

by usual and customary means, the availability of Ziehm. Defendants shall inform any person making inquiry regarding a possible purchase of Ziehm that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Ziehm customarily provided in a due-diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide each prospective Acquirer and the United States information relating to the personnel involved in the production, operation, development, and sale of Ziehm's C-arm products to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, or sale of Ziehm's C-arms. For a period of eighteen (18) months from the date of the divestiture of the Ziehm business, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer of the Ziehm business, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of Ziehm to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

E. Defendants shall warrant to the Acquirer of Ziehm that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Ziehm.

G. Defendants shall warrant to the Acquirer of Ziehm that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Ziehm, defendants

will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Ziehm.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section VI, or by trustee appointed pursuant to Section VII, of this Final Judgment, shall include the entire Ziehm business as defined in Section II.F, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Ziehm can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of C-arms in the United States. The divestiture, whether pursuant to section VI or section VII of this Final Judgment,

1. Shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of C-arms in the United States; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

#### **VII. Appointment of Trustee To Divest Ziehm**

A. If defendants have not divested Ziehm within the time period specified in Section VI.A, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Ziehm.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Ziehm. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable efforts by the trustee, subject to the provisions of sections VI, VII, and VIII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section VII.D of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VIII.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Ziehm and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 month, 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 interest in Ziehm, and shall describe in detail each contact