

HOWARD J. PARKER
JOEL S. SANDERS
AVARELLE SILVER-WESTRICK
Antitrust Division
Department of Justice
450 Golden Gate Avenue
Box 36046, 16th Floor
San Francisco, California 94102
Telephone: (415) 556-6300

Attorneys for the United States

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

INDUSTRIAL ASPHALT;
HUNTMIX, INC.;
CALMAT CO.; and
COAST ASPHALT, INC.,

Defendants.

Civil No. 85-4631 (RG)

COMPLAINT FOR EQUITABLE
RELIEF FOR VIOLATION
OF TITLE 15 U.S.C.
SECTIONS 1 AND 18

ANTITRUST

Filed: July 15, 1985

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief and complains and alleges as follows:

COUNT ONE

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) and Section 4 of the Sherman Act (15 U.S.C. § 4) to restrain the continuing

1 violations by the defendants, as hereinafter alleged, of Section 7
2 of the Clayton Act (15 U.S.C. § 18) and Section 1 of the Sherman
3 Act (15 U.S.C. § 1).

4 2. Industrial Asphalt, Huntmix, Inc., and CalMat Co.
5 transact business and are found within the Central District of
6 California. Coast Asphalt, Inc. transacts business within the
7 Central District of California.

8 II

9 DEFINITIONS

10 3. As used herein the term "HHI" means the Herfindahl-
11 Hirschman Index, a measure of market concentration calculated by
12 squaring the market share of each firm in the market and then
13 summing the resulting numbers. For example, for a market
14 consisting of four firms with shares of 30, 30, 20, and 20
15 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$).
16 The HHI takes into account the relative size and distribution of
17 the firms in a market. It approaches zero when a market is
18 occupied by a large number of firms of relatively equal size and
19 reaches its maximum of 10,000 when a market is controlled by a
20 single firm. The HHI increases both as the number of firms in the
21 market decreases and as the disparity in size between those firms
22 increases.

23 4. As used herein the term "asphalt concrete" means material
24 that is used principally for paving and is produced by combining
25 and heating asphalt cement (also referred to in the industry as

26 ///

27 ///

1 "liquid asphalt" or "asphalt oil") with rock, gravel, or sand. A
2 plant that produces asphalt concrete is commonly referred to as a
3 "hot-mix plant."

4 5. As used herein the term "greater Los Angeles area" refers
5 to the areas principally served by asphalt concrete plants owned
6 by Industrial Asphalt ("the Joint Venture") in the communities of
7 Anaheim, Azusa, Carson, Fontana, Irwindale, Los Angeles,
8 Montclair, Orange, Santa Ana, Sun Valley, Upland, and Wilmington,
9 and generally includes Los Angeles County except the northern
10 portion of that county, Orange County except the southern portion
11 of that county, western San Bernardino County, and western
12 Riverside County.

13 6. As used herein the term "western San Diego County" refers
14 to the areas principally served by asphalt concrete plants owned
15 by Industrial Asphalt ("the Joint Venture") in the communities of
16 Lakeside, San Diego, and Vista, and generally includes San Diego
17 County except the eastern portion of that county.

18 III

19 DEFENDANTS

20 7. Industrial Asphalt ("the Joint Venture") is made a
21 defendant herein. The Joint Venture is a California partnership
22 with its principal place of business in Van Nuys, California. The
23 Joint Venture operates hot-mix plants in the greater Los Angeles

24 ///

25 ///

26 ///

27 ///

1 area, San Diego County, and other locations in California, Nevada,
2 and Arizona. The Joint Venture's principal business is
3 manufacturing and selling asphalt concrete.

4 8. Coast Asphalt, Inc. ("Coast Asphalt") is made a defendant
5 herein. Coast Asphalt is a Delaware corporation with its
6 principal place of business in New York. Coast Asphalt is a
7 partner in and an owner of the Joint Venture. Coast Asphalt is
8 the successor of Industrial Asphalt Inc., one of the parties to
9 the formation of the Joint Venture. Prior to the formation of the
10 Joint Venture, Industrial Asphalt Inc. operated hot-mix plants in
11 the greater Los Angeles area, San Diego County, and other
12 locations in California, Nevada, and Arizona. Manufacturing and
13 selling asphalt concrete was the principal business of Industrial
14 Asphalt Inc. before the formation of the Joint Venture.

15 9. Huntmix, Inc. ("Huntmix") is made a defendant herein.
16 Huntmix is a California corporation with its principal place of
17 business in Van Nuys, California. Huntmix is a partner in and an
18 owner of the Joint Venture. Huntmix has an option to acquire
19 Coast Asphalt's interest in the Joint Venture ten years after its
20 formation, i.e., in 1993. Prior to the formation of the Joint
21 Venture on or about December 20, 1983, Huntmix operated hot-mix
22 plants in the greater Los Angeles area and in San Diego County,
23 and manufacturing and selling asphalt concrete was its principal
24 business.

25 ///

26 ///

27 ///

28 Page 4 -- COMPLAINT FOR EQUITABLE RELIEF

10. CalMat Co. ("CalMat") is made a defendant herein. CalMat is a Delaware corporation with its principal place of business in Los Angeles, California. CalMat owns 50 percent of the voting securities of Huntmix. CalMat has an option to purchase 100% of the stock of Huntmix in 1992. Two of CalMat's principal businesses are extracting, processing, and selling rock, sand, and gravel (collectively known as aggregate), and manufacturing and selling ready-mixed concrete. CalMat leases space on several of its aggregate pits to the Joint Venture for the operation of the Joint Venture's hot-mix plants. CalMat is the successor of Conrock Co. Conrock Co. contributed lease extensions on some of its aggregate pit locations to the Joint Venture.

IV

TRADE AND COMMERCE

11. Asphalt concrete is used principally to pave roads. It is also used to pave parking lots, driveways, and airport runways.

12. Asphalt concrete differs from all other paving materials in its physical composition, functional characteristics, customary uses, means of production, and pricing. Buyers and sellers of asphalt concrete do not view other paving materials as good substitutes for asphalt concrete.

13. Manufacturers and buyers of asphalt concrete and other paving materials recognize asphalt concrete as a distinct product.

///

///

///

///

1 14. The manufacture and sale of asphalt concrete constitutes
2 a line of commerce and a relevant product market for antitrust
3 purposes.

4 15. Manufacturers of asphalt concrete located in the greater
5 Los Angeles area sell and compete with each other for sales of
6 asphalt concrete within the greater Los Angeles area. Manufacturers
7 of asphalt concrete located outside the greater Los Angeles area do
8 not sell a significant amount of asphalt concrete for use within
9 the greater Los Angeles area.

10 16. The greater Los Angeles area constitutes a section of
11 the country and a relevant geographic market for antitrust
12 purposes. Alternatively, smaller geographic markets within the
13 greater Los Angeles market may constitute sections of the country
14 and relevant geographic markets for antitrust purposes.

15 17. Manufacturers of asphalt concrete located in western San
16 Diego County sell and compete with each other for sales of asphalt
17 concrete within western San Diego County. Manufacturers of
18 asphalt concrete located outside western San Diego County do not
19 sell a significant amount of asphalt concrete for use within
20 western San Diego County.

21 18. Western San Diego County constitutes a section of the
22 country and a relevant geographic market for antitrust purposes.

23 19. Prior to the violation alleged below, Industrial Asphalt
24 Inc. was the largest and Huntmix was one of the three largest
25 manufacturers of asphalt concrete in the greater Los Angeles area

26 ///

27 ///

28 Page 6 -- COMPLAINT FOR EQUITABLE RELIEF

1 as measured by either capacity or actual production. As measured
2 by actual production, Industrial Asphalt Inc.'s market share for
3 1983 in the greater Los Angeles area was approximately 24% and
4 Huntmix's was approximately 17%. As measured by capacity,
5 Industrial Asphalt Inc.'s market share for 1983 in the greater Los
6 Angeles area was approximately 24% and Huntmix's was approximately
7 19%. As a result of the violation alleged below, the HHI for the
8 greater Los Angeles area market, as measured by either actual
9 production or capacity, increased by more than 700 points to over
10 2100.

11 20. Prior to the violation alleged below, Industrial Asphalt
12 Inc. and Huntmix were two of the five largest manufacturers of
13 asphalt concrete in western San Diego County as measured by either
14 capacity or actual production. As measured by actual production,
15 Industrial Asphalt Inc.'s market share for 1983 in western San
16 Diego County was approximately 18% and Huntmix's was approximately
17 11%. As measured by capacity, Industrial Asphalt Inc.'s market
18 share for 1983 in western San Diego County was approximately 15%
19 and Huntmix's was approximately 9%. As a result of the violation
20 alleged below, the HHI for the western San Diego County market, as
21 measured by either actual production or capacity, increased by
22 more than 250 points to over 2400.

23 21. Asphalt concrete manufactured in the greater Los Angeles
24 area and in western San Diego County is used to pave and repair
25 roads that are part of a network of interconnecting highways
26 throughout the United States over which motor vehicles move in a
27

1 continuous and uninterrupted stream of interstate commerce from
2 and through one state to another. The construction and
3 maintenance of some of these highways is financed directly or
4 indirectly by the federal government. A substantial amount of the
5 nation's goods moves in interstate commerce over these highways.

6 22. Substantial quantities of equipment and material used in
7 the manufacturing of asphalt concrete in the greater Los Angeles
8 area and western San Diego County is purchased from sources
9 outside the State of California and shipped across state lines
10 into the State of California. Substantial quantities of money
11 move across state lines from one state to another as a direct
12 result of the defendants' business activities related to the
13 manufacture and sale of asphalt concrete in the greater Los
14 Angeles area and western San Diego County.

15 23. The asphalt concrete manufacturing and sales activities
16 engaged in by the defendants are within the flow of, and
17 substantially affect, interstate commerce.

18 V

19 VIOLATION ALLEGED

20 24. On or about November 29, 1983, Huntmix and Coast
21 Asphalt's predecessor, Industrial Asphalt Inc., entered into a
22 Joint Venture Formation Agreement by which, among other things,
23 they would form the Joint Venture and the Joint Venture would
24 acquire and operate their assets related to the business of
25 manufacturing and selling asphalt concrete, in effect creating a
26 merger between Industrial Asphalt Inc. and Huntmix, Inc. The

1 Joint Venture Agreement also gives Huntmix the option to acquire
2 Coast Asphalt's interest in the Joint Venture in 1993.

3 25. Conrock Co., CalMat predecessor, contributed lease
4 extensions to the Joint Venture on some aggregate pits which it
5 owned. CalMat currently has a 50% ownership interest in Huntmix
6 which may become 100% in 1992. The formation of the Joint Venture
7 took place on or about December 20, 1983.

8 26. The effect of the formation of the Joint Venture may be
9 substantially to lessen competition in the aforesaid trade and
10 commerce in violation of Section 7 of the Clayton Act, in the
11 following ways, among others:

12 (a) competition in the manufacture and sale of asphalt
13 concrete in the greater Los Angeles area or in some
14 smaller relevant markets within the greater Los Angeles
15 area may be substantially lessened;

16 (b) competition in the manufacture and sale of asphalt
17 concrete in western San Diego County may be substantially
18 lessened.

19 COUNT TWO

20 27. The allegations contained in paragraphs 1 through 25 of
21 this complaint are here realleged with the same force and effect
22 as though set forth in full.

23 28. The formation of the Joint Venture unreasonably
24 restrains the aforesaid interstate trade and commerce in violation

25 ///

26 ///

1 of Section 1 of the Sherman Act, in the following ways, among
2 others:

3 (a) competition in the manufacture and sale of asphalt
4 concrete in the greater Los Angeles area or in some
5 smaller relevant markets within the greater Los Angeles
6 area may be substantially lessened;

7 (b) competition in the manufacture and sale of asphalt
8 concrete in western San Diego County may be
9 substantially lessened.

10 PRAYER

11 WHEREFORE, plaintiff prays:

12 1. That the formation of the Joint Venture be adjudged and
13 decreed to be unlawful and in violation of Section 7 of the
14 Clayton Act.

15 2. That the formation of the Joint Venture be adjudged and
16 decreed to be unlawful and in violation of Section 1 of the
17 Sherman Act.

18 3. That such relief by way of divestiture and reorganization
19 be ordered as is necessary or appropriate to remedy the effects of
20 the unlawful activities alleged in this complaint and to restore
21 competitive conditions to the relevant markets.

22 4. That for a period of ten years, defendants be enjoined
23 from, in any fashion, acquiring ownership or control of the stock
24 or assets of any other manufacturer of asphalt concrete in the
25 greater Los Angeles area or western San Diego County, except with
26 prior approval of the plaintiff or the Court.

1 5. That the plaintiff have such other and further relief as
2 the case requires and the Court deems proper.

3 6. That the plaintiff recover the costs of this action.

4
5 Dated:

6
7 
8 CHARLES F. RULE
Acting Assistant Attorney General

HOWARD J. PARKER

9
10 
11 ROGER B. ANDEWELT

JOEL S. SANDERS

12
13 GARY R. SPRATLING

AVARELLE SILVER-WESTRICK

14 Attorneys
15 U. S. Department of Justice
Antitrust Division

Attorneys for the United States
U. S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
Box 36046
San Francisco, CA 94102

17 ROBERT C. BONNER
18 United States Attorney
19 Central District of California