



CT - 1996 / 001 – Doc # 223

IN THE MATTER of an application by the Director of Investigation and Research for orders pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of the merger whereby Dennis Washington and K & K Enterprises acquired a significant interest in, and control of, Seaspac International Ltd.;

AND IN THE MATTER of the merger whereby Dennis Washington acquired Norsk Pacific Steamship Company, Limited;

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Dennis Washington
K & K Enterprises
Seaspac International Ltd.
Genstar Capital Corporation
TD Capital Group Ltd.
Coal Island Ltd.
314873 B.C. Ltd.
C.H. Cates and Sons Ltd.
Management Shareholders
Preference Shareholders
Norsk Pacific Steamship Company, Limited

Respondents



CONSENT ORDER

Date of Hearing:

January 29, 1997

Members:

McKeown J. (presiding)
Frank Roseman
Lorne R. Bolton

Counsel for the Applicant:

Director of Investigation and Research

William J. Miller
John S. Tyhurst
Elspeth A. Gullen

Counsel for the Respondents:

Dennis Washington
K & K Enterprises
C.H. Cates and Sons Ltd.
Norsk Pacific Steamship Company, Limited
Seaspan International Ltd.

Nils E. Daugulis
Douglas G. Morrison
Sharon Dos Remedios
George D. Burke

Genstar Capital Corporation

Calvin S. Goldman, Q.C.
Robyn M. Bell

TD Capital Group Ltd.

Kent E. Thomson
Linda S. Abrams

Bradley P. Martin

COMPETITION TRIBUNAL

CONSENT ORDER

Director of Investigation and Research

v.

Dennis Washington et al.

FURTHER TO the application of the Director of Investigation and Research (the "Director") pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") and further to the second amended notice of application, filed December 17, 1996, for a consent order directing the divestiture of certain assets as provided for in the draft consent order and other remedies specified in the draft consent order;

AND ON CONSIDERING the pleadings herein, the consent order impact statement and consent of the parties dated January 12, 1997 filed herein;

AND ON CONSIDERING THAT the Director and the respondents, Dennis Washington, K & K Enterprises, Seaspan International Ltd., C.H. Cates and Sons Ltd. and Norsk Pacific Steamship Company, Limited (the "respondents") have reached a settlement which is reflected in the draft consent order;

AND ON CONSIDERING THAT the Director declares herself satisfied that, on the basis of

the considerations outlined in the consent order impact statement, the remedies provided herein, if ordered, will be sufficient to remove the substantial lessening or prevention of competition in the ship berthing and barging markets described in the second amended notice of application;

AND IT BEING UNDERSTOOD by the parties hereto that nothing in this order shall be taken as an admission by the respondents of any facts or law which would support the allegation that the acquisitions, as described in the pleadings, prevent or lessen, or are likely to prevent or lessen, competition substantially;

AND IT BEING UNDERSTOOD BY THE PARTIES HERETO THAT the Director has alleged certain material facts, and the respondents do not agree with all the facts alleged but do not contest the statement of grounds and material facts and consent order impact statement for the purposes of this application and any proceeding initiated by the Director or the respondents relating to this consent order only, including an application to vary or rescind under section 106 of the Act;

AND ON HEARING counsel for the parties in respect of this application;

AND FOR THE REASONS issued on this date under separate cover;

THE TRIBUNAL ORDERS THAT:

Definitions

1. For the purposes of this order the following definitions shall apply:

- (a) "Cates" means the respondent C.H. Cates and Sons Ltd.;
- (b) "identified assets" means the ship berthing assets, Seaspan barging assets, and Norsk barging assets;
- (c) "K & K" means the respondent K & K Enterprises;
- (d) "Norsk" means either the respondent Norsk Pacific Steamship Company, Limited or Norsk Pacific Steamship Canada Ltd., as applicable;
- (e) "Norsk barging assets" means those assets and interests owned by Norsk and identified in schedule D and schedule E hereto;
- (f) "Norsk chip barge assets" means those assets and interests owned by Norsk and identified in schedule D hereto;
- (g) "Norsk covered barge assets" means those assets and interests owned by Norsk and identified in schedule E hereto;
- (h) "person" includes a natural person, partnership and body corporate;
- (i) "Seaspan" means the respondent Seaspan International Ltd.;

- (j) "Seaspan barging assets" means those assets and interests owned by Seaspan identified in schedule B and schedule C hereto;
- (k) "Seaspan chip barge assets" means those assets and interests owned by Seaspan identified in schedule B hereto;
- (l) "Seaspan covered barge assets" means those assets and interests owned by Seaspan identified in schedule C hereto;
- (m) "ship berthing assets" means those assets and interests identified in schedule A hereto;
- (n) "trustee" means the person appointed as trustee pursuant to paragraph 15 hereof to effect a sale of Cates, the Norsk covered barge assets and the Norsk chip barge assets, or any of them;
- (o) "trustee sale" means the sale or sales by the trustee referred to in paragraph 15 hereof;
- (p) "Washington" means the respondent Dennis Washington;
- (q) "Washington Group" means Washington, K & K, Cates, Seaspan and Norsk.

Any reference in subparagraphs 1(f), (g), (k), (l) and (m) to assets shall include all appurtenances and equipment as are customarily included in the sale of such assets and normally used in their day-to-day operation.

Application

2. The provisions of this order shall apply to each of Washington, Cates, Seaspán, K & K and Norsk, whether natural persons or corporations, and to:

(a) each division, subsidiary or other person controlled by them and each officer, director, employee, agent or other person acting for or on behalf of any of them with respect to any of the matters referred to in this order;

(b) each of their respective successors and assigns, and all other persons acting in concert or participating with any of them with respect to the matters referred to in this order who shall have received actual notice of this order; and

(c) the trustee.

Preservation of Assets and Interests

3. In order to preserve the identified assets and Cates for divestiture, Washington and K & K shall cause Cates, Seaspán and Norsk, and Cates, Seaspán and Norsk shall use reasonable best efforts, as applicable:

(a) to maintain and hold the ship berthing assets in good condition and repair in accordance with best industry practices until they have been divested according to the procedures established in this order, or the divestiture of Cates becomes required under the provisions of this order, as the case may be;

(b) to maintain and hold the Seaspan barging assets in good condition and repair in accordance with best industry practices until they have been divested according to the procedures established in this order, or the divestiture of the Norsk barging assets becomes required under the provisions of this order, as the case may be;

(c) to maintain and hold the Norsk barging assets in good condition and repair in accordance with best industry practices until the Seaspan barging assets have been divested pursuant to this order or the divestiture of the Norsk barging assets is completed pursuant to this order, as the case may be; and

(d) to maintain Cates at at least the same standards of competition and operation that existed prior to the date of the application until the ship berthing assets have been divested or the divestiture of Cates is completed pursuant to this order, as the case may be. Until either of those divestitures has been completed, Washington and Cates shall not:

(i) permit any deterioration in such competitive standards of Cates;

(ii) cause the termination of employment of key personnel of Cates, except termination for cause; or

(iii) cause any disposition of the assets of Cates other than in the ordinary course of business or pursuant to any order of the Tribunal.

4. The Washington Group shall refrain from taking any action that would unreasonably, within the intent of this order, jeopardize the sale of the identified assets or Cates as required by this order.

5. Nothing in this order shall restrict the Washington Group from:

(a) providing for and maintaining sufficient working capital to permit Cates to continue to operate as a viable on-going business; and

(b) providing for and authorizing all necessary capital improvements to Cates required to enable it to continue to operate up to the standards referred to in paragraph 3(d).

Divestiture of the Ship Berthing Assets and Seaspam Barging Assets

6. The Washington Group, as applicable, shall promptly commence their efforts to divest and shall complete divestiture of the ship berthing assets and Seaspam barging assets within 12 months from the date of this order in accordance with the procedure for divestiture set out in this order.

7. Washington may at his discretion:

(a) vary, with a view to promptly effecting a sale, the assets and interests listed in schedules A, B and C, to provide a greater quantity or quality of asset, by including a group of assets which are of lesser age, better condition or of greater relative horsepower, as the case may be, or by including any of the assets listed in schedules D and E, or by including other assets; or

(b) in lieu of a divestiture of the ship berthing assets, divest Cates; or

(c) in lieu of a divestiture of the Seaspan chip barge assets, divest the Norsk chip barge assets; or

(d) in lieu of a divestiture of the Seaspan covered barge assets, divest the Norsk covered barge assets.

Divestiture of the Norsk Barging Assets

8. If the divestiture of the Seaspan covered barge assets pursuant to paragraph 6 is not completed within the time specified therefor, the Washington Group, as applicable, shall proceed to divest the Norsk covered barge assets in accordance with the procedure for the trustee sale set out in this order.

9. If the divestiture of the Seaspan chip barge assets pursuant to paragraph 6 is not completed within the time specified therefor, the Washington Group, as applicable, shall proceed

to divest the Norsk chip barge assets in accordance with the procedure for the trustee sale set out in this order.

Divestiture of Cates

10. If the divestiture of the ship berthing assets pursuant to paragraph 6 is not completed within the time specified therefor, Washington shall proceed to divest Cates in accordance with the procedure for the trustee sale set out in this order.

Divestiture Procedure

11. Divestiture of the ship berthing assets and Seaspan barging assets or, in the case of a trustee sale pursuant to this order, divestiture of Cates and the Norsk barging assets, or either of them, (collectively, in paragraphs 11 and 12, referred to as the "divested assets") shall be completed on the following terms:

(a) by sale, assignment of lease or sublease, assignment of contract, or other disposition necessary to ensure that, by completion of the divestiture, the Washington Group have, directly or indirectly, no remaining right, title or interest in the divested assets inconsistent with the intent of this order;

(b) by way of disposition of the divested assets for use as a going concern, respectively;

(c) to an arm's length purchaser or purchasers who shall meet the following objective criteria:

(i) in the case of the ship berthing assets (or Cates, in the event of a trustee sale), shall effect the purchase with the expressed intention of carrying on the business of ship berthing in Burrard Inlet to compete effectively with Cates or Seaspan, as the case may be;

(ii) in the case of the Seaspan barging assets (or the Norsk barging assets, in the event of a trustee sale), shall effect the purchase with the expressed intention of using the assets to compete effectively as a provider of barging services on British Columbia domestic routes;

(iii) in any case, shall have the managerial, operational and financial capability to operate and compete effectively in the markets in question;

(iv) shall not be, directly or indirectly, or shall not be proposed to be, a of services historically provided in connection with or by the divested assets unless that purchaser intends to use those assets to make the relevant barging or ship berthing services generally available to third parties; and

(v) shall purchase the divested assets as a package, in the case of a divestiture by the Washington Group, consisting of not less than any one of the Seaspan chip

barge assets, the Seaspan covered barge assets, or the ship berthing assets; and, in the case of a trustee sale, consisting of not less than any one of Cates, the Norsk chip barge assets, or the Norsk covered barge assets. For greater certainty, a purchaser may bid upon, to the extent they are available pursuant to a divestiture under this order, any combination of the Seaspan chip barge assets, the Seaspan covered barge assets, the ship berthing assets, Cates, the Norsk chip barge assets, or the Norsk covered barge assets;

(d) by way of a commercially reasonable public tender, bidding or other procedure instituted in a manner to allow a fair opportunity to any bona fide prospective purchasers who receive notice of the prospective divestiture to make an offer to acquire the divested assets; and

(e) otherwise on usual commercial terms for transactions of the size and nature of those contemplated in this order.

12. Any person making a bona fide inquiry of the relevant seller or its agent regarding the possible purchase by that person or its principal of the divested assets offered for sale shall be notified that the sale is being made pursuant to this order and provided with a copy of this order. Any bona fide prospective purchaser shall be furnished, subject to the execution of a customary confidentiality agreement, with all pertinent information regarding the assets or interests being divested; such information shall be provided to the Director on request. Any bona fide prospective purchaser shall, subject to an appropriate confidentiality agreement, be permitted to make such inspection of the assets and of all financial, operational or other documents and

information as may be relevant to the divestiture, except for all documents which have been or shall be made the subject of an order of confidentiality of this Tribunal.

13. The Washington Group, as applicable, shall use their reasonable best efforts to accomplish the divestiture within the time period specified.

14. The Washington Group, as applicable, shall advise the Director every 30 days in writing of the progress of their efforts to accomplish the divestiture, including a description of contacts or negotiations and the identity of all parties contacted and prospective purchasers who have come forward, all with reasonable detail.

Trustee Sale

15. If the divestiture of the ship berthing assets or the Seaspan chip barge assets or the Seaspan covered barge assets is not completed within 12 months from the date of this order, the Tribunal, on the application of the Director, after affording the Washington Group a reasonable opportunity to be heard with respect to the identity of the trustee, which opportunity in no way restricts rights otherwise given under this order, shall appoint a trustee to be nominated by the Director for the sale of Cates in the event that the ship berthing assets are not divested, for the sale of the Norsk covered barge assets in the event that the Seaspan covered barge assets are not divested, and for the sale of the Norsk chip barge assets in the event that the Seaspan chip barge assets are not divested, (the "assets"), as the case may be, on the following terms:

- (a) the relevant assets and Cates, or either of them, shall be divested by the trustee within 6 months of the trustee's appointment at the most favourable price and on the most favourable terms and conditions available;
- (b) the trustee sale shall be accomplished in accordance with paragraph 11 herein;
- (c) the trustee sale shall be considered to have been completed when the purchaser has signed a binding agreement that has not been the subject of objection permitted by this order;
- (d) after the appointment of the trustee becomes effective, only the trustee shall have the right to effect the divestiture required by this order;
- (e) the trustee shall have the full power and authority to effect the trustee sale and shall use all reasonable efforts to accomplish it;
- (f) the Washington Group, as applicable, shall use their reasonable best efforts to assist the trustee in accomplishing the trustee sale. In connection therewith, the trustee shall have full and complete access as is reasonable in the circumstances, subject to an appropriate confidentiality agreement, to the personnel, books, records and facilities of Cates, or Norsk, as applicable, who shall take no action to interfere with or impede the trustee's accomplishment of the trustee sale;

(g) after appointment, the trustee shall, every 30 days, file reports with the Director and the Washington Group, setting forth the trustee's efforts to accomplish the trustee sale;

(h) all expenses reasonably and properly incurred by the trustee in the course of the trustee sale shall be paid by Washington or his nominee and the proceeds of the trustee sale paid to the Washington Group, as applicable; and

(i) the trustee shall have such other powers as the Tribunal shall deem appropriate.

16. The Washington Group shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance, gross misconduct or breach of this order and any such objection shall be made in accordance with the provisions of paragraph 23.

17. If the trustee has not accomplished the required divestiture within 90 days of appointment, the trustee shall thereupon promptly file with the Tribunal on a confidential basis a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture or disposition has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the Director and the Washington Group, who shall each have the right to be heard by and to make additional recommendations to the Tribunal consistent with the purpose of the divestiture. The Tribunal may thereafter make such orders as it shall deem appropriate in order to

carry out the divestiture, which may, if necessary, include extending the term of the trustee's appointment.

General Provisions Regarding Divestiture

18. Following a divestiture or trustee sale, none of the Washington Group nor any of its agents or representatives shall make further direct or indirect use of the assets or interests divested or acquire same for a period of 10 years, but nothing in this paragraph shall preclude:

(a) the exchange or sale of services or like arrangements of a customary nature acceptable to the new owner; or

(b) a repurchase by the Washington Group for use outside the relevant markets:

(i) if the business associated with the divested assets or a divested Cates has failed or is likely to fail within the meaning of those terms in the Act; or

(ii) where the new owner has made an independent decision for bona fide business reasons to remove, and removes, the ship berthing assets or the assets of a divested Cates from the Port of Vancouver to operate them elsewhere,

except that any such purchase by the Washington Group shall be subject to the provisions of the Act.

19. To the extent required by a purchaser of the ship berthing assets, Seaspan or Cates shall provide reasonable assistance, not to exceed a period of 6 months, to such purchaser with respect

to crew training necessary to provide competent crews to man the vessels to be used in ship berthing. Such assistance shall be subject to the purchaser agreeing to waive any claims against Washington, Seaspan and Cates arising out of such assistance and to pay the reasonable costs incurred in providing such assistance.

Notification

20. The Washington Group or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the Director and, in the case of a trustee sale, the Washington Group, and any person who has a contract for the purchase of services related to the Seaspan barging assets or the Norsk barging assets and identified in schedules B, D or E to this order, of the identity of the purchaser in any proposed divestiture required by this order. The notice to the Director and, in the case of a trustee sale, to the Washington Group, 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 or expressed an interest or desire to acquire any of the assets to be divested together with complete details of the offer or expression of interest.

21. Within 7 days after receipt of the notice referred to in paragraph 20, the Director and, in the case of a trustee sale, the Washington Group, may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. The Washington Group or the trustee shall furnish the additional information within 7 days of the receipt of the request unless the Director agrees in writing to extend the time.

22. Within 15 days after receipt of the notice in paragraph 20 or, in the case of the Director, if

additional information is requested by the Director within the time specified in paragraph 21, within 15 days after receipt of the additional information, the Director or any person notified pursuant to paragraph 20 shall notify the Washington Group and the trustee, if there is one, in writing of any objections they have to the proposed divestiture on the ground that it does not conform to the terms of this order and give reasonably detailed reasons therefor.

23. If the Director or any person notified pursuant to paragraph 20 fails to object within the period specified in accordance with paragraph 22, or if the Director notifies the Washington Group and the trustee, if there is one, in writing that there is no objection, then the divestiture may be completed, subject only to the limited right of the Washington Group to object to the sale on the grounds set out in paragraph 16. Upon such objection by the Washington Group, the proposed divestiture shall not be completed unless approved by the Tribunal.

24. If the Director or any person notified pursuant to paragraph 20 objects pursuant to paragraph 22, they may apply to the Tribunal for an order that the proposed divestiture not be completed.

Financing

25. None of the Washington Group shall provide financing for all or any part of any divestiture under this order which would permit any of the Washington Group to influence or control the operation of the assets after the divestiture (such as through a right of repossession) without the prior written consent of the Director.

Compliance Inspection

26. The Washington Group shall, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, from time to time permit representatives of the Director, including counsel, consultants and other persons retained by the Director (which representatives shall be subject to an appropriate confidentiality arrangement whether by statute or contract, as applicable), upon the written request of the Director and on 7 days notice to the Washington Group, as applicable:

(a) to have access during office hours to inspect all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Washington Group, as applicable, which may have counsel present, relating to any matters contained in the order; and

(b) subject to the reasonable convenience of the Washington Group, as applicable, and without restraint or interference from them to interview their officers, employees and agents, who may have their respective counsel and counsel for the Washington Group, as applicable, present regarding any such matters.

27. Upon the written request of the Director, the Washington Group, as applicable, shall submit written reports, under oath if requested, with respect to any of the matters contained in this order.

General

28. No information or documents obtained by the means provided in paragraphs 26 and 27 herein shall be divulged by any representative of the Director to any person except in the course of legal proceedings to which the Director and any of the respondents are a party, and only to the extent such information needs to be divulged for the purpose of securing compliance with this order, or as otherwise required by law.

29. Jurisdiction shall be retained by the Tribunal for the purpose of any application by the Director, the Washington Group or the trustee to rescind or vary any of the provisions of this order in the event of a change in circumstances or otherwise.

30. The Interim Consent Order, dated April 19, 1996, as amended, is hereby rescinded as of the date of the making of this order.

31. The application of the Director commenced by notice of application filed March 1, 1996 and amended by an amended notice of application filed July 16, 1996, and by a second amended notice of application filed December 17, 1996, is otherwise hereby dismissed.

32. Nothing in this order shall require the variation, alteration or amendment of the present provisions of those agreements identified in schedules D and E hereto, except to the extent necessary to permit the assignment to a new purchaser of such contracts for the purposes of any divestiture of the assets employed in those contracts required under this order.

Notice

33. When notice is required to be given pursuant to any of the terms of this order, it shall be deemed given if dispatched by registered letter and if so dispatched shall be deemed to have been given 3 days thereafter.

Interpretation

34. In the event of a dispute as to the interpretation of this order, the Director, the trustee or Washington, or his nominee, shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this order. Nothing in this paragraph is intended to restrict the power of the Tribunal to rescind or vary this order pursuant to paragraph 29 hereof or section 106 of the Act or take other action authorized by the Act or the *Competition Tribunal Act*.

DATED at Ottawa, this 29th day of January, 1997.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W.P. McKeown

W.P. McKeown

SCHEDULE A

Ship Berthing Assets

"Ship berthing assets" means:

- (a) two tractor tugs certified as being of approximately 2400 or greater BHP;
- (b) three conventional tugs, one of which is 1800 BHP; and
- (c) one line boat

which Washington may select from the following ship berthing tugs which will be, at the time of sale, of the standard of the ship berthing tugs used in Burrard Inlet and as recognized and accepted by the marine industry as ship berthing vessels:

<u>Name of Tug</u>	<u>Official Number</u>	<u>Horsepower</u>	<u>Configuration</u>
Charles H. Cates I	807889	2400 BHP	Tractor/Z-Peller
Charles H. Cates II	803541	2400 BHP	Tractor/Z-Peller
Charles H. Cates III	814182	2400 BHP	Tractor/Z-Peller
Charles H. Cates IV	369221	800 BHP	Twin Screw/Kort Nozzle
Charles H. Cates V	391885	1800 BHP	Twin Screw/Kort Nozzle
Charles H. Cates VI	395353	1800 BHP	Twin Screw/Kort Nozzle
Charles H. Cates VII	383382	1800 BHP	Twin Screw/Kort Nozzle
Charles H. Cates VIII	395948	1800 BHP	Twin Screw/Kort Nozzle
Charles H. Cates X	811176	1450 BHP	Tractor/Z-Peller
Charles H. Cates XVI	189260	700 BHP	Open Wheel
Charles H. Cates XVIII	346375	1000 BHP	Twin Screw/Kort Nozzle
Charles H. Cates XX	330470	700 BHP	Twin Screw/Kort Nozzle
Seaspan Falcon	816602	3000 BHP	Tractor/Z-Peller
Seaspan Hawk	816601	3000 BHP	Tractor/Z-Peller
Seaspan Corsair	370217	1800 BHP	Twin Screw/Kort Nozzle
Seaspan Scout	816475	1800 BHP	Twin Screw/Kort Nozzle
Seaspan Guardian	369175	1550 BHP	Twin Screw/Kort Nozzle
Seaspan Defender	368711	1550 BHP	Twin Screw/Kort Nozzle
Seaspan Trojan	322313	1200 BHP	Single Screw/Open Wheel
Seaspan Prince	322492	1000 BHP	Single Screw/Kort Nozzle
Seaspan Charger	331309	1000 BHP	Twin Screw/Kort Nozzle
Seaspan Stormer	323204	750 BHP	Twin Screw/Kort Nozzle

At the request of the purchaser the ship berthing tugs listed below may also form part of the aforementioned list:

Seaspan Mariner*	311797	1700 BHP	Twin Screw/Kort Nozzle
Seaspan Venture*	330844	1450 BHP	Single Screw/Kort Nozzle
Seaspan Tempest*	314838	700 BHP	Single Screw/Open Wheel

* Currently inactive

SCHEDULE B

Seaspan Chip Barge Assets

"Seaspan chip barge assets" means:

- (a) six Seaspan chip barges, described in the table below;
- (b) an option:
 - (i) to purchase, for a period of up to one year from and including the date of purchase of the six barges referred to in (a) above, on normal and reasonable commercial terms, up to four additional Seaspan chip barges of substantially equivalent age, capacity and condition and in similar service as the six barges referred to in (a) above;
 - (ii) with, if the purchaser chooses to subcontract the barges to remain in Seaspan's service, the associated barge hire revenue, subject to the ability of the purchaser to remove such barge or barges from Seaspan's service on reasonable commercial notice; and
 - (iii) at a purchase price to be determined between Seaspan and the purchaser, the barge asset value component of which shall be agreed upon by the parties or be fixed by a competent marine surveyor, ship broker or other similarly qualified person mutually appointed by Seaspan and the purchaser or should they fail to agree on the person to be appointed, such barge asset value component of the said purchase price shall be determined by arbitration pursuant to the rules of the Vancouver Maritime Arbitrators Association.
- (c) the business described in paragraph 33 of the contract made between Seaspan International Ltd. and Avenor Inc., dated August 1, 1995; and
- (d) a tug, more properly described as the "Seaspan Sentry" (official number 320254).

<u>Name of Barge</u>	<u>Official Number</u>	<u>Type</u>
Seaspan 383	320297	chip barge
Seaspan 392	322469	chip barge
Seaspan 394	323249	chip barge
Seaspan 395	323291	chip barge
Seaspan 400	325653	chip barge
Seaspan 408	326494	chip barge

SCHEDULE C

Seaspan Covered Barge Assets

"Seaspan covered barge assets" means either the Seaspan 618 and Seaspan 619 or the Seaspan 610 and Seaspan 616 (all of which are described in the table below) as selected by Washington.

<u>Name of Barge</u>	<u>Official Number</u>	<u>Type</u>
Seaspan 618	314844	covered barge
Seaspan 619	314859	covered barge
Seaspan 610	323846	covered barge
Seaspan 616	322476	covered barge

SCHEDULE D

Norsk Chip Barge Assets

"Norsk chip barge assets" means:

- (a) twelve chip barges described in the table below; and
- (b) the Chip Barge Transportation Contract between Norsk and Fletcher Challenge Canada Limited, dated March 31, 1979 and amended March 31, 1994.

<u>Name of Barge</u>	<u>Official Number</u>	<u>Type</u>
Norsk Pacific 11	392223	chip barge
Norsk Pacific 12	392743	chip barge
Norsk Pacific 13	392990	chip barge
Norsk Pacific 14	393358	chip barge
Norsk Pacific 15	392783	chip barge
Norsk Pacific 16	392979	chip barge
Norsk Pacific 17	800201	chip barge
Norsk Pacific 18	800202	chip barge
Norsk Pacific 19	800203	chip barge
Norsk Pacific 20	801004	chip barge
Norsk Pacific 21	801052	chip barge
Norsk Pacific 22	801523	chip barge

SCHEDULE E

Norsk Covered Barge Assets

"Norsk covered barge assets" means:

- (a) the nine covered barges described in the table below;
- (b) the Covered Barge Towing Services Agreement (Domestic) between Fletcher Challenge Canada Sales Inc. and Norsk dated April 1, 1995; and
- (c) two tugs, more properly described as the "Texada Crown" (official number 323577) and the "Comox Crown" (official number 348790).

<u>Name of Barge</u>	<u>Official Number</u>	<u>Type</u>
Norsk Pacific 10	810141	covered barge
Norsk Pacific 61	328960	covered barge
Norsk Pacific 62	810501	covered barge
Norsk Pacific 63	810502	covered barge
Norsk Pacific 64	815115	covered barge
Norsk Pacific 65	188354	covered barge
Norsk Pacific 66	189270	covered barge
Norsk Pacific 67*	812363	covered barge
Norsk Pacific 68	818622	covered barge

* Not in use in Fletcher Challenge service; occasionally chartered