, the filing of consolidated income tax returns or the customary allocation of general and administrative expenses as between corporations, or (b) LTV's receipt from Braniff of stock dividends on Braniff's Special Stock, Class A, or (c) the acquisition of any equity interest in or asset of Braniff, Okonite, or J&L in connection with a divestiture the terms and conditions of which have not been objected to by plaintiff;

(3) Any recapitalization of Braniff, Okonite, or J&L, which is part of a transaction involving (a) any two or more of them, (b) any other person bound by this Final Judgment, (c) any other subsidiary of any other person so bound, or (d) Jones & Laughlin Steel Corporation and any of its subsidiaries;

(4) The encumbrance of any assets of Braniff, Okonite, or J&L to secure the indebtedness of (a) any other of them, (b) any other person bound by this Final Judgment, (c) any other subsidiary of any other person so bound, (d) any person LTV or J&L is now or is hereafter in the process of acquiring;

(5) Any disposition of any of the assets of Braniff, Okonite, or J&L other than transactions in the ordinary course of business and except as otherwise permitted by the provisions of this Final Judgment;

(6) Any acquisition, corporate reorganization, merger, consolidation or combination in any form by either Braniff or Okonite or J&L; provided, however, that this clause (6) shall not preclude (a) the filing of any consolidated income tax return, or (b) any acquisition by J&L as to which the plaintiff has failed to object in writing to LTV and J&L within thirty (30) days after receiving written notice of the material terms of the proposed acquisition;

(7) Any conversion by LTV of LTV-owned stock in Braniff or Okonite into stock having different right.

Nothing in clauses (E)(1) through (E)(7) of this Section IV shall prevent any of the following:

(a) Any transaction the purpose of which is to transfer or otherwise make available to LTV any consideration received in connection with any disposition of assets made pursuant to the divestiture provisions of this Final Judgment;

(b) Any transaction between Ling-Temco-Vought, Inc., and any of its subsidiaries other than Braniff, Okonite, or J&L;

(c) Any transaction (other than a recapitalization or corporate reorganization) solely between Jones & Laughlin Steel Corporation and any of its wholly-owned subsidiaries;

(d) Any transaction solely between Braniff Airways, Incorporated, and any of its wholly-owned subsidiaries;

(e) Any transaction solely between The Okonite Company and any of its wholly-owned subsidiaries; or

(f) With respect to clauses (2), (3), (5), (6) and (7) of this paragraph (E), the consummation of the proposed transactions for LTV (i) to acquire full ownership of Okonite, and (ii) to reorganize Okonite into separate, viable businesses consisting, respectively, of the wire and cable operations, and the carpet operations.

V

(A) LTV is enjoined and restrained, and J&L is enjoined and restrained, if not divested, for ten (10) years from the date of entry of this Final Judgment (1) from acquiring one percent (1%) or more of the voting securities in any company the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars (\$100,000,000), or from acquiring from any one person or group of persons under common control tangible or intangible assets or good will recorded on the books thereof (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars (\$100,000,000), without first obtaining the consent of the plaintiff, or approval of this Court upon LTV's or J&L's establishing, whichever is the acquiring company, by a preponderance of the evidence that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country, and (2) from acquiring, except as contemplated by Section IV(B) of this Final Judgment or upon consent of the plaintiff, any substantial interest in any property to be divested pursuant to Section IV of this Final Judgment, or any interest in a person who acquires any property to be divested pursuant to Section IV of this Final Judgment so long as such person retains such property, and (3) from participating in any joint venture or business combination with any company divested pursuant to Section IV of this Final Judgment, unless plaintiff otherwise consents.

(B) The prohibition contained in subsection (A) of this Section V shall

no longer be in effect (1) if and when LTV should divest itself of all of its interest in J&L, meaning J&L's business substantially as conducted on the date of entry of this Final Judgment, or (2) as to any subsidiary of LTV or J&L, if and when such subsidiary is disposed of to a person who is not a defendant or person who has submitted to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment.

VI

(A) Simultaneously with the consummation of the divestiture of a company pursuant to Section IV of this Final Judgment, LTV shall take such steps as may be necessary to remove from the position as director or officer of such company any person holding any similar position with or having previously been associated with LTV prior to LTV's acquisition of such company, unless plaintiff otherwise consents. Except as provided in this Section VI, nothing in this Final Judgment shall prevent officers and directors of LTV, or officers and directors of companies which it controls, or other nominees of LTV from serving as officers and directors of any of the companies specified in subsection (A) of Section IV of this Final Judgment.

(B) Prior to the divestiture of a company pursuant to Section IV of this Final Judgment, LTV shall grant to the company to be divested an option to terminate any contract between LTV and such company at any time within one (1) year after divestiture, but this subsection (B) shall not relieve any divested company of its obligation to pay LTV any consideration which is due at the time of the termination of any such contract.

VII

Each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in this Section VII as a "defendant") is enjoined and restrained from:

(A) Purchasing, or entering into or adhering to any contract, agreement or understanding to purchase, products, goods or services from any actual or potential supplier on the condition or understanding that purchases by such defendant from such supplier will be based on or conditioned upon such supplier's purchases from such defendant;

(B) Selling, or entering into or adhering to any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such customer will be based on or conditioned upon such customer's or potential customer's purchases from such defendant;

(C) Communicating to such defendant's actual or potential suppliers or contractors that:

(1) In purchasing products, goods or services, defendant will give preference to any supplier or contractor based on or conditioned upon such supplier's or contractor's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(2) In compiling bidder lists or in awarding contracts for projects involving capital expenditures by such defendant, preference will be given to any contractor or supplier based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(3) Such defendant is entitled to receive contracts or orders for products or goods sold or services from such supplier or contractor based on or conditioned upon such defendant's purchases from such supplier or the dollar value of contracts awarded by defendant to such contractor;

(4) In awarding contracts for materials or services, such defendant has or will give preference to any contractor or supplier based upon such supplier's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(D) Comparing or exchanging statistical data with any supplier or contractor to ascertain, facilitate or further any relationship between purchases by such defendant from such supplier or contractor and sales by such defendant to such supplier or contractor;

(E) Engaging in the practice of discussing with any supplier or contractor the relationship between purchases or contract awards by such defendant involving such supplier or contractor, and sales by such defendant to such supplier or contractor;

(F) Preparing or maintaining statistical compilations for any supplier or contractor or any class or grouping of suppliers or contractors which compare purchases by such defendant from suppliers or the dollar value of contracts awarded by defendant to contractors with purchases by such suppliers from such defendant or the dollar value of contracts awarded to such defendant by such contractors;

(G) Issuing, to personnel having responsibilities for purchasing or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases from such defendant or which identify companies and the dollar value of contracts they have awarded to such defendant or which specify or recommend that purchases be made from any such customers or that contracts be awarded to such companies;

(H) Referring compilations of bids received for contracts for projects involving capital expenditures by such defendant to any department or unit having sales responsibilities for decision or recommendation by such department or unit as to the identity of the firm or firms to whom contracts for such projects should be awarded.

VIII

Each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in this Section VIII as a "defendant") is ordered and directed to:

(A) Refrain from continuing or establishing any office or position whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing policies, arrangements, or practices;

(B) Withdraw from all personnel with sales responsibilities any lists or compilations which may be in existence described in subsections (F) and (H) of Section VII above, and withdraw from all personnel with purchasing or contracting responsibilities any lists or compilations which may be in existence described in subsections (F) and (G) of Section VII above;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to, or participating in the activities of, or contributing anything of value to any association whose activities, programs or objectives are in whole or in part to promote trade relations involving reciprocal purchasing policies, arrangements or practices;

(D) Issue within sixty (60) days to each of its officers and employees having sales, purchasing or contracting responsibilities a policy directive stating that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases by such defendant from such supplier or potential supplier will be based on or conditioned upon such supplier's purchases from such defendant;

(2) All officers and employees are prohibited from selling, entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon such defendant's past or future sales to each customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by such defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, on the condition or understanding that such solicitations or such awards by such defendant will be based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such contractor or supplier to such defendant;

(4) Violation of the policy directive may subject any offending officer or employee to dismissal from his employment and to liability for violation

of this Final Judgment;

(E) Furnish to each supplier from whom such defendant has purchased, and to each customer to whom such defendant has sold, more than \$100,000 of products, goods and services (or \$50,000 in the case of a defendant that maintained and has available such data on a company-wide cumulative basis) during 1967 or 1968 (or during the most recent year for which such data is available in the case of a person who becomes bound by the provisions hereof pursuant to subsection (A)(2) of Section X of this Final Judgment), a statement accurately and completely describing the provisions contained in Sections VII and VIII of this Final Judgment, or a copy thereof, and advise each such supplier and customer, by written notice satisfactory to the Anti-trust Division of the United States Department of Justice, that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases by such defendant from such supplier or potential supplier will be based on or conditioned upon such supplier's purchases from such defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon such defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by such defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, upon the condition or understanding that such solicitations or such awards by such defendant will be based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such contractor or supplier to such defendant.

IX

Nothing in Sections VII or VIII of this Final Judgment:

(A) Shall prohibit any defendant or any person who submits to the jurisdiction of this Court for purposes of being bound by the provisions of this Final Judgment:

(1) From entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(2) From contracting for construction work or for the manufacture or installation of equipment and facilities for its own use and not for resale

on the condition that its products, goods or services are to be used in the performance of such contracts; or

(3) From complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

(B) Shall apply to any transactions engaged in by a foreign subsidiary of a defendant or by a foreign subsidiary of any person who submits to the jurisdiction of this Court for purposes of being bound by the provisions of this Final Judgment, if any such foreign subsidiary is not controlled by such defendant or person.

X

(A) Each defendant is further ordered and directed (1) within sixty (60) days from the date of entry hereof to cause each of its present domestic subsidiaries to file with the Court its submission to the jurisdiction of the Court and its consent to be bound by the provisions of this Final Judgment until the expiration of ten (10) years from the date of entry of this Final Judgment, and (2) within sixty (60) days from the date of acquiring or organizing any additional domestic subsidiary, to cause such domestic subsidiary to file its submission to the jurisdiction of the Court and its consent to be bound by the provisions of this Final Judgment until the expiration of ten (10) years from the date of entry of this Final Judgment.

(B) Compliance with subsection (A) of this Section X shall not be required with respect to any subsidiary the assets of which are recorded on its books (net of related valuation reserves recorded on such books) in an amount not in excess of Ten Million Dollars (\$10,000,000), or by any presently-owned subsidiary which is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission.

XI

The preliminary injunction entered herein on April 14, 1969, having provided that it should continue until "the final adjudication" of this action, and the Court having intended thereby to mean continuation only until the entry of a Final Judgment in this action, including a Final Judgment entered on consent, now therefore the said preliminary injunction is hereby dissolved, including the directive in paragraph 4 thereof requiring the placing of LTV-owned common stock of J&L in a voting trust.

XII

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in

this Section XII as a "defendant") shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such defendant's principal office, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section XII of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment, and any person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of 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, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

This Final Judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein.