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8 Attorney for Plaintiff  
9 United States of America

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, )  
13 )  
14 Plaintiff, )  
15 v. )  
16 ESSEX GROUP, INC.; )  
17 CONTINENTAL COPPER & STEEL )  
18 INDUSTRIES, INC.; )  
19 AMERICAN INSULATED WIRE CORP.; )  
20 CYPRUS MINES CORP., )  
21 SOUTHWIRE COMPANY, INC.; and )  
22 TRIANGLE PWC, INC., )  
23 Defendants. )

Civil Action No. 78-3659-ALS

*Filed 1/16/80*

24 COMPETITIVE IMPACT STATEMENT

25 Pursuant to Section 2(b) of the Antitrust Procedures and  
26 Penalties Act, 15 U.S.C. § 16(b), the United States of America  
27 hereby files this Competitive Impact Statement relating to the  
28 proposed Final Judgment submitted for entry in this civil  
antitrust proceeding.

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NATURE AND PURPOSE OF THE PROCEEDING

On September 21, 1978, the United States filed a civil antitrust action under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the defendants and unnamed co-conspirators combined and conspired to exchange information among themselves concerning their business activities, including prices, discounts, and other terms and conditions of sale, with the purpose and effect of restraining competition among them in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The complaint alleges that as a result of the conspiracy competition in prices, discounts and other terms and conditions of the sale of copper building wire throughout the United States has been restrained; and that purchasers of copper building wire have been deprived of the benefit of free and open competition in the sale thereof. The United States sought a perpetual injunction prohibiting the conduct alleged to have given rise to the violation.

Entry by the Court of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings which might be required to interpret, modify, or enforce the Final Judgment or to punish alleged violations of any of the provisions of the Final Judgment.

No criminal indictment was sought in connection with the alleged combination and conspiracy to restrain trade and commerce.

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II

DESCRIPTION OF PRACTICES GIVING  
RISE TO THE ALLEGED VIOLATIONS

A. The Defendants

Each of the defendants listed below is incorporated and exists under the laws of the state listed opposite its name, with its principal place of business in the city listed. During all or part of the period of time covered by the complaint, each of said defendants engaged in the business of manufacturing and selling copper building wire in the United States.

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Essex Group, Inc.	Michigan	Ft. Wayne, Indiana
Continental Copper & Steel Industries, Inc.	Delaware	New York, New York
American Insulated Wire Corp.	Rhode Island	Pawtucket, Rhode Island
Cyprus Mines Corp. <sup>1/</sup>	New York	Los Angeles, California
Southwire Company, Inc.	Georgia	Carrollton, Georgia
Triangle PWC, Inc.	Delaware	New Brunswick, New Jersey

<sup>1/</sup> On July 9, 1979 Cyprus Mines Corp. sold its assets involved in the production and sale of copper building wire to R C D Purchasing Corp., a wholly owned subsidiary of the Bankside Company. The name of R C D Purchasing Corp. was immediately changed to Rome Cable Corporation (Rome). Rome is a Delaware Corporation with its principal place of business in Rome, NY. R C D Purchasing Corp. agreed at the time of sale to be bound  
/ / /

1 B. Co-Conspirators

2 The complaint alleges that various other persons, not made  
3 defendants in this complaint, have participated as co-conspirators  
4 with the defendants in the violation alleged herein and have per-  
5 formed acts and made statements in furtherance thereof.

6 C. Trade and Commerce Involved

7 The industry which the complaint alleges as the subject of  
8 defendants' conspiracy is the copper building wire distribution  
9 business. Manufacturers of copper building wire distribute through  
10 either independent agents or private company sales networks, which  
11 in turn distribute the products to electrical wholesalers who in  
12 turn supply electrical contractors. In addition, a small portion  
13 of copper building wire is sold by manufacturers to "super distrib-  
14 utors" who in turn sell to electrical wholesalers. Small amounts  
15 are sold by manufacturers to retail outlets for sale directly to  
16 the consumer.

17 \_\_\_\_\_  
18 1/ continued

19 by the subject decree. The agreement is attached as Appendix A.  
20 As consideration for the sale, Cyprus received ownership  
21 interest in the voting stock of Bankside. Cyprus expects to  
22 be represented on the Board of Directors of Bankside and/or  
23 Rome. As long as Cyprus is not engaged in the manufacture or  
24 sale of copper building wire, the Department of Justice does  
25 not consider the decree to apply to exchanges or communication  
26 of information, requests for information or agreements to  
27 exchange information between Cyprus and Rome and/or Bankside  
28 in connection with Cyprus' participation in the ownership of Rome.

1 Copper building wire is manufactured from a raw material base  
2 consisting primarily of copper and insulating materials. Copper  
3 building wire is manufactured in standardized classifications,  
4 sizes, and designs, and conforms to standards promulgated by  
5 Underwriters Laboratory. Most of the copper building wire manu-  
6 factured and sold by each of the defendant corporations is substan-  
7 tially identical with equivalent copper building wire sold by  
8 other defendant corporations.

9 D. Alleged Violations

10 Each of the defendant corporations manufacture and sell a  
11 full range of copper building wire and distribute it on a national  
12 basis, through one or more of the channels of distribution described  
13 above. They are known in the trade as "full-line" manufacturers,  
14 and are generally distinguished from "short-line" manufacturers who  
15 primarily operate only in limited geographic areas and manufacture  
16 only limited types of copper building wire.

17 During the period of time covered by the complaint, the  
18 defendant corporations had total sales of copper building wire  
19 in excess of \$150 million.

20 Within the period of time covered by the complaint, the  
21 defendant corporations sold and shipped in interstate commerce  
22 substantial quantities of copper building wire to customers in  
23 states other than the state in which their plants are located and  
24 obtained in interstate commerce substantial quantities of raw  
25 materials used in the manufacture of copper building wire from  
26 states other than those where their plants are located. The sale  
27 and shipment of copper building wire to customers in interstate  
28 commerce and the purchase and shipment in interstate commerce of

1 materials used in the manufacture of copper building wire were  
2 substantially affected by the combination and conspiracy alleged  
3 in the complaint.

4 The complaint alleges that beginning in approximately October  
5 1974 and continuing thereafter up to and including the date of the  
6 filing of the complaint, the defendants and co-conspirators engaged  
7 in a combination and conspiracy in unreasonable restraint of inter-  
8 state trade and commerce in copper building wire in violation of  
9 Section 1 of the Sherman Act (15 U.S.C. § 1). The alleged conspir-  
10 atorial activity involved discussions and agreements among officials  
11 of defendants and co-conspirators concerning their business activi-  
12 ties, including prices, discounts, and other terms and conditions  
13 of sale of copper building wire. The complaint alleged that these  
14 discussions and agreements were entered into with the purpose,  
15 and had the effect, of restraining competition.

16 According to the complaint, the conspiracy had the following  
17 effects: (a) competition in prices, discounts and other terms  
18 and conditions of the sale of copper building wire throughout the  
19 United States has been restrained; and (b) purchasers of copper  
20 building wire have been deprived of the benefit of free and open  
21 competition.

### 22 III

#### 23 EXPLANATION OF THE PROPOSED 24 FINAL JUDGMENT

25 The United States and the defendants have agreed in a stipu-  
26 lation that the Final Judgment in the form negotiated by the parties  
27 may be entered by the Court any time after compliance with the  
28 Antitrust Procedures and Penalties Act, provided that plaintiff

1 has not withdrawn its consent. The Final Judgment provides that there  
2 have been no admissions by any party with respect to any issue of  
3 fact or law. Under the provisions of Section 2(e) of the Antitrust  
4 Procedures and Penalties Act, entry of this Final Judgment is con-  
5 ditioned upon the Court's determination that it is in the public  
6 interest.

7 A. Prohibited Conduct

8 The proposed Final Judgment grants the fundamental relief  
9 the United States sought in the complaint. In Section IV of the Final  
10 Judgment, the defendants are enjoined and restrained from entering  
11 into, adhering to, maintaining or furthering any contract, agree-  
12 ment, understanding, plan or program with any other copper building  
13 wire manufacturer to exchange or communicate information concerning  
14 prices, price differentials, bids, discounts or other terms or  
15 conditions relating to the price of copper building wire.

16 The defendants are further prohibited by Section V from  
17 exchanging with, communicating to or requesting from any other  
18 copper building wire manufacturer, any information or intention  
19 concerning present or prospective prices, price differentials,  
20 bids, discounts, or other terms or conditions relating to the  
21 price of copper building wire.

22 B. Scope of the Proposed Final Judgment

23 The Final Judgment provides that its terms shall apply to each  
24 defendant and to each of its officers, directors, agents, employees,  
25 subsidiaries, successors and assigns, and to all other persons in  
26 active concert or participation with any of them who shall have  
27 received actual notice of the Final Judgment by personal service or  
28 otherwise. There is no geographical limitation in the Final Judgment.

1           The Final Judgment specifically requires that if a defendant  
2 sells the assets used by it in the manufacture and sale of copper  
3 building wire, the acquiring party agree to be bound by the provi-  
4 sions of the Final Judgment.

5           Each defendant will be required, within 60 days after entry  
6 of the Final Judgment, to furnish a copy of the Final Judgment to  
7 certain of its officers, directors, employees and agents and to take  
8 additional affirmative steps to advise them of their obligations  
9 under the Final Judgment and of the criminal penalties for violation  
10 thereof. Within 90 days of entry of Final Judgment, an Affidavit  
11 as to the fact and manner of each defendant's compliance must be  
12 filed with the Court. These provisions should help prevent future  
13 violations of the Final Judgment by making each responsible employee  
14 individually aware of the Final Judgment and its prohibitions.

15           The scope of the Final Judgment is limited in three ways. First,  
16 nothing contained in the Final Judgment shall apply to any negotia-  
17 tion or necessary communication between a defendant and any other  
18 defendant or between a defendant and any other person, when such  
19 parties are engaged in a contemplated or actual bona fide purchase  
20 or sale of copper building wire, to the extent such communications  
21 are necessary to such bona fide purchase or sale. . Second, the Final  
22 Judgment does not apply to transactions or communications between a  
23 defendant and a parent or subsidiary of, or other person under  
24 common control with, such defendant, or between the officers,  
25 directors, agents or employees thereof. Third, a defendant is not  
26 prohibited from communicating written copper building wire price  
27 information after the effective date of such price sheets, without  
28 comment, markings or explanation and without reference to any

1 particular geographic region, provided such written information has  
2 already been released and circulated to such defendant's customers  
3 generally, unless such communication shall have the purpose or effect  
4 of stabilizing prices or otherwise restraining trade.

5 In order to assure compliance, the Final Judgment authorizes the  
6 Department of Justice to inspect and copy records and documents  
7 in the possession or under the control of any defendant relating  
8 to any matters contained in the Final Judgment, pursuant to reason-  
9 able procedures. In addition, the Department of Justice may  
10 require any defendant to submit reports from time to time.

11 The Final Judgment is for a term of 10 years from the date  
12 it is entered, and the Court retains jurisdiction for that period.

13 C. Effect of the Proposed Final Judgment on Competition

14 The terms of the Final Judgment are designed to prevent any  
15 recurrence of the activities alleged in the complaint. The prohib-  
16 itive language of the Final Judgment should ensure that future price  
17 actions of the defendants will be independently determined, without  
18 the restraining and artificial influences which result from communi-  
19 cations and agreements among competitors.

20 The Department of Justice believes that the proposed Final  
21 Judgment provides fully adequate provisions to prevent continuance  
22 or recurrence of the violations of the antitrust laws charged in the  
23 complaint. In the Department's view, disposition of the lawsuit  
24 without further litigation is appropriate in that the proposed Final  
25 Judgment provides all the relief which the Government sought in its  
26 complaint; the additional expense of litigation would therefore  
27 not result in additional public benefit.

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1 IV

2 ALTERNATIVE REMEDIES CONSIDERED  
3 BY THE GOVERNMENT

4 The Antitrust Division had originally submitted a Final Judgment  
5 which contained language prohibiting the defendants from entering  
6 into agreements or understandings to fix, stabilize or maintain  
7 prices of copper building wire. The defendants objected to this  
8 provision inasmuch as the language used in the complaint alleged an  
9 agreement to exchange information rather than an agreement to fix  
10 prices. The Government agreed to delete this provision provided  
11 the Final Judgment clearly prohibited the defendants from engaging  
12 in any type of exchange or agreement to exchange price or related  
13 information which might have the purpose or effect of fixing,  
14 stabilizing or maintaining prices or otherwise restraining trade.  
15 After considerable negotiation with the defendants and two confer-  
16 ences with the Honorable Albert L. Stephens, the parties reached  
17 agreement on the present Paragraph VI. Paragraph VI B states that  
18 the Final Judgment does not prohibit a defendant from communicating  
19 its written price information to another defendant or person where  
20 it has already been released and circulated to customers generally,  
21 after the effective date of such written price information, and  
22 provided that the communication is not accompanied by any comments,  
23 markings or explanations, so long as such communications do not have  
24 the purpose or effect of stabilizing prices or otherwise restraining  
25 competition.

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REMEDIES AVAILABLE  
POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this Final Judgment has no prima facie effect in any subsequent lawsuits which may be brought against these defendants.

VI

PROCEDURES AVAILABLE FOR  
MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Barbara A. Reeves, Antitrust Division, U. S. Department of Justice, 3101 Federal Building, 300 North Los Angeles Street, Los Angeles, California, 90012, within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed Final Judgment provides that the Court retains juris-

1 diction over this action, and the parties may apply to the Court for  
2 such order as may be necessary or appropriate for its modification,  
3 interpretation or enforcement.

4 .VII

5 ALTERNATIVE TO THE  
6 PROPOSED FINAL JUDGMENT

7 The alternative to the proposed Final Judgment considered by the  
8 Antitrust Division was a full trial of the issues on the merits  
9 and on relief. The Division considers the substantive language of  
10 the Final Judgment to be of sufficient scope and effectiveness to  
11 make litigation on the issues unnecessary, as the Final Judgment  
12 provides appropriate relief against the violations charged in the  
13 complaint.

14 VIII

15 OTHER MATERIALS

16 No materials and documents of the type described in Section 2(b)  
17 of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) were  
18 considered in formulating this proposed Final Judgment. Conse-  
19 quently, none are submitted pursuant to such Section 2(b).

20 Respectfully submitted,

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23 Leon W. Weidman, Attorney  
U. S. Department of Justice

24 Dated:  
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RCD PURCHASE CORP.  
421 Ridge Street  
Rome, New York 13440

July 9, 1979

Cyprus Mines Corporation  
555 South Flower Street  
Suite 3700  
Los Angeles, California 90071

Gentlemen:

Reference is made to the Agreement for Sale and Purchase of Assets dated as of July 9, 1979 by and between you and the undersigned (the "Agreement"), pursuant to which the undersigned is acquiring the property, certain assets and the business of Cyprus Wire and Cable Company (the "Division"). As a condition precedent to your obligations under the Agreement, the undersigned is required to agree to be bound by the provisions of the final judgment (the "Final Judgment") to be entered by the United States District Court for the Central District of California (the "Court") in Civil Action No. 78-3659-ALS and to the filing of such agreement with the Court, so long as such judgment is substantially in the form of the proposed Final Judgment delivered by you to the undersigned upon the date of this letter.

In consideration of your transfer of the property, certain assets and the business of the Division in accordance with the terms of the Agreement and your performance of your other obligations under the Agreement, the undersigned hereby agrees to be bound by the provisions of the Final Judgment, so long as such judgment is substantially in the form of the proposed final judgment delivered to the undersigned by you on the date hereof. The undersigned also agrees to execute such further undertaking to such effect as may be required by the Court upon entry of the Final Judgment. The undersigned further consents to the filing with the Court of a copy of this letter agreement.

Very truly yours,

RCD PURCHASE CORP.

By

Peter R. Weiss  
President

Agreed to:

CYPRUS MINES CORPORATION

By

Richard K. Genthorn

Senior Vice President  
& Treasurer

EXHIBIT A