

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
c/o Department of Justice
Washington, D.C. 20530
Plaintiff

v.

BEAZER PLC
1 Grosvenor Place
London, England SW1X 7JH
United Kingdom
Defendant

Civil Action No. 93-1881

8/14/92

COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF PREMERGER REPORTING
REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of a civil penalty against the Defendant named herein, and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under section 7A of the Clayton Act, 15 U.S.C. § 18a, also known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act" or "Act") to recover a civil penalty for violation of the HSR Act.

2. This Court has jurisdiction over the defendant and over the subject matter of this action pursuant to Section 7A(g) of the Act, 15 U.S.C. § 18a(g), and 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue in this District is proper by virtue of defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of Final Judgment in this District.

THE DEFENDANT

4. Defendant Beazer plc ("Beazer") is incorporated in the United Kingdom with its principal place of business at 1 Grosvenor Place, London, England SW1X 7JH, United Kingdom. Beazer is a multinational general construction company. At the time of its acquisition of the shares of Koppers Company, Inc. in 1987-1988, Beazer, through a subsidiary was engaged, inter alia, in the aggregates and cement industries in the United States. At all times pertinent to this complaint, Beazer had total assets valued in excess of \$100 million. The defendant at all times pertinent to this proceeding was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Act, 15 U.S.C. § 18a(a)(1).

OTHER ENTITIES

5. Bright Aggregates, Inc. ("Bright") is a wholly-owned, indirect subsidiary of defendant Beazer formed in 1987 for the purpose of making acquisitions of shares of Koppers Company, Inc. ("Koppers"). At all times relevant to this complaint, Bright was a corporation organized under the laws of Delaware with its principal place of business at 2515 McKinney Avenue, Dallas, Texas 75201.

6. Shearson Lehman Brothers Holdings, Inc. ("Shearson") is a Delaware corporation with principal offices in New York, New York. Shearson, through various subsidiaries, is one of the leading full-line securities firms serving United States and foreign securities and commodities markets. SL-Merger Inc. ("SL-Merger") is a wholly-owned subsidiary of Shearson.

7. National Westminster Bank PLC ("NatWest") is a banking company organized under the laws of the United Kingdom. NatWest and its subsidiaries provide an extensive range of banking and financial services, both domestic and international. Speedward Limited ("Speedward") is a wholly-owned subsidiary of NatWest.

8. BNS Partners ("Partners") was a general partnership organized under the laws of Delaware on October 16, 1987. Partners was structured so that Beazer (through Bright) held a 49 percent interest, Shearson (through SL-Merger) held a 46.1 percent interest, and NatWest (through Speedward) held a 4.9 percent interest. At all times relevant to this complaint, Partners did not have a regularly prepared balance sheet, and had

no assets other than shares of Koppers and cash to be used for the acquisition of additional shares of Koppers. Applying the regulations promulgated under the Act, 16 C.F.R. § 800 et seq. ("HSR Rules" or "Rules"), Partners at all times relevant to this complaint had total assets below the Act's \$10 million size-of-person threshold.

9. BNS Inc. was a corporation organized under the laws of Delaware in 1988 for the purpose of launching a tender offer for Koppers. BNS Inc. was structured so that defendant Beazer (through Bright) held a 49 percent interest, Shearson (through SL-Merger) held a 46.1 percent interest, and NatWest (through Speedward) held a 4.9 percent interest. Beazer (through Bright) had the power to appoint 50 percent of BNS Inc.'s directors. At all times relevant to this complaint, Beazer was the ultimate parent entity of BNS Inc. within the meaning of 16 C.F.R. § 801.1(a)(3).

10. Koppers was, at all times pertinent to this proceeding, a Delaware corporation with its principal place of business at Koppers Building, 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219. At the time of the acquisition of its shares by defendant Beazer in 1987-1988, Koppers was engaged principally in the construction materials and services, including aggregates, and chemicals and allied products industries in the United States. At all times pertinent to this complaint, Koppers was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and

Section 7A(a)(1) of the Act, 15 U.S.C. § 18a(a)(1), and had total assets valued in excess of \$100 million.

THE HART-SCOTT-RODINO ACT AND RULES

11. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired ("acquired persons") to file notifications with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also designed to provide the antitrust agencies an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent transactions that may violate the antitrust laws.

12. The notification and waiting period requirements of the Act apply to direct or indirect acquisitions when the Act's size-of-person and commerce tests are met and, inter alia, as a result of such acquisition, an acquiring person would hold an aggregate total amount of the voting securities and assets of an acquired person in excess of \$15 million. 15 U.S.C. § 18a(a)(3).

13. Where an acquisition is subject to the Act, the "ultimate parent entity" of an acquiring person is obligated by the HSR Rules to file premerger notification and report forms with the Federal Trade Commission and the Department of Justice

and to observe the required waiting period before making the acquisition.

14. Section 801.90 of the HSR Rules provides that "[a]ny transaction(s) or other device(s) entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the act shall be disregarded, and the obligation to comply shall be determined by applying the act and these rules to the substance of the transaction." 16 C.F.R. § 801.90.

VIOLATION ALLEGED

15. On or about September 23, 1987, defendant Beazer developed a plan to acquire all of Koppers' voting securities in a series of acquisitions through several entities.

16. Between September 28, 1987, and October 16, 1987, defendant Beazer, through Bright, acquired approximately 343,400 shares of Koppers' voting securities, with a value of approximately \$14 million as measured pursuant to the HSR Rules.

17. On October 16, 1987, Bright, together with SL-Merger and Speedward, entered into a general partnership that was ultimately named BNS Partners ("Partners"). Pursuant to the partnership agreement for Partners, Beazer had complete operational control over Partners and the sole authority to act on behalf of Partners.

18. Also pursuant to the partnership agreement for Partners, Beazer (through Bright) would have the power to appoint 50 percent of the directors of a corporate entity that was to be

formed to launch a tender offer for voting securities of Koppers. Pursuant to the partnership agreement for Partners, if the tender offer succeeded Partners was to exchange any shares of Koppers acquired by Partners for shares of such corporation, which shares were to be distributed to Bright, SL-Merger and Speedward, and Partners would then dissolve.

19. An attachment to the partnership agreement for Partners was a stockholders' agreement which was to become effective upon the formation of a corporation to launch a tender offer for voting securities of Koppers. This stockholders' agreement provided that defendant Beazer, through Bright, had the option of acquiring Shearson's and NatWest's interests in the corporation, and Shearson and NatWest had the option of requiring defendant Beazer to purchase their interests in the corporation, after certain time periods. The option price pursuant to the stockholders' agreement was a set amount (i.e., the amount of the respective equity contributions to Partners plus a 25 percent per annum return) wholly unrelated to the value of the corporation or its assets at the time the option was to be exercised. Also pursuant to the stockholders' agreement, Shearson and NatWest agreed that neither Bright nor any director elected to the board of the corporation by Bright would have any fiduciary duties or obligations to them prior to the sixth anniversary of the closing of the tender offer for Koppers, when the options expired.

20. On October 19, 1987, Partners acquired approximately 223,000 shares of Koppers' voting securities with a value of

approximately \$8 million as measured pursuant to the HSR Rules. Thereafter, and until March 2, 1988, Partners acquired a total of 1,636,000 shares of Koppers' voting securities, with a value of approximately \$48 million as measured pursuant to the HSR Rules.

21. Between October 19, 1987, and October 27, 1987, defendant Beazer, through Bright, acquired an additional 114,700 shares of Koppers' voting securities independently of Partners. In total, Bright acquired 458,100 shares of Koppers' voting securities. As of October 27, 1987, the value of Bright's holdings was approximately \$14.8 million as measured pursuant to the HSR Rules.

22. On March 3, 1988, Beazer, through BNS Inc., launched a cash tender offer for all of the remaining outstanding Koppers' voting securities.

23. On March 3, 1988, defendant Beazer filed premerger notification with the Department of Justice and the Federal Trade Commission, pursuant to the HSR Act, with regard to the tender offer for Koppers. The waiting period on such premerger filing expired on March 18, 1988. On March 18, 1988, the Antitrust Division of the United States Department of Justice filed a complaint alleging the acquisition of Koppers by BNS Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the Southern California aggregates market. At the same time, the Department filed a proposed final judgment, agreed to by BNS Inc., that required BNS

Inc. to divest any interest it acquired in Koppers' Southern California aggregates plant.

24. On June 16, 1988, BNS Inc., pursuant to its cash tender offer, accepted for purchase more than 90 percent of the voting securities of Koppers. Simultaneously, Partners transferred its Koppers' voting securities to BNS Inc. in exchange for shares of stock in BNS Inc. Pursuant to its partnership agreement, Partners then dissolved and distributed the stock of BNS Inc. to its partners.

25. On January 20, 1989, defendant Beazer purchased Shearson's and NatWest's interests in BNS Inc. Since that time, defendant Beazer has been sole owner of Koppers.

26. Defendant Beazer created and employed Partners as a device for the purpose of avoiding its obligation to comply in a timely manner with the requirements of the HSR Act within the meaning of Section 801.90 of the HSR Rules.

27. The substance of the transactions involving use of Partners as an avoidance device, for purposes of the HSR Act, was that of acquisitions by defendant Beazer of Koppers' voting securities.

28. The HSR Act and regulations promulgated thereunder, 16 C.F.R. § 800 et seq., required that defendant Beazer file premerger notification and observe a waiting period before acquiring an aggregate amount of voting securities in Koppers in excess of \$15 million. Defendant Beazer exceeded that \$15 million level on October 19, 1987, when, through Partners, it

purchased Koppers' voting securities in an amount that, when aggregated with Koppers' voting securities that it already held through Bright, brought the total value of Koppers' voting securities attributable to Beazer above the \$15 million reporting threshold under the HSR Act and Rules.

29. Defendant Beazer did not comply with the notification and waiting period requirements of the Act before the October 19, 1987, acquisition and subsequent acquisitions described in Paragraphs 20 and 21 were made.

30. Defendant Beazer was in continuous violation of the HSR Act from October 19, 1987, until March 18, 1988 (i.e., until the expiration of the HSR Act waiting period, which commenced with defendant Beazer's March 3, 1988, premerger notification filing), a total of 152 days.

31. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with the Act's provisions shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.

PRAYER

WHEREFORE, Plaintiff prays that this Court:

1. Adjudge and decree that defendant Beazer's purchases of Koppers' voting securities from October 19, 1987, through March 2, 1988, were in violation of the Hart-Scott-Rodino Act, 15

U.S.C. § 18a, and that defendant Beazer was in violation of the HSR Act each day during the period from October 19, 1987, through March 18, 1988;

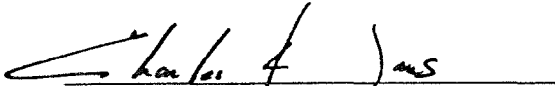
2. Order defendant Beazer to pay to the United States an appropriate civil penalty as provided by Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1);

3. Grant such other, further relief as the Court shall deem just, necessary or appropriate; and

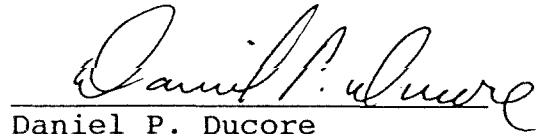
4. Award plaintiff its costs of this suit.

DATED: _____

FOR THE PLAINTIFF UNITED STATES OF AMERICA



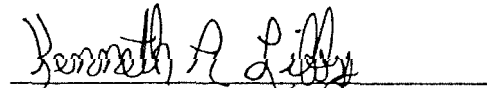
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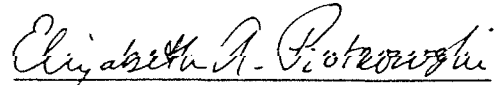


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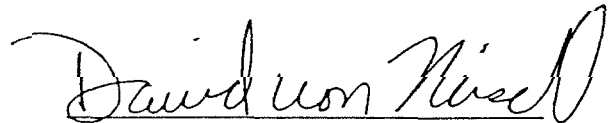


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