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99 MAY 26 AM 8:32 UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

JACKSONVILLE DIVISION

99 MAY 27 AM 11:07

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLORIDA ROCK INDUSTRIES, INC.;
HARPER BROS., INC.;
COMMERCIAL TESTING, INC.; and
DANIEL R. HARPER,

Defendants.

Civil No.: 99-516-CIV-J-20A

Filed:

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

FILED

~~PROPOSED~~
FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, and defendants, Florida Rock Industries, Inc. ("Florida Rock"), Harper Bros., Inc. ("Harper Bros."), Commercial Testing, Inc. ("Testing"), and Daniel R. Harper, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein and that this Final Judgment shall settle all claims made by the United States in its Complaint filed on May 26, 1999;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

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AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate and silica sand in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 480 in Florida;

AND WHEREAS, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

AND WHEREAS, the United States currently believes that entry of this Final Judgment is in the public interest;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida

corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida, and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing

material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) all rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) all intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros.' Palmdale, Glades County, Florida

sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand, inclusive of:

- (1) all rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Palmdale Sand Mine; and
- (2) all intangible assets, including silica sand reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

L. “Reserve Assets” means the aggregate reserves leased by Florida Rock located in Lee County, Florida, identified as Florida Rock Properties, Inc.’s properties in the following locations in Lee County, Florida:

- (1) West Mining Parcel: The east ½ of Section 33 and the south 1500 feet of the southeast 1/4 of Section 28, Township 45 South, Range 26 East, Lee County, Florida (see Area 1 of attached map);
- (2) North Mining Parcel: The south 1500 feet of Section 27, Township 45 South, Range 26 East and the northwest 1/4 of Section 34, Township 45 South, Range 26 East, Lee County, Florida (see Area 2 of attached map); and

(3) an easement through the north 959.405 feet of Section 4, Township 46 South, Range 26 East, Lee County, Florida.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of the Alico Road Quarry and the Palmdale Sand Mine, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURES

A. Florida Rock is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Alico Road Quarry and the Palmdale Sand Mine to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Florida Rock shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Florida Rock promptly shall make known, by usual and customary means, the availability of the Alico Road

Quarry and the Palmdale Sand Mine. Florida Rock shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Florida Rock shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Florida Rock shall make available such information to the United States at the same time that such information is made available to any other person.

D. Florida Rock shall not interfere with any negotiations by any purchaser to employ any Florida Rock or Harper Bros. employee who works at, or whose principal responsibility concerns any silica sand or aggregate and stone products business that is part of the Palmdale Sand Mine or the Alico Road Quarry assets.

E. As customarily provided as part of a due diligence process, Florida Rock shall permit prospective purchasers of the Alico Road Quarry and the Palmdale Sand Mine to have access to personnel and to make such inspection of the these assets; 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.

F. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that each asset will be operational on the date of sale.

G. Florida Rock shall not take any action, direct or indirect, that will impede in any way the operation of the Alico Road Quarry or the Palmdale Sand Mine.

H. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road

Quarry and the Palmdale Sand Mine that there are no known material defects in the environmental, zoning, or other permits pertaining to the operation of these assets, and that Florida Rock with respect to the Alico Road Quarry and the Palmdale Sand Mine will not undertake, directly or indirectly, following the divestiture of these assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by Florida Rock or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Alico Road Quarry and the Palmdale Sand Mine and be accomplished by selling or otherwise conveying each asset, or such other assets included by the Trustee under Section V, to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate and stone products and silica sand. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States' sole satisfaction that the purchaser: (1) has the capability and intent of competing effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; and (3) is not hindered by the terms of any agreement between the purchaser and Florida Rock which gives Florida Rock the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to effectively compete in Southwest Florida.

V.

APPOINTMENT OF TRUSTEE

FLR
W.D.
E.J.H. A. In the event that Florida Rock has not divested the Alico Road Quarry or the Palmdale Sand Mine within the time specified in Section IV^A of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States ^{and approved by the Court} to effect the divestiture of each such asset not sold. If the Alico Road Quarry has not been sold, the trustee shall have the right, in its sole discretion, to include the Reserve Assets in the sale of the Alico Road Quarry.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Florida Rock any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Florida Rock shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Florida Rock 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 VI of this Final

Judgment.

C. The trustee shall serve at the cost and expense of Florida Rock, on such terms and conditions as the Court may prescribe, 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 Florida Rock and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the assets to be divested 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.

D. Florida Rock shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. 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 businesses to be divested, and Florida Rock shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidential assurances. Florida Rock shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final

Judgment; provided, however, that 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, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court 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 has not been accomplished, and (3) the trustee's recommendations; provided, however, that 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. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

Not
Page 11
G. The conduct or actions of the trustee shall be subject to review by the Court upon the application of any party hereto.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any

proposed divestiture pursuant to Sections IV or V of this Final Judgment, Florida Rock or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify Florida Rock. The notice 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 to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from Florida Rock, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Florida Rock and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Florida Rock, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to Florida Rock and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Florida Rock and the trustee that it does not object, then the divestiture may be consummated, subject only to Florida Rock's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section ~~VI~~^V may not be consummated. Upon objection by Florida Rock under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Florida Rock shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Florida Rock has taken to solicit a buyer for any of the assets to be divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Florida Rock, including limitations on information, shall be made within (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Florida Rock shall deliver to the United States an affidavit which describes in detail all actions Florida Rock has taken and all steps Florida Rock has implemented on an on-going basis to preserve the Alico Road Quarry and the Palmdale Sand Mine pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Florida Rock's efforts to maintain and operate the Alico Road Quarry and the

Palmdale Sand Mine as active competitors, maintain the management, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations.

Florida Rock shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Florida Rock's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Florida Rock shall preserve all records of all efforts made to preserve the Alico Road Quarry and the Palmdale Sand Mine and to effect the ordered divestitures.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alico Road Quarry and the Palmdale Sand Mine.

IX.

FINANCING

Florida Rock is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X.

COMPLIANCE INSPECTION

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Florida Rock made to its principal offices, shall be permitted:

- (1) Access during office hours of Florida Rock to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Florida Rock, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
- (2) Subject to the reasonable convenience of Florida Rock and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Florida Rock's principal offices, Florida Rock shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise

required by law.

D. If at the time information or documents are furnished by Florida Rock to the United States, Florida Rock represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Florida Rock marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to Florida Rock prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Florida Rock is not a party.

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DONE and ORDERED this 13th day of October 1999, Jacksonville,
Florida.


UNITED STATES DISTRICT JUDGE

etc

Area 2

FRP TRACT

FRP NORTH MINING

FRP NORTHEAST MINING PARCEL

FRP WEST MINING PARCEL

FRP SOUTH MINING PARCEL

GOLDBERG WEST MINING TRACT

GOLDBERG TRACT

Area 1

