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CENTRAL DISTRICT OF CALIF.
LOS ANGELES



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. 85-4631JGD(JRx)
FINAL JUDGMENT

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Plaintiff, United States of America, having filed its
Complaint herein on July 15, 1985, and plaintiff and defendants,
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;

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1 Now, therefore, before the taking of any testimony, and
2 without trial or adjudication of any issue of fact or law herein,
3 and upon consent of the parties hereto, it is hereby ORDERED,
4 ADJUDGED, AND DECREED as follows:

5 I

6 JURISDICTION

7 This Court has jurisdiction over the subject matter of this
8 action and over each of the parties hereto. The Complaint states
9 a claim upon which relief may be granted against each defendant
10 under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18),
11 and under Section 1 of the Sherman Act (15 U.S.C. § 1).

12 II

13 DEFINITIONS

14 As used in this Final Judgment:

15 A. "Aggregate" means rock, sand, and gravel suitable for
16 mixture in asphalt concrete.

17 B. "Asphalt concrete" means material that is used
18 principally for paving and is produced by combining and heating
19 asphalt cement (also referred to in the industry as "liquid
20 asphalt" or "asphalt oil") with rock, sand, or gravel.

21 C. "Assets to be Divested" means all the assets identified
22 in Sections IV.A and IV.B, below.

23 D. "CalMat" means CalMat Co., a Delaware corporation with
24 its principal place of business in Los Angeles, California.

25 E. "Coast Asphalt" means Coast Asphalt, Inc., a Delaware

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1 corporation with its principal place of business in Los Angeles,
2 California.

3 F. "Greater Los Angeles area" means that area of Los
4 Angeles County, San Bernardino County, Riverside County, and
5 Orange County with the following boundaries: on the west, the
6 Pacific Ocean and the border between Los Angeles County and
7 Ventura County; on the north, a line running through the
8 intersection of Interstate 5 and Interstate 210 near Sylmar,
9 California, due west to the Los Angeles County border and due east
10 to the San Bernardino County border, and then southerly to the
11 southeastern corner of the Angeles National Forest, and then due
12 east to Interstate 15E/215; on the east, Interstate 15E/215; and
13 on the south, a line running from the intersection of Interstate
14 405 and Interstate 5 due west to the Pacific Ocean and from the
15 intersection of Interstate 405 and Interstate 5 northeasterly to
16 the intersection of Interstate 15E/215, California State Highway
17 60 and California State Highway 91.

18 G. "Hot-mix plant" means a plant that produces asphalt
19 concrete.

20 H. "Huntmix" means Huntmix, Inc., a California corporation
21 with its principal place of business in Van Nuys, California.

22 I. "Industrial Asphalt" means Industrial Asphalt, a
23 California partnership with its principal place of business in Van
24 Nuys, California.

25 J. "Ownership interest" means all right, title, and

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1 interest, including but not limited to both fee and leasehold
2 interests.

3 K. "Western San Diego County" means that area of San Diego
4 County with the following boundaries: on the west, the Pacific
5 Ocean; on the north, California State Highway 78; on the east, a
6 line running due south from the intersection of California State
7 Highways 78 and 67 near Ramona, California, to the Mexican border;
8 and on the south, the Mexican border.

9 III

10 APPLICABILITY

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

17 B. Defendants shall require, as a condition of the sale or
18 other disposition of all or substantially all of their assets in
19 the greater Los Angeles area or western San Diego County involved
20 in the production of asphalt concrete, or in the extracting,
21 processing, and selling of aggregate, that the acquiring party or
22 parties agree to be bound by the provisions of this Final Judgment.

23 IV

24 DIVESTITURE OF ASSETS

25 A. Industrial Asphalt is hereby ordered and directed to
26 divest, to an eligible purchaser or eligible purchasers, all of

1 its ownership interest in all of the real and personal property
2 used in the production and sale of asphalt concrete at:

- 3 1. either its plant located at 454 North Prospect
4 Street, Orange, California (the "Orange Plant
5 Assets") or its plant located at 24000 Santa Ana
6 Canyon Road, Anaheim, California (the "Santa Ana
7 Canyon Plant Assets");
- 8 2. its plant located at 19th Street and Campus Avenue,
9 Upland, California (the "Upland Plant Assets"); and
- 10 3. either its plant located at 1380 East Arrow
11 Highway, Irwindale, California (the "Arrow Highway
12 Plant Assets") or its plant located at 13130 E. Los
13 Angeles Street, Irwindale, California (the "Durbin
14 Plant Assets").

15 Industrial Asphalt will warrant to the purchaser or purchasers of
16 such assets that such assets will be operational on the date of
17 sale, with its liability limited to repairing or replacing defects
18 under the warranty. The Orange Plant Assets to be divested shall
19 include the Sublicense Option Agreement executed on May 20, 1986
20 by Industrial Asphalt and Owl Rock Products Co., which provides an
21 option to sublicense a site suitable for the operation of the
22 Orange Plant Assets or a hot-mix plant of comparable batch
23 capacity on Owl Rock Products Co.'s rock, sand, and gravel
24 property on Gypsum Canyon Road in Orange County.

25 B. As part of any divestiture of plant assets under this
26 Final Judgment, CalMat Co. shall agree that, for a period of ten

1 (10) years from the date of divestiture, it shall, on request,
2 supply aggregate to any purchaser or purchasers of such assets,
3 from any of its aggregate producing sites in the greater Los
4 Angeles area and western San Diego County then supplying aggregate
5 to Industrial Asphalt, as long as CalMat is producing aggregate at
6 that site, at f.o.b. prices and on other terms and conditions of
7 sale that are at least as favorable as the f.o.b. price and other
8 terms and conditions of sale at which aggregate of similar
9 quantity and quality is sold at the same time by CalMat from that
10 particular site to Industrial Asphalt. Provided, however, that
11 nothing in this section IV.B shall preclude CalMat from
12 conditioning the sale of aggregate to any such person on the
13 reasonable approval of that person's credit. In the case of a
14 shortage of aggregate, an interruption of the supply of aggregate,
15 or other force majeure events, CalMat shall allocate aggregate to
16 such persons on a reasonable and nondiscriminatory basis among all
17 of its customers.

18 C. Unless plaintiff otherwise consents, divestiture under
19 Sections IV.A and IV.B shall be made to a purchaser or purchasers
20 who shall demonstrate to the plaintiff or, failing the plaintiff's
21 approval, to the Court that (1) the purchase is for the purpose of
22 competing in the manufacture and sale of asphalt concrete and
23 (2) the purchaser or purchasers has or have the managerial,
24 operational, and financial capability to compete in the
25 manufacture and sale of asphalt concrete.
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1 D. Industrial Asphalt shall take all reasonable steps to
2 accomplish quickly the divestiture contemplated by Sections IV.A
3 and IV.B.

4 V

5 APPOINTMENT OF TRUSTEE

6 A. In the event that Industrial Asphalt has not divested
7 all of its ownership interests required by Section IV.A within six
8 (6) months from the date of entry of this Final Judgment, the
9 Court shall, on application of the plaintiff, appoint a trustee to
10 effect the remainder of the divestiture required by Section IV.A.
11 Such appointment shall become effective not more than forty-five
12 (45) days following the filing of the petition. After the
13 appointment of a trustee becomes effective, only the trustee shall
14 have the right to sell the assets required to be divested pursuant
15 to Section IV. The trustee shall have the power and authority to
16 accomplish the divestiture at the best price then obtainable upon
17 a reasonable effort by the trustee, subject to the provisions of
18 Section VI of this Final Judgment, and shall have such other
19 powers as the Court shall deem appropriate. Industrial Asphalt
20 shall not object to a sale by the trustee on any grounds other
21 than malfeasance.

22 B. If Industrial Asphalt has not divested all of the
23 ownership interests required by Section IV.A within five (5)
24 months of the date of entry of this Final Judgment, the plaintiff
25 and Industrial Asphalt shall immediately notify each other in
26 writing of the names and qualifications of not more than two (2)

1 nominees for the position of the trustee who shall effect the
2 required divestiture. The parties shall attempt to agree upon one
3 of the nominees to serve as the trustee. If the parties are able
4 to agree on a trustee within thirty (30) days of the exchange of
5 names, plaintiff shall notify the Court of the person upon whom
6 the parties agreed, and the Court shall appoint such person as the
7 trustee. If the parties are unable to agree within that time
8 period, plaintiff shall furnish the Court the names of each
9 party's nominees. The Court may hear the parties as to the
10 qualifications of the nominees and shall appoint one of the
11 nominees as the trustee.

12 C. The trustee shall serve at the cost and expense of
13 Industrial Asphalt, on such terms and conditions as the Court may
14 prescribe, and shall account for all monies derived from the sale
15 of the assets sold by the trustee and all costs and expenses so
16 incurred. After approval by the Court of the trustee's
17 accounting, including fees for its services, all remaining money
18 shall be paid to Industrial Asphalt and the trust shall then be
19 terminated. The compensation of such trustee shall be based on a
20 fee arrangement providing the trustee with an incentive based on
21 the price and terms of the divestiture and the speed with which it
22 is accomplished.

23 D. The defendants shall use their best efforts to assist
24 the trustee in accomplishing the required divestiture. The
25 trustee and any consultants, accountants, attorneys, and other
26 persons retained by the trustee shall have full and complete

1 access to the personnel, books, records, and facilities of the
2 Assets to be Divested, and Industrial Asphalt shall develop
3 financial or other information relevant to such assets as the
4 trustee may request. Defendants shall take no action to interfere
5 with or impede the trustee's accomplishment of the divestiture.

6 E. After its appointment, the trustee shall file monthly
7 reports with the parties and the Court setting forth the trustee's
8 efforts to accomplish divestiture as contemplated under this Final
9 Judgment. If the trustee has not accomplished such divestiture
10 within twelve (12) months after its appointment, the trustee shall
11 thereupon promptly file with the Court a report setting forth
12 (1) the trustee's efforts to accomplish the required divestiture,
13 (2) the reasons, in the trustee's judgment, why the required
14 divestiture has not been accomplished, and (3) the trustee's
15 recommendations. The trustee shall at the same time furnish such
16 report to the parties, who shall each have the right to be heard
17 and to make additional recommendations consistent with the purpose
18 of the trust. The Court shall thereafter enter such orders as it
19 shall deem appropriate in order to carry out the purpose of the
20 trust, which may, if necessary, include extending the trust and
21 the term of the trustee's appointment.

22 VI

23 NOTIFICATION

24 A. Industrial Asphalt or the trustee, whichever is then
25 responsible for effecting the divestiture required herein, shall
26 notify the plaintiff of any proposed divestiture required by

1 Section IV or V of this Final Judgment. If the trustee is
2 responsible, it shall similarly notify Industrial Asphalt. The
3 notice shall set forth the details of the proposed transaction and
4 list the name, address, and telephone number of each person not
5 previously identified who offered or expressed an interest or
6 desire to acquire any ownership interest in any of the Assets to
7 be Divested, together with full details of the same. Within
8 fifteen (15) days after receipt of the notice, the plaintiff may
9 request additional information concerning the proposed
10 divestiture, the proposed purchaser, and any other potential
11 purchaser. Industrial Asphalt or the trustee shall furnish the
12 additional information within fifteen (15) days of the receipt of
13 the request. Within thirty (30) days after receipt of the notice
14 or within fifteen (15) days after receipt of the additional
15 information, whichever is later, plaintiff shall notify in writing
16 Industrial Asphalt and the trustee, if there is one, if it objects
17 to the proposed divestiture. If the plaintiff fails to object
18 within the period specified, or if the plaintiff notifies in
19 writing Industrial Asphalt and the trustee, if there is one, that
20 it does not object, then the divestiture may be consummated,
21 subject only to Industrial Asphalt's limited right to object to
22 the sale under Section V.A. Upon objection by the plaintiff or by
23 Industrial Asphalt under Section V.A, the proposed divestiture
24 shall not be accomplished unless approved by the Court.

25 B. Thirty (30) days from the date of entry of this Final
26 Judgment and every thirty (30) days thereafter until the

1 divestiture has been completed, Industrial Asphalt shall deliver
2 to plaintiff an affidavit as to the fact and manner of compliance
3 with Section IV of this Final Judgment. Each such affidavit shall
4 include, for each person who during the preceding thirty (30) days
5 made an offer, expressed an interest or desire to acquire, entered
6 into negotiations to acquire, or made an inquiry about acquiring
7 any ownership interest in any of the Assets to be Divested, the
8 name, address, and telephone number of that person and a detailed
9 description of each contact with that person during that period.
10 Industrial Asphalt shall maintain full records of all efforts made
11 to divest the Assets to be Divested.

12 VII

13 PRESERVATION OF ASSETS

14 A. Subject to Sections VII.E and VII.F, Industrial Asphalt
15 shall preserve, hold, and, with the exception of the Arrow Highway
16 Plant Assets, continue to operate as going businesses the Assets
17 to be Divested. Industrial Asphalt shall use all reasonable
18 efforts to maintain the Assets to be Divested as competitive
19 entities, with the exception of the Arrow Highway Plant Assets,
20 and shall not sell or otherwise dispose of, or pledge as
21 collateral for loans (except such loans as are currently
22 outstanding or replacements or substitutes therefor), the Assets
23 to be Divested, except that such component as is replaced in the
24 ordinary course of business with a newly purchased component may
25 be sold or otherwise disposed of, provided the newly purchased
26 component is so identified as a replacement component for an Asset

1 to be Divested. This provision includes but is not limited to:
2 preserving all asphalt concrete plants, and their aggregate supply
3 and right and ability to operate at the sites where they are
4 located; preserving all air pollution and operating permits
5 (including proceeding with such application or operation as is
6 necessary to renew or make permanent any temporary permits); and
7 preserving all administrative and support facilities.

8 B. Subject to Sections VII.E and VII.F, Industrial Asphalt
9 shall preserve the Assets to be Divested except those replaced
10 with newly acquired assets in the ordinary course of business, in
11 a state of repair equal to their state of repair as of January 3,
12 1984.

13 C. Subject to Section VII.F, Industrial Asphalt shall
14 identify separately for each asphalt concrete plant referred to in
15 Section IV.A all assets or replacements for or proceeds therefrom
16 that were used in the production and sale of asphalt concrete at
17 such plant prior to the formation of Industrial Asphalt.

18 D. Subject to Section VII.F, Industrial Asphalt shall keep
19 a separate bookkeeping record of the income and debits
20 attributable to each asphalt concrete plant referred to in Section
21 IV.A.

22 E. Industrial Asphalt shall be excused from its failure to
23 preserve, hold, operate, repair, or replace any asset when such
24 failure is attributable to causes beyond its reasonable control,
25 including explosion, fire, flood, storm or other acts of God,
26 governmental regulation or the loss of Industrial Asphalt's right

1 to operate at a plant's current location. In the event such a
2 cause occurs, Industrial Asphalt promptly will provide notice
3 thereof to plaintiff.

4 F. The requirement that Industrial Asphalt take certain
5 steps to preserve and identify assets as set forth in Sections
6 VII.A, VII.B, VII.C, and VII.D shall terminate with respect to:

- 7 1. the Orange Plant Assets and the Santa Ana Canyon
8 Plant Assets when the divestiture required by this
9 Final Judgment of either the Orange Plant Assets or
10 the Santa Ana Canyon Plant Assets has been
11 accomplished;
- 12 2. the Upland Plant Assets when the divestiture
13 required by this Final Judgment of the Upland Plant
14 Assets has been accomplished; and
- 15 3. the Arrow Highway Plant Assets and the Durbin Plant
16 Assets when the divestiture required by this Final
17 Judgment of either the Arrow Highway Plant Assets
18 or the Durbin Plant Assets has been accomplished.

19 VIII

20 FUTURE ACQUISITIONS

21 A. The defendants are enjoined and restrained for a period
22 of ten (10) years from the date of entry of this Final Judgment
23 from merging with, or directly or indirectly acquiring any assets
24 or stock of, any other person engaged in whole or in part in the
25 production of asphalt concrete in the greater Los Angeles area or
26 western San Diego County without the prior written consent of

1 plaintiff or, if such consent is refused, without the approval of
2 the Court after an affirmative showing by the defendants that the
3 effect of any such acquisition will not be substantially to lessen
4 competition or to tend to create a monopoly in any line of
5 commerce in any section of the country.

6 B. Defendants are enjoined and restrained for a period of
7 ten (10) years from the date of entry of this Final Judgment
8 from: acquiring any interest in the asphalt concrete plant
9 located in Lakeside, California, operated by Asphalt Inc. (the
10 "Lakeside plant"); managing or operating, directly or indirectly,
11 the Lakeside plant; acting as sole selling or buying agent for, or
12 entering into any other exclusive agreement with, any person that
13 holds an ownership interest in the Lakeside plant with respect to
14 the Lakeside plant; or interfering with or impeding the Lakeside
15 plant owners' ability to sell the output from that plant to
16 whomever and at whatever price and on whatever other terms and
17 conditions of sale that they choose.

18 C. Nothing in this Section VIII shall prohibit defendants
19 from acquiring property, equipment, or materials from any source
20 in the ordinary course of their businesses or from holding or
21 acquiring one percent (1%) or less of the voting securities of any
22 person engaged in whole or in part in the production of asphalt
23 concrete in the greater Los Angeles area or western San Diego
24 County.

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IX

COMPLIANCE INSPECTION

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

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their respective principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, 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 defendants at their respective principal offices,

1 defendants shall submit such written reports, under oath if
2 requested, with respect to any of the matters contained in this
3 Final Judgment as may be requested.

4 C. No information or documents obtained by the means
5 provided in this Section IX shall be divulged by any
6 representative of the Department of Justice to any person other
7 than a duly authorized representative of the Executive Branch of
8 the United States, except in the course of legal proceedings to
9 which the United States is a party (including grand jury
10 proceedings), or for the purpose of securing compliance with this
11 Final Judgment, or as otherwise required by law.

12 D. If at the time information or documents are furnished by
13 a defendant to plaintiff, that defendant represents and identifies
14 in writing the material in any such information or documents for
15 which a claim of protection may be asserted under Rule 26(c)(7) of
16 the Federal Rules of Civil Procedure, and that defendant marks
17 each pertinent page of such material, "subject to claim of
18 protection under Rule 26(c)(7) of the Federal Rules of Civil
19 Procedure," then plaintiff shall give ten (10) days notice to that
20 defendant prior to divulging such material in any legal proceeding
21 (other than a grand jury proceeding) to which that defendant is
22 not a party.

23 X

24 RETENTION OF JURISDICTION

25 Jurisdiction is retained by this Court for the purpose of
26 enabling any of the parties to this Final Judgment to apply to

1 this Court at any time for such further orders or directions as
2 may be necessary or appropriate for the construction,
3 implementation, or modification of any of the provisions of this
4 Final Judgment, for the enforcement of compliance with this Final
5 Judgment, or for the punishment of violations of this Final
6 Judgment.

7 XI

8 TERM

9 This Final Judgment will expire ten (10) years after the date
10 of its entry or earlier upon the granting of a motion for
11 termination made by plaintiff.

12 XII

13 PUBLIC INTEREST

14 Entry of this Final Judgment is in the public interest.

15 Dated:

16 APR 16 1987

17 JOHN G. DAVIES
18 United States District Judge

19 Honorable John G. Davies
20 United States District Judge
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