IN THE MATTER OF

ROBERTO FOJO, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3373. Complaint, Mar. 2, 1992 -- Decision, Mar. 2, 1992

This consent order prohibits, among other things, a Miami, Florida, obstetrician/gynecologist from agreeing with any other physician to withhold or threaten to withhold emergency room services at any hospital, and, for a period of five years, from threatening that any physician would or might withhold such services at any hospital.

Appearances

For the Commission: *L. Barry Costilo, Paul Nolan* and *Alan Soudakoff.*

For the respondent: *Robert P. Manina, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.*, Ft. Lauderdale, FL.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roberto Fojo, M.D., hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roberto Fojo, M.D., is a physician licensed to practice medicine in the State of Florida and engages in the practice of obstetrics and gynecology in Miami, Florida. At the time of the acts and practices described herein, Dr. Fojo held medical staff privileges at North Shore Medical Center, Inc., in Miami where

he was chairman of its department of obstetrics and gynecology. His principal office is located at 1190 Northwest 95th Street, Suite 107, Miami, Florida.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondent has been and is now in competition with other obstetrician/gynecologists (Ob/Gyns) in Miami, Florida.

PAR. 3. Respondent's general business practices, and the acts and practices described below, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 4. North Shore Medical Center Inc. ("North Shore" or "hospital") is a 357-bed general acute care not-for-profit hospital located in Miami, Florida. At the time of the acts and practices described herein, North Shore had a major marketing program directed toward the health care needs of women, and its Ob/Gyn department provided a substantial source of revenue to the hospital.

PAR. 5. As is typically the case, the economic arrangement between North Shore and its medical staff did not involve an exchange of money, but rather an exchange of "free" goods and services. The hospital granted privileges to qualified physicians to use its facilities and support personnel without receiving payment from the physicians, and in exhange physicians agreed to provide various services without receiving payment from the hospital. One of the services that some physicians provided as part of this arrangement was taking emergency room "call," *i.e.*, being available on a regularly scheduled basis to come to the hospital to treat emergency room patients. As of November 1986, North Shore required Ob/Gyns who had active or provisional medical staff privileges at the hospital to take emergency room call. As a consequence, approximately 20 Ob/Gyns were required to take emergency room call. Most of these Ob/Gyns competed with each other.

PAR. 6. Beginning at least as early as November 1986, respondent conspired with other members of North Shore's Ob/Gyn department to withhold and threaten to withhold emergency room call services from the hospital. The aim of the respondent and other conspirators was to improve their economic arrangement with North Shore by coercing the hospital to release them from their obligation to take emergency room call in exchange for their hospital privileges, and to pay in some other manner those Ob/Gyns who were willing to

take call. By concertedly threatening not to take emergency room call, respondent and the other conspirators sought to enhance their bargaining power and to reduce the risk that the hospital would terminate their individual hospital privileges if they refused to take call. The conspirators' loss of medical staff privileges at North Shore would have placed them at a competitive disadvantage vis-a-vis other Ob/Gyns.

PAR. 7. Respondent chaired Ob/Gyn department meetings at North Shore on November 13 and December 11, 1987. At the November 13th meeting, members of the department voted to remove their names from North Shore's emergency room call roster. At the December 11th meeting, 19 members of the department who were present agreed to inform North Shore's administration that on December 15, 1986, the department members would stop taking emergency room call. Immediately after the meeting, respondent notified North Shore's administration of this threatened action.

PAR. 8. After making this threat, respondent refused to take call in late December 1986 and has not taken call since that time. Moreover, in late December 1986, respondent, on behalf of the members of his department, met on several occasions with North Shore's administrator to seek greater financial incentives for taking call, including indemnification for malpractice damages or direct payments to Ob/Gyns.

PAR. 9. In January 1987, all but two members of the Ob/Gyn department stopped taking emergency room call. Thereafter, from February 1 through June 30, 1981, North Shore altered its economic arrangement with the Ob/Gyns and paid them, as well as other physicians on its staff, to take call. North Shore decided that this arrangement was too expensive and as of July l, 1981, staffed its emergency room with those few Ob/Gyns who were willing to take call in exchange for hospital privileges.

PAR. 10. The purpose, effect, tendency, or capacity of the conspiracy, acts, and practices described in paragraphs six through nine are and have been to restrain trade unreasonably in the following ways, among others:

a. Restraining competition among respondent and other Ob/Gyns on the medical staff of North Shore;

b. Coercing North Shore to provide Ob/Gyns access to its facilities on more favorable economic terms; and

c. Depriving consumers of the benefits of competition.

PAR. 11. The conspiracy, acts, and practices described herein constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Roberto Fojo, M.D. ("Dr. Fojo") is a physician licensed and doing business under and by virtue of the laws of the State of Florida. The mailing address and principal place of business of Dr. Fojo is 1190 Northwest 95th Street, Suite 107, Miami, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. "*Respondent*" means Roberto Fojo, M.D., and his employees, agents and representatives.

2. "*Emergency room call services*" means being available, as determined by a hospital, to come to the hospital and treat emergency room patients needing medical or surgical services.

II.

It is further ordered, That respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, continuing, or attempting to enter into or continue, any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital; and

B. For a period of five (5) years from the date this order becomes final, expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital.

Provided that, nothing in this order shall prohibit respondent from entering into any agreement with any physician with whom respondent practices medicine in partnership or as a professional corporation, or who is employed by such partnership or professional corporation or by respondent.

III.

It is further ordered, That respondent:

A. Distribute a copy of this order and the accompanying complaint, by first class mail within thirty (30) days after this order becomes final, to each hospital at which he has hospital privileges at the time this order becomes final;

B. File a written report with the Commission within sixty (60) days after this order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which respondent has complied and is complying with this order; and

C. Notify the Commission within thirty (30) days of any change in his business address.

IN THE MATTER OF

HANSON PLC, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3374. Complaint, Mar. 9, 1992--Decision, Mar. 9, 1992

This consent order permits, among other things, the respondents to acquire Beazer PLC, and requires the respondents to divest the Cencal Cement Company interest to a Commission-approved acquirer. If the divestiture is not completed within 12 months, the respondents shall consent to the appointment by the Commission of a trustee to divest the Cencal interest.

Appearances

For the Commission: *Casey Triggs* and *Steven A. Newborn.*

For the respondents: *Helene Jaffe, Weil, Gotschal & Manges*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, Hanson PLC ("Hanson") and H B Acquisitions PLC ("HBA"), an indirect wholly-owned subsidiary of Hanson (hereinafter collectively referred to as "Hanson"), both corporations subject to the jurisdiction of the Commission, propose to acquire substantially all of the voting securities of Beazer PLC ("Beazer") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions apply:

(a) "*Hanson*" means Hanson PLC and H B Acquisitions PLC, their successors and assigns, directors, officers, employees, agents and representatives, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Hanson PLC or H B Acquisitions PLC, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(b) "*Beazer*" means Beazer PLC, its successors and assigns, directors, officers, employees, agents and representatives, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Beazer, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(c) "*Cencal*" means the California general partnership joint venture, Ssangyong/Riverside Ltd. d/b/a Cencal Cement Company, which is owned in equal part by Ssangyong (Pacific), Inc., a California corporation, and Riverside Cement (Pacific), Inc., a Delaware corporation.

(d) "*The Cencal interest*" means Beazer's ownership interest in Cencal, the owner of a deep-sea cement import terminal located at the Port of Stockton, California.

(e) "*Kaiser*" means Kaiser Cement, an indirect, wholly-owned subsidiary of Hanson, which operates a cement manufacturing facility in Permanente, California.

(f) "*Ssangyong*" means Ssangyong Cement (Pacific), Inc., a wholly-owned subsidiary of Ssangyong Cement Ind. Co., Ltd., and 50% owner of Cencal.

(g) "*Cement*" means portland cement, a chemical combination of calcium, silica, alumina, iron ore, and small amounts of other materials which is made by quarrying, crushing, and grinding the raw materials, burning them in huge kilns at extremely high temperatures and finely grinding the resulting marble-shaped pellets with gypsum into an extremely fine, usually gray, powder.

II. THE RESPONDENTS

2. Respondent Hanson is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its principal offices at 1 Grosvenor Place, London SW1X 7JH, England.

3. Respondent HBA, an indirect, wholly-owned subsidiary of Hanson, is a corporation existing under the laws of the United Kingdom with its principal offices at 1 Grosvenor Place, London SW1X 7JH, England.

4. Hanson and HBA are now, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

5. Beazer is a corporation organized and existing under the laws of the United Kingdom, with its principal executive offices at Lower Bristol Road, Bath Avon BA2 3EY, England.

6. Beazer is now, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

7. On October 18, 1991 Hanson and HBA commenced a tender offer to acquire all of the voting securities of Beazer PLC.

V. RELEVANT MARKET

8. For purposes of this complaint, the relevant line of commerce in which to analyze Hanson's acquisition of all of the voting securities of Beazer is the manufacture and sale of portland cement.

9. For purposes of this complaint, the relevant sections of the country in which to assess the effects of Hanson's acquisition of the voting securities of Beazer is the northern California area consisting of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Tehama, Glenn, Butte, Plumas, Lake, Colusa, Sutter, Yuba, Sierra, Nevada, Placer, Sonoma, Napa, Yolo, Solano, Sacramento, El Dorado, Marin, Amador, Alpine, Contra Costa, San Joaquin, Alameda, Calaveras, Tuolumne, Mono, San Francisco, San Mateo, Santa Clara, Stanislaus, Santa Cruz, Merced, Mariposa, Monterey, San Benito, Fresno, Madera, Inyo, Tulare, and Kings counties. ("Northern California market")

VI. MARKET STRUCTURE

10. The relevant market set forth in paragraphs 8 and 9 is highly concentrated, whether measured by Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios.

VII. ENTRY CONDITIONS

11. Entry into the relevant market is difficult.

VIII. COMPETITION

12. Hanson, through Kaiser, and Beazer, through Cencal, are actual competitors in the relevant market.

IX. EFFECTS OF THE ACQUISITION

13. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the manufacture and sale of cement in the Northern California market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) By eliminating direct and actual competition between Kaiser and Cencal; and

(b) By significantly enhancing the likelihood of collusion or interdependent coordination among the firms that produce or sell cement in the Northern California market.

14. All of the above increase the likelihood that firms manufacturing or selling cement in the Northern California market will increase prices and restrict output, both in the near future and in the long-term.

X. VIOLATIONS CHARGED

15. The acquisition described in paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hanson PLC ("Hanson"), a corporation, and H B Acquisitions PLC ("HBA"), corporation, hereinafter collectively referred to as "respondents," and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said act, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, names the following jurisdictional findings and enters the following order:

1. Hanson PLC ("Hanson") is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SW1X 7JH, England.

2. H B Acquisitions PLC ("HBA"), an indirect, wholly-owned subsidiary of Hanson PLC, is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SWlX 7JH, England.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

A. "*Hanson*" means Hanson PLC and H B Acquisitions PLC, their successors and assigns, directors, officers, employees, agents, and representatives, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Hanson PLC or H B Acquisitions PLC and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*Acquisition*" means the acquisition by Hanson, PLC and HBA of substantially all of the voting securities of Beazer.

C. "*Cencal*" means the California general partnership joint venture, Ssangyong-Riverside Ltd., d/b/a Cencal Cement Company, which is owned in equal part by Ssangyong (Pacific), Inc., a

California corporation, and Riverside Cement (Pacific), Inc., a Delaware corporation.

D. "*The Cencal interest*" means Hanson's ownership interest in Cencal, the owner of a deep-sea import terminal located at the Port of Stockton, California.

E. "*Cement*" means portland cement, a chemical combination of calcium, silica, alumina, iron ore, and small amounts of other materials which is made by quarrying, crushing, and grinding the raw materials, burning them in huge rotary kilns at extremely high temperatures and finely grinding the resulting marble-sized pellets with gypsum into an extremely fine, usually gray, powder.

II.

It is ordered, That:

A. Within twelve (12) months of the date this order becomes final, Hanson shall divest, absolutely and in good faith, the Cencal interest.

B. Within sixty (60) days of the date this order becomes final Hanson shall exercise its right under Section 15.1 of the Joint Venture Agreement of Ssangyong/Riverside Ltd. ("JV Agreement") attached hereto as Exhibit A, to give Ssangyong a Buy-Sell Notice under the JV Agreement for the purpose of divesting its interest in Cencal to Ssangyong.

1. If Ssangyong acquires Hanson's interest in Cencal for cash only without additional covenants or restrictions, then Hanson is not required to seek the prior approval of the Commission for such divestiture; however, if consideration to acquire Cencal is not for cash only, or if Hanson requires additional covenants or restrictions for its divestiture of Cencal to Ssangyong, then such divestiture shall be subject to the prior approval of the Commission.

2. If Ssangyong declines to acquire Hanson's interest in Cencal and Hanson, by operation of the Buy-Sell Option of JV Agreement, acquires Ssangyong's fifty (50) percent interest in Cencal, then:

(a) Hanson is not required to seek the prior approval of the Commission for that acquisition under paragraph V of this order;

(b) Hanson shall divest its entire interest in Cencal, including the interest acquired from Ssangyong, within the time provided by paragraph II. A.; and

(c) Hanson shall hold separate the interest acquired from Ssangyong under the same terms and conditions as provided in paragraph II. D.

C. The divestiture shall be only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Cencal interest is to ensure the continuation of Cencal as a viable deep-sea import terminal, engaged in the same businesses in which they are presently employed, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

D. Hanson shall comply with all terms of the Agreement To Hold Separate ("Hold Separate"), attached hereto and made a part hereof. Said Hold Separate shall continue to be in effect until such time as the Hold Separate provides.

E. Hanson shall take such action as is necessary to maintain the viability and marketability of the Cencal interest and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the Cencal assets except in the ordinary course of business and except for ordinary wear and tear, acts of God or Force Majeure.

III.

It is further ordered, That:

A. If Hanson has not divested, absolutely and in good faith and with the Commission's prior approval, the Cencal interest within 12 months after the date this order becomes final, Hanson shall consent to the appointment by the Commission of a trustee to divest the Cencal interest. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Com-

mission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Hanson shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Hanson to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III. A. of this order, Hanson shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Hanson, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Cencal interest.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or by the court (in the case of a court-appointed trustee); *provided, however*, the Commission may only extend the trustee's divestiture period one time for such time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Cencal interest, or any other relevant information as the trustee may request. Hanson shall develop such financial or other information as such trustee may request and shall cooperate with any request of the trustee. Hanson shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Hanson shall extend the time for divestiture under this paragraph

in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Hanson's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II. B. of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer of the Cencal interest. The divestiture shall be made in the manner set out in paragraph II.; *provided, however*, if the trustee receives *bona fide* offers from more than one prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Hanson from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Hanson, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Hanson, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Hanson and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Cencal interest.

7. Hanson shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a

court-appointed trustee, of the court, Hanson shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture in accordance with this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III. A. of this order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture in accordance with this order.

11. The trustee shall have no obligation or authority to operate or maintain the Cencal interest.

12. The trustee shall report in writing to Hanson and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Hanson has fully complied with the provisions of paragraphs II. and III. of this order, Hanson shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Hanson shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Hanson also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

It is further ordered, That, for a period commencing on the date this order becomes final and continuing for ten (10) years, Hanson shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, or otherwise:

(1) Any assets engaged in, used for, or previously used for (and still suitable for); or

(2) Any interest in, or the whole or any part of the stock or share capital of any entity that owns or operates assets engaged in, used for, or previously used for (and still suitable for)

the manufacture, sale, shipment or distribution of cement in the area of Northern California comprised of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Tehama, Glenn, Butte, Plumas, Lake, Colusa, Sutter, Yuba, Sierra, Nevada, Placer, Sonoma, Napa, Yolo, Solano, Sacramento, El Dorado, Marin, Amador, Alpine, Contra Costa, San Joaquin, Alameda, Calaveras, Tuolumne, Mono, San Francisco, San Mateo, Santa Clara, Stanislaus, Santa Cruz, Merced, Mariposa, Monterey, San Benito, Fresno, Madera, Inyo, Tulare, and Kings counties, other than assets acquired in the ordinary course of business for the manufacture, sale, shipment or distribution of cement at Kaiser's Permanente plant; *provided, however,* that it shall not be a violation of this paragraph V. if Hanson acquires, through the operation of the so-called Buy-Sell Option of paragraph XV. of the Joint Venture Agreement of Ssangyong/ Riverside Ltd., the fifty (50) percent interest currently owned by Ssangyong Cement (Pacific) Inc., provided that, if Hanson does acquire such interest, it will divest it and all such interest in the joint venture within the time period prescribed by paragraph II. of this order. One year from the date this order becomes final and annually thereafter for nine years, Hanson shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered, That, acquisitions resulting in an interest of not more than three (3) percent of the outstanding voting securities of publicly traded companies, solely for the purpose of investment, are not subject to paragraph V. of this order.

VII.

It is further ordered, That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the northern California market, nor is engaged in the manufacture, sale, shipment or distribution of cement to such area (hereinafter "acquired entity"), Hanson announces its intention to acquire or commences an acquisition of any interest in the acquired entity and, before Hanson obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in an entity that owns or operates assets used for the manufacture, sale, shipment or distribution of cement in such area (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture, sale, shipment or distribution of cement in such area ("cement assets") or begins selling, shipping or distributing cement to such area, if approval of such acquisition would be required pursuant to paragraph V., Hanson may, in lieu of obtaining prior approval of such acquisition under paragraph V. in this order, comply with each of the requirements of this paragraph VII. of this order. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to paragraph V., Hanson shall:

A. Notify the Commission as soon as practicable, and in any event, within three (3) days of Hanson's learning of the acquisition by the acquired entity of any interest in a third entity, or of any cement assets, as described in paragraph VI. of this order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period,

and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR 801, 802 and 803.

B. In the case where the acquired entity acquired cement assets, Hanson shall comply with all terms of the Hold Separate, attached to this order and made a part hereof. *Provided, however,* that each reference to "Cencal" in the Hold Separate shall for purposes of this paragraph VII., mean either the "stock or share capital of the third entity" or the "cement assets of the acquired entity." Said Hold Separate shall take effect as soon as Hanson has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Hanson has divested all the cement assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Hanson has sufficient control over the acquired entity to do so, Hanson shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

C. Within six (6) months of the date when Hanson has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Hanson shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired cement assets, divest, absolutely and in good faith, all the cement assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the cement assets of the acquired entity.

D. Hanson shall divest the stock or share capital of the third entity or the cement assets of the acquired entity only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired cement assets, Hanson shall demonstrate the viability and competitiveness of the cement assets of the acquired entity in its application for approval of a

proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture, sale, and/or shipment of cement, and to remedy any lessening of competition resulting from the acquisition.

E. In the case where the acquired entity acquired cement assets, Hanson shall take such action as is necessary to maintain the viability, competitiveness and marketability of the cement assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

F. If Hanson has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the cement assets of the acquired entity within six (6) months of the date when Hanson has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Hanson shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or
2. The cement assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the cement assets of the acquired entity.

G. In the case where the acquired entity commences shipping, selling or distributing of cement in the northern California market upon acquiring control, Hanson shall cause the acquired entity to cease and desist such activity.

H. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Hanson shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or

any other statute enforced by the Commission, for any failure by Hanson to comply with this order.

I. If a trustee is appointed by the Commission or a court pursuant to paragraph VII. F. of this order, Hanson shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph III. B. of this order. *Provided, however*, that each reference to "Cencal" in paragraph III. B. of this order shall, for the purposes of this paragraph VII., mean either the "stock or share capital of the third entity" or the "cement assets of the acquired entity."

VIII.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Hanson, Hanson shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Hanson relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Hanson, and without restraint or interference from Hanson, to interview officers or employees of Hanson, who may have counsel present, regarding such matters.

IX.

It is further ordered, That, Hanson shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution, or sale of subsidiaries, or any other change that may affect compliance obligations arising out of the order.

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and among Hanson PLC ("Hanson" as defined in paragraph I. of the proposed consent order), a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal office at 1 Grosvenor Place, London SWlX 7JH, England; Hanson's indirect wholly-owned subsidiary, H B Acquisitions PLC ("HBA"), with its principal office at 1 Grosvenor Place, London SWlX 7JH, England; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

Premises

Whereas, on October 18, 1991, Hanson and HBA commenced a tender offer to acquire all of the voting securities of Beazer PLC ("Beazer"); and

Whereas, Kaiser Cement ("Kaiser"), an indirect, wholly-owned subsidiary of Hanson, with its principal office located at 1333 N. California Boulevard, Suite 445, Walnut Creek, CA., operates a cement manufacturing facility in Permanente, California; and

Whereas, Ssangyong/Riverside Ltd., a California general partnership d/b/a Cencal Cement Company ("Cencal"), with its principal office located at 2321 W. Washington Street, Suite H, Stockton, California, owns a deep-sea cement import terminal located at the Port of Stockton, California. Cencal is owned equally, as a joint venture, by Beazer PLC and Ssangyong, a Korean Company; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("agreement") the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and,

Whereas, the Commission is concerned that if an understanding is not reached to preserve the *status quo ante* and to hold separate the assets and businesses of Cencal until the divestiture of Cencal contemplated by the consent order has been made, divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Cencal interest as described in paragraph I. of the proposed consent order, and the Commission's right to have Cencal continue as a viable competitor of Kaiser; and

Whereas, the purpose of the Hold Separate and the consent order is to:

1. Preserve Cencal as a viable independent deep-sea cement import terminal, pending divestiture of the Cencal interest as defined in paragraph I. of the consent order,
2. Remedy any anticompetitive effects of the Acquisition,
3. Preserve the Cencal assets as viable assets engaged in the same business in which they are presently employed pending divestiture; and

Whereas, Hanson's entering into this Hold Separate shall in no way be construed as an admission by Hanson that the acquisition is illegal; and

Whereas, Hanson understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the agreement, it will not seek further relief from Hanson with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold

Separate and the order to which the Hold Separate is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of Cencal and all other available relief pursuant to the order, as follows:

1. Hanson agrees to execute and be bound by the attached agreement.

2. Hanson agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) and 2(b), it will comply with the provisions of this Hold Separate:

(a) Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

(b) The day after the divestiture obligations required by the consent order have been satisfied.

3. To ensure the complete independence and viability of Cencal and to assure that no competitive information is exchanged between Cencal and any of the cement related operations of Hanson, Hanson will hold Cencal separate and apart on the following terms and conditions:

(a) Cencal, as it is presently constituted, shall be held separate and apart and shall be operated independently of Hanson (meaning here and hereinafter, Hanson excluding Cencal); *provided, however,* that Hanson may exercise only such direction and control over Cencal as is necessary to assure compliance with this Hold Separate, the agreement, and the order.

(b) Hanson shall not exercise direction or control over, or influence, directly or indirectly, Cencal or any of its operations or businesses; *provided, however*, that Hanson may exercise only such direction and control over Cencal as is necessary to assure compliance with this Hold Separate, the agreement, and the order.

(c) Hanson shall maintain the viability and marketability of Cencal and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair its marketability or viability.

(d) The Cencal Management Committee shall have exclusive authority for managing Cencal.

(e) The individuals on the Cencal Management Committee shall not be involved in any way in the marketing, selling, manufacturing, or management of Kaiser, or any other business of Hanson (other than Beazer's operations as presently constituted) involved in the marketing, selling, production, management, shipment, or distribution of cement in the Northern California market. Each of these individuals, the management of Cencal and Hanson's directors, officers, or employees responsible for the operation or management of Kaiser and any other Hanson cement related assets will receive the notification appended as Attachment A hereto.

(f) If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the order, Hanson may, but is not required to, assign an individual to Cencal for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Cencal and such records of Cencal as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Hanson agreeing to be bound by the terms and conditions of Attachment A, appended hereto.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Hanson shall not receive or have access to, or the use of, any material confidential information about Cencal or the activities of the Cencal Management Committee in managing the business that is not in the public domain. Nor shall the Cencal Management Committee, any individual member of the Cencal Management Committee, nor the on-site person receive or have access to, or the use of, any material confidential information about Hanson's cement related assets or related businesses or activities not in the public domain. Hanson may receive on a regular basis from Cencal aggregate financial information necessary and essential to allow Hanson to prepare United States consolidated financial reports, tax returns, and personnel reports. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Hanson from sources other

than the Cencal Management Committee and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

(h) Hanson shall not remove or replace any member of the Cencal Management Committee, or the on-site person, except as provided below:

(i) Hanson may remove and replace anyone for cause, death, disability, or resignation from service with Hanson.

(ii) Hanson may remove any member of the Cencal Management Committee if a conflict of interest develops in that member's role as a potential purchaser of the Cencal Assets and that role as a manager of Cencal.

(iii) Hanson may replace any member of the Cencal Management Committee or officer of Cencal after providing the Commission with sixty (60) days advance written notice; and

(iv) Hanson may replace any individual who interferes in any way with Hanson's ability to comply with the terms of this Hold Separate, the agreement, or the order. "*Provided, however*, that each individual newly appointed to the Cencal Management Committee, pursuant to this subparagraph, must conform to all terms and condition of this Hold Separate.

(i) Hanson shall provide Cencal with its share of working capital as Cencal requests from its partners from time to time .

(j) In the event aggregate losses in Cencal exceed $3,000,000, Hanson shall not exercise its right to dissolve the joint venture. In the event aggregate losses in Cencal exceed $3,000,000, and Ssangyong elects to dissolve the joint venture, Hanson shall take any and all reasonable measures necessary to ensure the continued viability of Cencal as an independent deep-sea cement import terminal as defined in paragraph I of the consent order, including, but not limited to, the contribution of working capital.

(k) Should the Commission seek in any proceeding to compel Hanson to divest itself of the Cencal interest as defined in the proposed order, Hanson shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improve-

ments Act waiting period or the fact that the Commission has permitted the acquisition. Hanson also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or consent order requires Hanson to take, or prohibits Hanson from taking, certain actions which otherwise may be required or prohibited by contract, Hanson shall abide by the terms of the Hold Separate or consent order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or consent order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Hanson Industries, 99 Wood Avenue South, Iselin, New Jersey, Hanson's United States affiliate, Hanson shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Hanson and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Hanson relating to compliance with this Hold Separate;

(b) Upon five (5) days notice to Hanson, and without restraint or interference from Hanson, to interview officers or employees of Hanson, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Hanson PLC ("Hanson") has entered into a consent agreement and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of the to be acquired interest in Cencal Cement Company ("Cencal"). Until after the Commission's order becomes final and the interests in Cencal divested, Cencal must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Hanson. All competitive information relating to Cencal must be retained and maintained by the persons responsible for the management of Cencal (including each of Cencal's Board of Directors who are employees of Beazer) on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involving Hanson business, including the operations of Kaiser Cement Corporation ("Kaiser"). Similarly, all such persons responsible for the management of Hanson's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Cencal.

Any violation of the consent agreement or the Hold Separate Agreement, incorporated by reference as part of the consent order, may subject Hanson to civil penalties and other relief as provided by law.

EXHIBIT A

JOINT VENTURE AGREEMENT OF SSANGYONG/RIVERSIDE LTD.

Dated for identification purposes as of October 1, 1988

This Joint Venture Agreement of Ssangyong/Riverside Ltd. ("Agreement") is dated for identification purposes as of October 1, 1988 and is executed by and between Ssangyong Cement (Pacific), Inc., a California corporation (herein referred to as "Ssangyong") and Riverside Cement (Pacific), Inc., a Delaware corporation (herein referred to as "Riverside"). Ssangyong and Riverside are sometimes herein referred to individually as a "Partner" and collectively as the "Partners."

SECTION I

General

1.1. Formation. Ssangyong, a wholly owned subsidiary of Ssangyong Cement Ind. Co., Ltd., (herein referred to as "Ssangyong Cement"), a leading manufacturer and international supplier of cement, and Riverside, a wholly owned subsidiary of the Riverside Cement Company Division of Gifford-Hill Cement Company (herein referred to as "Riverside Cement"), a United States importer and marketer of cement, hereby form and create this joint venture (the "Partnership") as a partnership pursuant to the provisions of the Uniform Partnership Act of the State of California, effective as of the Effective Date.

1.2. Name. The name of the Partnership shall be SSANGYONG/RIVERSIDE LTD. The Partners may change the name of the Partnership or adopt such trade or fictitious names as they may determine to be appropriate.

SECTION II

Certain Defined Terms

As used in this Agreement, the following terms have the following respective meanings:

"*Cement*": Shall mean finished Portland Cement in bulk conforming to American Society for Testing Materials Standards or Type II Low Alkali Cement, acceptable in the Northern California cement Market and meeting such additional specifications as may be prescribed by the Partnership from time to time.

"*Code*": The Internal Revenue Code of 1986, as amended.

"*Effective Date*": The date that is thirty (30) days following the date of execution of this Agreement by the Partners, or at such earlier or later date as may be agreed upon by the Partners, provided that the Partners shall have theretofore obtained all requisite government approvals (including but not limited to a

satisfactory port handling agreement with the Port of Stockton) and the Partnership shall have theretofore entered into a Cement Supply Agreement with Ssangyong Cement Ind. Co., Ltd. and through its affiliate.

"*Event of Default*": As defined in Section 12.1.

"*Market*": Shall mean the market for the purchase and sale of Cement in Northern California.

"*Northern California*": All locations in the northern part of the state of California, being that part of the State north of a line drawn from the coast through Monterey in the west, through Madera to the California-Nevada border in the east.

"*Percentage Interests*": The Percentage Interest of each of the Partners in the Partnership shall be as follows:

Ssangyong	50.00%
Riverside	50.00%

"*Project*": The specialized materials handling and storage facilities which shall be mutually agreed upon by the Partners on the basis of effectiveness and least cost to be located at the Project Site.

"*Project Site*": The real property located at the Port of Stockton, California in which leasehold, license, fee or other real property rights or interests shall be acquired by the Partnership in conjunction with the development of the Project.

"*Related Businesses*": Such businesses as the Partnership may acquire or be engaged in from time to time.

"*Stockton Terminal*": The cement terminal and truck load-out stations located at the Port of Stockton, California in which leasehold, license, fee or other real property rights or interests shall be acquired by the Partnership in conjunction with the development of the Project.

"*Transfer*": The mortgage, pledge, hypothecation, transfer, sale, assignment or other disposition of any part or all of an interest in the Partnership whether voluntarily, by operation of law or otherwise.

SECTION III

Purpose

The sole purpose and business of the Partnership shall be (a) acquiring the Project Site, (b) designing, constructing and installing the Project, (c) engaging in the business of importing, purchasing, transporting, and selling Cement in the Northern California Market in conjunction with the operation of the Project, (d) engaging in such other Related Businesses as the Partners shall unanimously determine, (e) entering into from time to time such financing arrangements as the Partners may determine to be necessary, appropriate, or advisable to enable the Partnership to accomplish its purposes, (f) to mortgage, pledge, assign, grant a security interest in, or otherwise encumber, lease, exchange, or otherwise dispose of, all or a part of the Project, Project Site or the partnership interest in one or more

or all of its assets to secure such financing arrangements, and (g) to engage in all activities and to enter into, exercise the rights and enjoy the benefits under, and discharge the obligations of the Partnership pursuant to, all contracts, agreements, and documents that may be necessary, appropriate, or advisable to enable the Partnership to accomplish the purposes set forth in clauses (a), (b), (c), (d), (e) or (f) of this sentence.

SECTION IV

Term

The term of the Partnership shall commence on the Effective Date hereof and shall continue until terminated as provided in Section XII; provided, however, that if the Partnership shall not have become effective by December 31, 1988, this Agreement shall be terminated, canceled and of no further force or effect.

SECTION V

Principal Place of Business

The principal place of business of the Partnership shall be at Stockton Terminal, or at such other location as the Management Committee in their discretion, may determine, and the Management Committee shall promptly notify the Partners in writing of each such change in location.

SECTION VI

Capital Contributions: Capital Accounts

6.1. Initial Capital Contributions. Within ten (10) days following the Effective Date of this Agreement, each of the Partners shall contribute One Million Dollars (US $1,000,000.00) to the capital of the Partnership and thereafter, each of the Partners shall contribute a second initial contribution to the capital of the Partnership as shall be mutually agreed by the Partners.

6.2. Additional Capital Contributions. (a) General. Except for the initial capital contributions required to be made pursuant to the provisions of Section 6.1, all costs and expenses, including debt and working capital financing, of the Partnership shall, to the extent practicable, be funded by Partnership borrowings from institutional or other third party lenders. To the extent the Partnership requires funds in addition to the initial capital contributions provided for in Section 6.1 and funds available from Partnership borrowings from institutional and other third party lenders, the Partners agree to make additional capital contributions, from time to time, subject to the receiving of all requisite government approvals, in the amount of such reasonably estimated excess cash requirement in accordance with the provisions herein and in the same percentages as their Percentage Interests.

(b) Partner Guarantees. In the event any Partner is required to accept liability on a recourse basis for repayment of any institutional or other third party borrowings, the Partners agree to furnish guarantees, from time to time, on a several basis with respect to such borrowings in the same percentages as their Percentage Interests.

6.3. Capital Accounts. Each Partner shall have a capital account which shall be increased by:

(a) The amount of its capital contributions to the Partnership pursuant to Section 6.1 and 6.2; and

(b) The amount of net income and gains allocated to it pursuant to Section VIII;

and shall be decreased by the amount of losses allocated to it pursuant to Section VIII and all amounts paid or distributed to it pursuant to the provisions hereof.

SECTION VII

Control and Management: Obligation of the Partners

7.1. Management Committee. (a) The Partnership shall have a Management Committee which shall consist of six (6) persons, of which three (3) shall be appointed by Ssangyong and three (3) shall be appointed by Riverside. A member of the Management Committee may from time to time designate any person to act as his alternate, and such alternate member shall have the same powers, rights, duties and authority as the member designating such alternate member. The Management Committee shall be chaired by one of the members appointed by the respective partners, alternately. Such chairman shall be responsible for conducting and presiding at all meetings of the Management Committee.

(b) The Management Committee shall conduct regular semi-annual meetings and additionally shall conduct such special meeting as may be called by any member of the Management Committee as necessary or appropriate for the partnership's business. All actions of the Management Committee shall require unanimous consent of all of the members. All meetings of the Management Committee may be in person or by means of conference telephone or similar communications equipment by means of which all members of the Management Committee can hear each other and participate in the meeting.

(c) Except as specifically limited herein, the Management Committee shall have full, exclusive and complete discretion in the management and control of the Partnership. Without limiting the generality of the foregoing, the Management Committee may in its sole discretion approve or disapprove:

(1) Any change to the capital structure of the Partnership;

(2) Business plans including quarterly managerial and accounting reports;

(3) Acquisition of the Project, development of the Project site, negotiation and coordination of contracts and subcontracts for the Project, and installation of the Project;
(4) Any change in the business of the Partnership;
(5) All borrowings of the Partnership;
(6) Any lease, sale, mortgage, exchange, transfer or other disposition of all or any portion of the Partnership's assets;
(7) Employment of a General Manager (provided, however, upon the call by any member of the Management Committee for the removal of a General Manager, the Management Committee shall within thirty (30) days remove and replace the General Manager); and
(8) Employment of such accounting, lawyers, agents, and other management or service personnel as may be required to carry on the business of the Partnership.

The Management Committee will develop, within sixty (60) days of the Effective Date hereof, a Business Plan for the period commencing on the Effective Date of this Agreement and ending December 31, 1990. Notwithstanding the foregoing, the Management Committee shall be authorized to modify any Business Plan theretofore adopted by the Partnership and shall modify the current Business Plan to the extent required as a result of unforeseen circumstances or as a result of any sale of interest in the Partnership pursuant to Section 15.1 of this Agreement.

7.2. Executive Committee. (a) The Partnership shall have an Executive Committee consisting of two (2) persons of which one (1) person shall be appointed by each Partner.

(b) The Executive Committee shall supervise the business operations of the Partnership, including:

(1) The auditing of overall operation of the business of the Partnership;
(2) Decision making as to matters of importance which are beyond the authority or ability of the General Manager;
(3) Such other powers, rights, duties and authority as may be granted from time to time by the Management Committee.

7.3. Duties of the General Manager. Subject to any limitations set forth in this Agreement or imposed by the Management Committee or the Executive Committee, the General Manager shall:

(1) Be responsible for daily management and operation of the business and affairs of the Partnership;
(2) Promote and effect sales of Cement and conduct such other normal and customary activities relating thereto;
(3) Perform any and all acts necessary or appropriate to preserve the Partnership's assets;

(4) Procure and maintain such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Manager;

(5) Execute and deliver on behalf of an in the name of the Partnership deeds, deeds of trust, notes, leases, subleases, day leases and other contracts for the unloading of bulk materials other than Cement, mortgage, bills of sale, financing statement, security agreements, assessments and any and all other instruments necessary or incidental to the conduct of the Partnership's business and the financing thereof;

(6) Annually, prior to the end of each fiscal year, prepare and submit a proposed Business Plan to the Management Committee for the following two-year period, in a form substantially similar to the initial Business Plan developed by the Management Committee, which shall include:

(i) A narrative description of the Business Plan, including a description of the marketing and other assumptions reflected therein, and specifying the modifications proposed for the first year of the period covered by the Business Plan from the previously adopted Business Plan of the Partnership for such period;

(ii) A schedule of estimated capital expenditures, segregated by project and showing the source of funds and total estimated costs to completion, regardless of whether such completion shall take place within the period covered by the Business Plan;

(iii) A schedule of projected cash flow for the period covered by the Business Plan on a quarterly basis showing the source and applications of cash, and separately stating proposed borrowings;

(iv) A projected income and expense statement for the period covered by the Business Plan on a quarterly basis; and

(v) A projected balance sheet as of the end of each fiscal year covered by the Business Plan.

(7) Carry out the Business Plan of the Partnership, including, without limitation, the procurement and construction or installation of the Project and the receipt and delivery of Cement therefrom;

(8) Employ persons and firms on behalf of the Partnership in connection with the engineering, procurement and construction or installation of the Project;

(9) Arrange for and coordinate the issuance of all required governmental approvals for the acquisition and operation of the Project;

(10) Take no action detrimental to the interests of the Partnership and take any action necessary to be taken in the interests of the Partnership;

(11) Prepare and submit to the Management Committee quarterly managerial and accounting reports in such manner and form as may be required by the Management Committee; and

(12) To perform such other duties as the Management Committee or the Executive Committee may specify.

7.4. Prohibited Acts. Without the consent of all the Partners acting through the Management Committee, no one in the Partnership, including the Management Committee, Executive Committee, the General Manager and all other employers of the Partnership shall be empowered to:

(1) Do any act in contravention of this Agreement;
(2) Do any act which would make it impossible to carry on the ordinary business of the Partnership;
(3) Confess a judgment against Partnership;
(4) Possess Partnership property or assign any rights in specific Partnership property for other than a Partnership purpose;
(5) Admit a person as a partner into the Partnership, except as specifically provided herein;
(6) Change or reorganize the Partnership into any other legal form;
(7) Cause the Partnership to (i) enter into other partnership agreements in the capacity of a general partner or a limited partner, (ii) become a member of a joint venture, (iii) participate in forms of syndication for investment, (iv) own stock in corporations, (v) engage in any business other than that specified in Section III hereof, except as agreed to by all the Partners; or (vi) guarantee debts or obligations of any Partner or any other entity; or
(8) Contractually obligate the Partnership to make capital expenditures in excess of that provided for in the Business Plan of the Partnership.

7.5. Liability. Neither the General Manager nor any member of the Management Committee or the Executive Committee shall be personally liable for the return of any portion of the capital contribution of the Partners or for the failure of the Partnership to achieve the results projected in any Partnership Business Plan, except where there has been a breach of Section 7.3(10) above.

7.6. Partner Transactions. (a) The Partnership evidenced by this Agreement shall not come into existence or be effective unless prior to the Effective Date the Partnership shall enter into a Cement Supply Agreement with Ssangyong Cement Ind. Co., Ltd. and its affiliate to supply to the Partnership certain initial quantities of Cement which Cement Supply Agreement shall include provisions consistent with the Cement Supply Memorandum of Agreement executed contemporaneously herewith. During 1988 the Partnership agrees to purchase cement from Ssangyong Cement Ind. Co., Ltd. per the terms of said Cement Supply Agreement. Thereafter, the Partnership may purchase Cement as the Partnership may require from other suppliers, provided that Ssangyong Cement shall have the first right to supply Cement to the Partnership, as long as Cement supplied by Ssangyong Cement is cost competitive.

(b) Riverside Cement shall have the right, but not the obligation, to furnish to the Partnership all supplies of domestic U.S. Cement as the Partnership may require, as long as Cement supplied by Riverside Cement is cost competitive.

(c) In the event the Partnership elects to acquire that property upon which Ssangyong (U.S.A.), Inc. has an option pursuant to that certain Acquisition Agreement dated June 13, 1988 as the Project Site, then Ssangyong shall cause Ssangyong (U.S.A.), Inc. to convey that property to the Partnership at the cost of Ssangyong (U.S.A.), Inc. therefor.

7.7. Other Activities. During the continuance of the Partnership, without written consent by other Partner, Ssangyong and Ssangyong Cement shall not own any interest in, or manage, control participate in, render services for or in any other manner engage in any other activity with respect to the manufacture, importation, sale, gift, or delivery of Cement to any storage facility or terminal, or for use by anyone located in, Northern California, except for the activities of and with the Partnership with respect to the project provided for herein. During the continuance of the partnership, without written consent by other Partner, Riverside and Riverside Cement shall not own any interest in, or manage, control, participate in, render services for or in any other manner engage in any other activity with respect to the manufacture, importation, sale, gift, or delivery of Cement to any storage facility or terminal, or for use by anyone located in, Northern California, except for the activities of and with the Partnership with respect to the Project provided for herein.

SECTION VIII

Net Income and Losses from Operations and from Capital Transactions

All net income, net gains and net losses and any tax credits of the Partnership for each fiscal year (or part thereof) of the Partnership during the period commencing on the date of the formation of the Partnership ending on the dissolution and winding up of the Partnership shall be allocated between the Partners in accordance with their Percentage Interests.

SECTION IX

Distributions

9.1. Net Cash Flow. After providing for the satisfaction of the current debts and obligations of the Partnership (including Optional Loans pursuant to the provisions of Section X) and reasonable reserves required to sustain normal operations of the Partnership, the Management Committee shall, as expeditiously as possible (but in all events within thirty (30) days after the end of each calendar quarter of the Partnership), make distribution of cash to the Partners out of the net

cash flow of the Partnership, to the extent available, in the following manner and order of priority.

(a) Net Cash Flow shall be distributed to and among the Partners in amounts and proportions necessary to cause the capital accounts of the Partners to stand in the same ratio as their Percentage Interests in the Partnership.

(b) Any remaining balance shall then be distributed to the Partners in accordance with their Percentage Interests.

9.2. Waiver of Right to Partition. No Partner shall be entitled to demand and receive property other than cash in return for its capital contributions to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all rights to partition any Project.

9.3. No Priority. No Partner shall have any priority over any other Partner as to the return of its contributions to the capital of the Partnership or as to compensation by way of income.

SECTION X

Optional Loans to the Partnership

If any Partner shall make any loan or loans to the Partnership or advance money on behalf of the Partnership, other than expressly provided herein ("Optional Loans"), the amount of any such loan or advance shall not be deemed an increase in or contribution to the capital account of the lending Partner or entitle such lending Partner to any greater proportion of the gain or losses which the Partnership may sustain. The amount of any such loan or advance shall bear interest at the rate per annum equal to the Prime Rate, and shall be deemed an obligation of indebtedness from the Partnership to such lending Partner payable in accordance with its terms.

SECTION XI

Transfers of Interests of Partners

11.1. Transfer Restricted. Neither Partner shall Transfer any part or all of its Partnership interest without the prior written consent of all the Partners, and, in each case, then only if the Transfer would not result in the "termination" of the Partnership pursuant to Section 708 of the Code. No Partner shall withdraw from the Partnership without the prior written consent of all the Partners.

11.2. Section 754 Election. In the event of the Transfer of all or part of the Interest of a Partner in the Partnership, at the request of the transferee, the Management Committee shall cause the Partnership to elect, pursuant to Section 754 of the Code, or the corresponding provision of subsequent law, to adjust the basis of the Partnership property as provided by Sections 734 and 743 of the Code.

SECTION XII

Default and Dissolution

12.1. Events of Default. The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder on the part of the Partner with respect to which such event occurs ("Defaulter", or, in the event of a Transfer pursuant to Section XI, thereafter on the part of either the original Partner or any affiliate transferee collectively the "Defaulter") if within thirty (30) days following notice of such default from the other Partner (ten (10) days if the default is due solely to the nonpayment of monies), the Defaulter fails to pay such monies, or in the case of non-monetary defaults, fails to commence substantial efforts to cure such default or thereafter fails within a reasonable time (but not to exceed thirty (30) days) to prosecute to completion with diligence and continuity the curing of such default; provided, however, that the occurrence of any of the events described in subsections (d)-(k) below shall constitute an Event of Default immediately upon such occurrence without any requirement of notice or passage of time except as specifically set forth in any such subsection:

(a) The failure by a Partner to make any additional capital contribution when required by the Partnership;

(b) The violation by a Partner (or with respect to a Partner) of any of the restrictions set forth in Section XI of this Agreement;

(c) The failure of a Partner's transferee to assume in writing and agree to be bound by all of the transferring Partner's obligations;

(d) Institution by a Partner of proceedings of any nature under any laws of the United States or of any state, whether now existing or subsequently enacted or amended, for the relief of debtors wherein such Partner is seeking relief as debtor;

(e) A general assignment by a Partner for the benefit of creditors;

(f) The institution by a Partner of a proceeding under any section or chapter of the federal Bankruptcy Code as now existing or hereafter amended or becoming effective;

(g) The institution against a Partner of a proceeding under any section or chapter of the federal Bankruptcy Code as now existing or hereafter amended or becoming effective, which proceeding is not dismissed, stayed or discharged within a period of sixty (60) days after the filing thereof or if stayed, which stay is thereafter lifted without a contemporaneous discharge or dismissal of such proceeding;

(h) A proposed plan of arrangement or other action by a Partner's creditors taken as a result of a general meeting of the creditors of such Partner;

(i) The appointment of a receiver, trustee or like officer, to take possession of assets of a Partner if the pendency of said receivership would reasonably tend to have a materially adverse effect upon the performance by said Partner of its

obligations under this Agreement; which receivership remains undischarged for a period of thirty (30) days from the date of its imposition;

(j) Admission by a Partner in writing of his or its inability to pay his or its debts as they mature;

(k) Attachment, execution or other judicial seizure of all or any substantial part of a Partner's assets;

(l) The breach by any Partner of any material warranty, representation or covenant of such partner contained in this Agreement;

(m) The use by any Partner of Partnership funds for purposes other than as provided for in this Agreement;

(n) Default by any Partner in the performance of or failure to comply with any other agreement, responsibility, obligation or undertaking of a Partner herein contained.

12.2. Causes of Dissolution. The Partnership shall be dissolved and its business wound up upon the earliest to occur of:

(a) The written direction of all the Partners determining that the Partnership should be dissolved;

(b) The Partnership becoming insolvent or bankrupt;

(c) The occurrence of an Event of Default and the non-defaulting Partner electing to dissolve the Partnership;

(d) The sale or other disposition of all or substantially all of the Partnership's assets;

(e) Upon the election of either Partner, in the event the Partnership shall sustain cumulative net losses from operations aggregating more than US $3,000,000.00 as of any time.

12.3. Replacement of the Managers of the Partnership. Upon the occurrence of an Event of Default on the part of a Partner, the authority of the Defaulter to call for the removal of any manager shall immediately be suspended and the other Partner(s) shall have the right to appoint managers of the Partnership and such managers shall take possession and control of the Project and all books, records, bank accounts and other documents related to the Project and shall perform all management responsibilities of the managers under this Agreement.

12.4. Dissolution and Winding Up. Upon dissolution of the Partnership:

(a) An accounting shall be made of the Partnership, the capital account of each Partner and the assets, liabilities and operations of the Partnership from the date of the last accounting required by the terms hereof to the date of such dissolution;

(b) The Executive Committee (or the member of the Executive Committee of the non-Defaulter Partner if the dissolution shall occur pursuant to Section 12.2(c)) shall act as Liquidating Trustee(s) and shall liquidate the business of the Partnership in an orderly manner, in which case, all or part of the assets, as determined by the Management Committee shall be sold and the proceeds thereof distributed and/or

the remaining assets distributed in kind to the Partners in their respective shares as provided herein;

(c) During the period of liquidation, all Partners shall continue all economic benefits and burdens of the Partnership attributable to their interest in the Partnership in the same manner and the proportion as before the liquidation;

(d) The Liquidating Trustee, and all agents, officers, directors, partners, (if any) of the Liquidating Trustee, shall be indemnified and held harmless by the Partnership from and against any and all claims, demands, liabilities, costs, damages, and causes of action of any nature whatsoever, arising out of or incidental to the taking of any action authorized under, or within the scope of this Section XII, or to any officer or director thereof while the Liquidating Trustee were so acting; provided, however, that neither the Liquidating Trustee nor any officer or director thereof shall be entitled to indemnification hereunder where the claim at issue arose out of the following:

(i) A matter entirely unrelated to the duties of the Liquidating Trustee under the provisions of this Section 12.4;

(ii) The proven gross negligence or willful misconduct of the Liquidating Trustee, or any officer or director thereof;

(iii) The proven breach by the Liquidating Trustee of its obligations under this Section 12.4.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies and recourses to which the Liquidating Trustee, or any officer or director thereof, shall be entitled, at law or in equity.

SECTION XIII

Accounting

13.1. Fiscal Year. The fiscal year of the Partnership shall be the period commencing on July 1 and ending on June 30.

13.2. Books and Record. The Management Committee shall keep, or cause to be kept, full and accurate records of all transactions of the Partnership in accordance with generally accepted accounting practices applicable in the United States. All of such books of account shall, at all times, be maintained in the principal office of the Partnership and shall be open during reasonable business hours for the reasonable inspection and examination by the Partners and their authorized representatives, who shall have the right to make copies thereof.

13.3. Tax Information. The Management Committee at the expense of the Partnership, shall cause to be delivered to the Partners such information as shall be necessary (including a statement for that year of each Partner's share of net income, net gains, net losses and other items of the Partnership) for the preparation by the Partners of their federal, state and local income and other tax returns.

SECTION XIV

Bank Accounts

The Management Committee shall open and maintain (in the name of the Partnership) a separate bank account or accounts in a bank or savings and loan association, the deposits of which within certain statutory limits are insured by an agency of the United States government, in which shall be deposited all funds of the Partnership. Withdrawals from such account or accounts shall be made upon the signature or signatures of such person or persons as the Partners shall designate.

SECTION XV

Options

15.1. Buy-Sell Option. (a) Each of the Partners shall have, and is hereby granted, a right to be exercised by notice (hereinafter referred to as the "Buy-Sell Notice") to the other Partners not joining in such Buy-Sell Notice to institute a buy-sell procedure, pursuant to which the Partners giving or joining in the Buy-Sell Notice (hereinafter referred to as the "Tendering Group") shall offer to purchase the entire interest in the Partnership of the Partners receiving the Buy-Sell Notice (hereinafter referred to collectively as the "Recipient Group") for the price set forth in the Buy-Sell Notice. No Partner may institute the buy-sell procedure set forth herein unless each other Partner that is an affiliate of such Partner joins in such procedure as a member of the Tendering Group.

(b) No later than thirty (30) days immediately succeeding the day on which the last Partner in the Recipient Group to receive notice receives the Buy-Sell Notice, the Tendering Group shall arrange one or more meetings attended by a representative of the Recipient Group and the Tendering Group duly authorized to make biding decisions on behalf of the respective parties for the purpose of resolving any disputes, points of contention or misunderstanding that may have led to the institution of the buy-sell procedure and, if possible, of reaching agreement concerning the maintenance or disposition of their respective Percentage Interests without further resort to the procedures set forth in this Section 15.1; provided, however, that no party hereto shall be required, pursuant to this procedure to receive any such matters or reach any such agreement.

(c) Unless the Tendering Group has withdrawn its Buy-Sell Notice by written notice to the Recipient Group, no later than sixty (60) days immediately succeeding the day on which the last Partner in the Recipient Group to receive notice receives the Buy-Sell Notice, the Recipient Group must notify the Tendering Group of its election either (i) to sell the Tendering Group the entire interest of the Recipient Group in the Partnership for price set forth in the Buy-Sell Notice, or (ii) to purchase the entire interest of the Tendering Group in the Partnership for a price equal to the product obtained by multiplying the price set forth in the Buy-Sell Notice by the fraction having, as its numerator, the then existing aggregate Percentage Interests of all members of the Tendering Group and, as its denominator, the then existing aggregate Percentage Interest of all members of the Recipient Group.

(d) In contemplation thereof, within twenty-five (25) days after its receipt of the Buy-Sell Notice, each member of the Recipient Group shall notify the other members of such Recipient Group of its election either to sell its interest in the Partnership to the Tendering Group or to purchase the Tendering Group's interest in the Partnership; provided, however, that the failure of a member of the Recipient Group to notify the other members within the aforesaid twenty-five (25) day period of its election to buy or sell shall, as among the members of the Recipient Group, conclusively be deemed for all purposes to be an election by such member to sell its interest in the Partnership. Within ten (10) days after such twenty-five (25) day period each member may change his or its election by notice to the other members of the Recipient Group. If one or more members of the Recipient Group elects to purchase and one or more members of such Recipient Group elects to sell, then the member(s) electing to purchase shall purchase not only the Tendering Group's interest in the Partnership but also the interest in the Partnership of each member of the Recipient Group that has elected (or been deemed to have elected) to sell its interest in the Partnership. The purchase price to be paid for such interest shall be equal to the product obtained by multiplying the price set forth in the Buy-Sell Notice by the fraction having, as its numerator, the then existing Percentage Interests of the selling member in question and, as its denominator, the then existing aggregate Percentage Interests of all members of the Recipient Group.

(e) The failure of the Recipient Group to notify the Tendering Group within the aforesaid sixty (60) day period of its election either to buy or to sell in accordance with subparagraph (c) above shall conclusively be deemed for all purposes to be an election by the Recipient Group to have agreed to sell to the Tendering Group its entire interest in the Partnership at the price set forth in the Buy-Sell Notice; such deemed election shall be treated as having occurred on the last day of such sixty (60) day period. Notwithstanding the foregoing, the right to institute the Buy-Sell procedure set forth in this Section 15.1 may not be exercised by a Partner following the initiation and during the pendency of a dissolution pursuant to Section 12.2(c).

(f) The closing of the purchase and sale of a Partnership interest pursuant to this Section 15.1 (the "Closing") shall occur on the date sixty (60) days after the determination of the purchasing Partner(s) hereunder of the Partnership interest or on such earlier date as the purchasing Partner(s) shall specify by written notice to the selling Partner. The purchase price specified in the Buy-Sell Notice, as adjusted pursuant to the provisions of Section 15.4, shall be payable by certified or bank check or wire transfer in same-day funds at the Closing.

(g) In the event of a Closing pursuant to this Section 15.1, the purchasing Partner(s) agrees to indemnify and hold harmless the selling Partner(s) from any loss, liability, cost or expense (including reasonable attorneys' fees) arising out of or pursuant to any and all of the selling Partner(s) guarantees under Section 6.2(b) of this Agreement; however, any selling Partner(s) with respect to whom an Event of Default shall have occurred shall remain liable to the Partnership and to the purchasing Partner(s) thereof.

15.2. Specific Performance. It is expressly agreed that the remedy at law for breach of any of the obligations set forth in this Article XIV is inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would

be sustained by reason of the failure of a Partner to comply fully with each of said obligations, and (ii) the uniqueness of the Partnership business and the Partnership relationship. Accordingly, each of the aforesaid obligations shall be, and is hereby expressly made, enforceable by specific performance.

15.3. Governmental Compliance. In the event that U.S. governmental filings must be made, approvals obtained and/or waiting periods observed, the date of Transfer shall, notwithstanding any provision of this Agreement to the contrary, unless otherwise agreed, be the fifth business day following the latest to occur of the making of such filings, the receipt of such approvals and the expiry of such waiting periods. The Partners shall use their best efforts to make any such filings, obtain any such approvals and/or cause any such waiting periods to run, as quickly as possible.

15.4. Adjustments to Purchase Price. The price to be paid for the selling Partner's interest shall be reduced by the aggregate amount of all distributions made to the selling Partner during the period between the date as of which the price for such interest was established and the date of the closing of the purchase and sale of such interest. The Partner transferring its interest shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer such interest to the acquiring Partner, including, but not limited to, any documents required to release any interest of any other party who may claim an interest in such Partner's Partnership interest. Any monetary default by the selling Partner must be cured out of the proceeds from such sale at the closing. Following the date of closing, the selling Partner shall have no further rights to any distributions of net cash flow or other Partnership income or distributions attributable to any period and all such rights shall vest in the selling Partner's transferee.

SECTION XVI

Notices

Whenever any notices is required or permitted to be given under any provisions of this Agreement, such notice shall be in writing, signed by or on behalf of the person giving the notice, and shall be deemed to have been given on the earlier to occur of (i) actual delivery or (ii) three (3) business days after mailing by certified mail, postage prepaid, return receipt requested, addressed to the person or persons to whom notice is to be given as follows (or at such other address as shall be stated in a notice similarly given):

(a) If to Ssangyong such notices shall be given at the following address: Ssangyong Cement (Pacific), Inc., 12101 Western Ave., Garden Grove, California 92641.

(b) If to Riverside, such notice shall be given at the following address: Riverside Cement (Pacific), Inc., P.O. Box 190999, Dallas, Texas 75218-0888. Attention: Corporate Secretary; and Riverside Cement (Pacific), Inc., 660 North Diamond Bar Boulevard, Suite 100, Diamond Bar, California 91765. Attention:.

SECTION XVII

Binding Effect

Except as herein otherwise provided to the contrary, this Agreement shall be binding upon the inure to the benefit of the parties hereto, their personal representatives, successors and assigns.

SECTION XVIII

Amendments

No amendment, modification or waiver of this Agreement, or any part hereof, shall be valid or effective unless in writing and signed by the Partners. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other condition or subsequent breach, whether of like or different nature.

SECTION XIX

Applicable Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION XX

Prior Agreements Superseded

This Agreement supersedes in its entirety all prior agreements, whether written or oral, between the parties hereto.

SECTION XXI

Time of the Essence

Time is of the essence in the performance of all of the obligations of the Partners provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have subscribed to this Agreement on the 4th day of November, 1988.

SSANGYONG CEMENT (PACIFIC), INC.

RIVERSIDE CEMENT (PACIFIC), INC.

IN THE MATTER OF

NEWTRON PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3375. Complaint, Mar. 16, 1992--Decision, Mar. 16, 1992

This consent order prohibits, among other things, an Ohio company and its principals from making any representations regarding the performance characteristics of any air cleaning product, unless it possesses competent and reliable evidence to substantiate those claims.

Appearances

For the Commission: *Joel C. Winston* and *Janet M. Evans.*

For the respondents: *Toby Singer, Jones, Day, Reavis & Pogue*, Washington, D. C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Newtron Products Co., Inc., a corporation, and Michael S. Duty and Donald G. Attermeyer, individually and as officers and directors of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Newtron Products Co., Inc. ("Newtron" or "corporate respondent") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Newtron's office and principal place of business is located at 3874 Virginia Avenue, P.O. Box 27175, Cincinnati, Ohio.

Respondents Michael S. Duty and Donald G. Attermeyer are officers and directors of Newtron. They formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as that of respondent Newtron.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents, at all times mentioned herein, have maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents advertise, offer for sale, sell and distribute the Newtron Electrostatic Air Cleaner ("Air Cleaner") to the public as a product designed to remove indoor air contaminants, including fungal spores (mold) and pollen.

PAR. 4. Respondents have disseminated or caused the dissemination of advertisements and other promotional materials for the Air Cleaner. Typical of respondents' advertisements and promotional materials, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A-E. The aforesaid advertisements and promotional materials contain the following statements and depictions:

"The Newtron is the only air cleaner on the market that has been tested in 'before and after' studies in homes of allergy sufferers. The findings are documented on the enclosed test copy: NEWTRON removed 100% of the pollen and 94% of the mold spores from the air." [Exhibit A]

[Depiction of graphs showing 94% removal of ' indoor spores' and 100% removal of 'indoor pollen' followed by caption:] "The above test conducted by the University of California, San Diego School of Medicine verifies NEWTRON'S effectiveness: 'The NEWTRON electrostatic air cleaner causes a significant decrease in airborne pollen and mold spores.'" [Exhibit B]

[Depiction of graphs showing 94% 'spore count' and 100% 'pollen count' reduction followed by caption:] "Spore and pollen removal tests conducted in homes of allergy sufferers." [Exhibit C]

"Newtron Electrostatic Air Cleaner eliminate up to 100% of irritants from indoor air." [Graph depicting 94% removal of 'spore count' and 100% removal of pollen count' followed by caption:] "Spore and pollen removal tests conducted in homes of allergy sufferers." [Exhibit D]

"Newtron High Efficiency Static Air Cleaner ELIMINATES pollen, mold spores" [followed by graphs depicting 100% reduction of 'pollen count,' 94% reduction of 'spore count'] [Exhibit E]

PAR. 5. Through the statements referred to in paragraph four, and others not specifically set forth herein, respondents have represented, directly or by implication, that:

1. The Air Cleaner removes 94% of fungal spores from the air people breathe under household living conditions.

2. The Air Cleaner removes 100% of pollen from the air people breathe under household living conditions.

PAR. 6. Through use of the statements and depictions referred to in paragraph four and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis, consisting of competent and reliable scientific tests, for such representations.

PAR. 7. In truth and in fact, at the time respondents made the representations set forth in paragraph five, the tests relied on by respondents were not competent and reliable to substantiate the representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the statements referred to in paragraph four and others not specifically set forth herein, respondents have represented, directly or by implication, that scientific studies conducted in the homes of allergy sufferers prove that the Air Cleaner removes 94% of fungal spores and 100% of pollen from the air people breathe under household living conditions.

PAR. 9. In truth and in fact, the studies conducted in the homes of allergy sufferers relied on by respondents do not prove that the Air Cleaner removes 94% of fungal spores and 100% of pollen from the air people breathe under household living conditions. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts and practices of respondents, as herein alleged, have constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

EXHIBIT A

Newtron Products
Manufacturer of the Newtron Air Cleaner...
The Physician's Choice

Thank you for your recent inquiry about the NEWTRON Static-Electric Air Cleaner. Enclosed is a portfolio of product information for your review.

Whether you suffer from allergies or just want a cleaner, healthier indoor environment, NEWTRON is the answer.

- The NEWTRON is the only air cleaner on the market that has been tested in "before and after" studies in homes of allergy sufferers. The findings are documented on the enclosed test copy: NEWTRON removed 100% of the pollen and 94% of the mold spores from the air. Also enclosed is a test conducted by the Air Filter Testing Laboratory in Louisville, Kentucky which demonstrates that the NEWTRON will remove cigarette smoke.

- Allergy Specialists throughout the country have used the NEWTRON in their own homes to determine its effectiveness. Based upon their evaluations, physicians are prescribing the NEWTRON for allergic patients. (See a sampling of quotations we received from participating physicians).

- The NEWTRON retails for less than installed electronic air cleaning equipment and the only maintenance required is a periodic water flush. Since the NEWTRON is static-electric, it does not produce any ozone.

After you have had an opportunity to examine the enclosed data, please contact the authorized NEWTRON dealer listed below for pricing and availability:

3874 Virginia Avenue, P.O. Box 27175, Cincinnati, Ohio 45227-0175, 513/561-7373, 1-800/543-9149.

EXHIBIT B

NEWTRON IS EFFECTIVE.

The NEWTRON Electrostatic Air Cleaner removes up to 100% of the pollen, dust and smoke particles in the room, as tested by NEWTRON cleans the air without emitting harmful ozone, prevalent in electronic air cleaners.

NEWTRON IS EFFICIENT.

The NEWTRON Electrostatic Air Cleaner does not use electricity and needs no wiring. It simply inserts in the forced air heating and cooling system in place of the existing filter. The NEWTRON is permanent and requires minimal maintenance.

NEWTRON IS ECONOMICAL.

The NEWTRON Electrostatic Air Cleaner costs approximately one-half the price of electronic air cleaners. NEWTRON has no moving parts to replace. When installed by a doctor, NEWTRON qualifies for reimbursement under many health plans and is tax deductible.

The above test conducted by The University of California, San Diego School of Medicine verifies NEWTRON's effectiveness:

"Ongoing research projects being conducted confirm that the NEWTRON electrostatic air cleaner causes a significant decrease in airborne pollen and mold spores."

Hundreds of doctors, who personally evaluated the NEWTRON, have verified its effectiveness.

"I feel (NEWTRON) has a significant role in the total management of the allergy patient."
Allergist Ann Arbor, Michigan

"(NEWTRON) reduced sneezing, itching, watery eyes."
Otolaryngologist Ogden, Utah

"It helps to a great extent in the management of respiratory allergies."
Allergist Long Island, New York

COMPLAINT EXHIBIT B

P. 1

There is a relief from allerg symptoms due to airborne dus pollen and smoke - a relief whic is effective AND economical -

NEWTRON
The ultimate air cleaner.

Indoor air pollution is an ever-increasing problem. It causes headaches, watering eyes, runny noses, coughing, sneezing and general discomfort. It affects everyone especially those with allergies

Throughout the country, allergists and respiratory specialists are recommending NEWTRON for symptomatic relief. In fact, 96% of the doctors' patients who installed the NEWTRON air cleaner expressed relief from their respiratory symptoms.

000043

COMPLAINT EXHIBIT B

P. 2

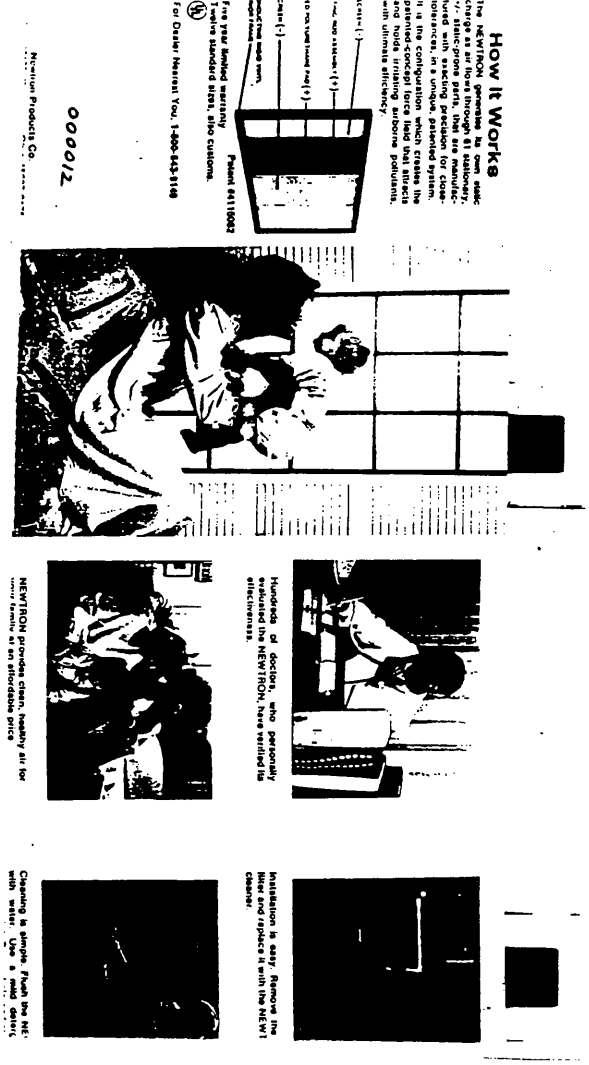


EXHIBIT C

...Newtron Electrostatic Air Cleaner for the relief of allergy symptoms.

"...e Newtron is the most efficient and ...nomical form of filtration for the home."
—Lazarus Loeb M.D.
Texas, allergist

"...-line electronic precipitators are much less ...ient, produce ozone, and require excessive maintenance. A fiberglass filter is useless and should be replaced with a filter that produces an electrostatic charge (I recommend the Newtron)."*
—John C. Selner M.D.
Colorado, Pediatrician

"The Newtron is the only one I am suggesting that patients buy."
—Charles Griffeth M.D.
Louisiana, allergist

"Many of my patients who had seasonal allergy are able to stop their injections after using the Newtron."
—Souheil Habbal M.D.
California, allergist

"The Newtron keeps the air cleaner than any previous filter we've used."
—Harold Arien M.D.
New Jersey, otolaryngologist

"The Newtron helped both my son and me with allergic rhinitis."
—Allen White M.D.
Alabama, pediatric allergist

"The Newtron has significantly reduced my hay fever symptoms this spring."
—J.E. Balz M.D.
North Carolina, internist

*Reprinted from *Journal of Respiratory Diseases*

Newtron Electrostatic Air Cleaner eliminates up to 100% of irritants from indoor air.

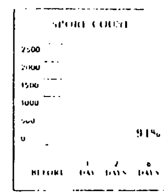
The Newtron removes pollen, dust, dander, smoke and mold spores from indoor air more efficiently than other, more-expensive air cleaners. The Newtron offers your family cleaner, healthier indoor air immediately without expensive installation or tedious maintenance...at about half the cost of electronic air cleaners.

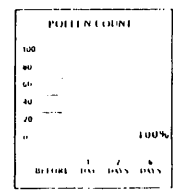
Effective: The Newtron cleans the air without producing harmful ozone gas. Ozone is a major element in smog, and it can irritate the eyes, nose, throat, and respiratory system. The Newtron is effective against cigarette smoke.

Efficient: The Newtron replaces your existing furnace filter and installs without wiring, duct changes, or other modifications to your heating or cooling system. And, because the Newtron operates on the principle of static electricity, it consumes no energy.

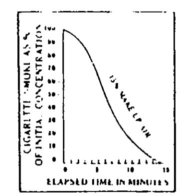
Economical: Not only is the Newtron priced at less than half that of electronic units, the savings continue because the Newtron never needs servicing. Further, the Newtron qualifies for reimbursement under many health plans and is tax deductible.

The Newtron substantially reduces airborne dust particles that settle on furniture and collect on walls and draperies. That means less dusting is required during normal housework, and less money spent on professional cleaning and redecorating services.





Spore and pollen removal tests conducted in homes of allergy sufferers.



Test conducted by Air Filter Testing Laboratory, Louisville, Ky. based on particulate analysis of 0.5 microns on a 2" unit

Complaint Exhibit C-1

Clean, Healthful Air For Your Family

Newtron

The Newtron cleans safely and naturally...

The Newtron generates a static charge as air flows through grids of several types of highly static-prone materials, arranged in a patented configuration that achieves ultimate efficiency. This static charge attracts and holds irritating airborne pollutants until they are released by washing.

- Non-directional air flow
- Continuous blower operation recommended
- Available in standard and custom sizes
- Five-year warranty

Standard Sizes: Model #	Actual Size	Minimum/Maximum Recommended Air Flow
1-1224	1-11¾ x 23¾	450-900 CFM
1-1228	1-12 x 27¾	500-1000 CFM
1-1424	1-13¾ x 23¾	525-1050 CFM
1-1425	1-13¾ x 24¾	550-1100 CFM
1-1430	1-13¾ x 29¾	660-1315 CFM
1-1620	1-15¾ x 19¾	500-1000 CFM
1-1625	1-15¾ x 24¾	625-1250 CFM
1-1628	1-15¾ x 27¾	700-1400 CFM
1-1824	1-17¾ x 23¾	675-1350 CFM
1-2020	1-19¾ x 19¾	625-1250 CFM
1-2025	1-19¾ x 24¾	780-1560 CFM
1-2028	1-19¾ x 27¾	875-1750 CFM
1-2030	1-19¾ x 29¾	940-1940 CFM
1-2424	1-23¾ x 23¾	900-1800 CFM
1-2428	1-23¾ x 27¾	1025-2050 CFM

Installs and cleans in minutes!

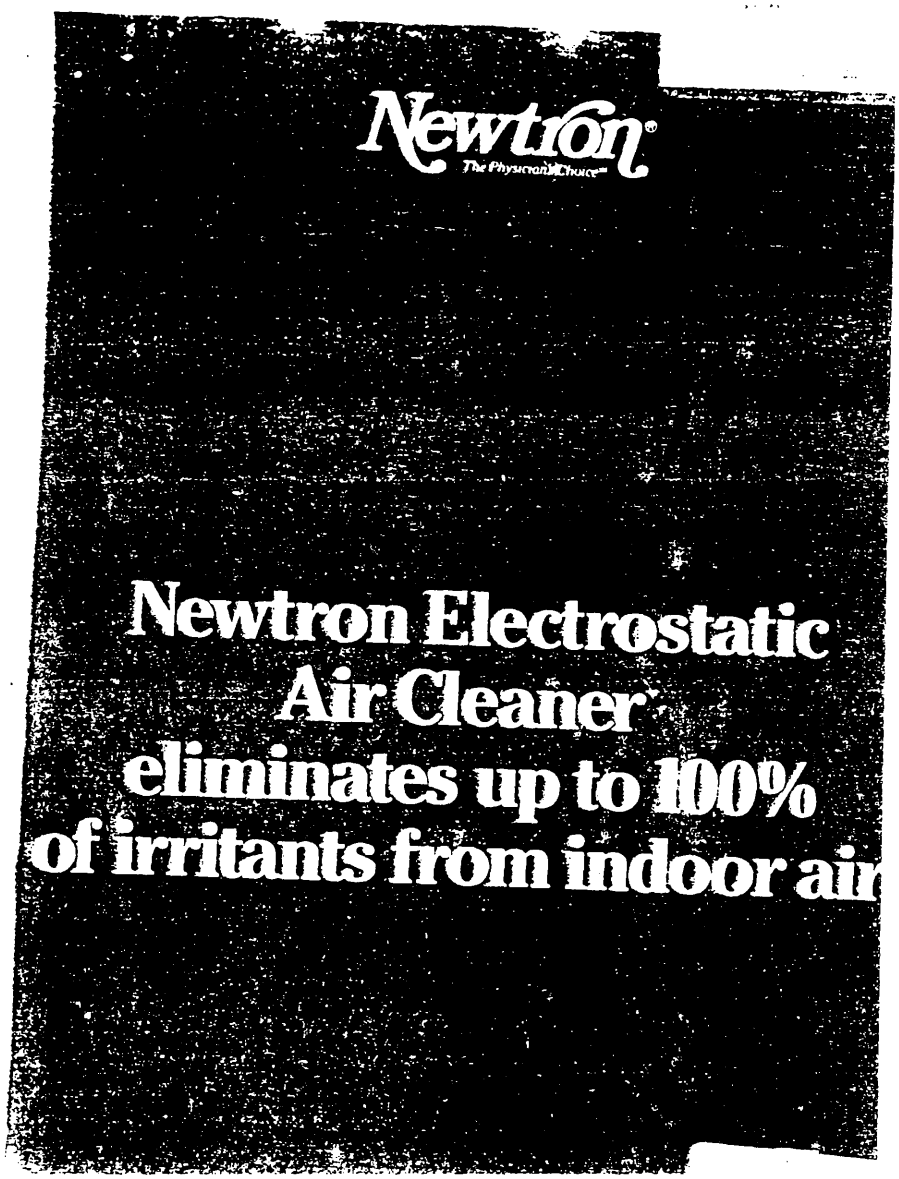
To install, simply remove your existing filter and replace it with the Newtron Air Cleaner.

Flush the Newtron with water every 60-90 days.

The initial cost is the final cost.

Because the Newtron is washable, it doesn't use expensive paper filter replacements. And the Newtron has no moving parts to wear out, so you'll never have to pay to have your Newtron serviced. The Newtron

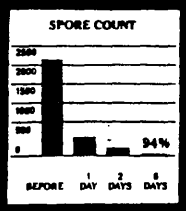
EXHIBIT D

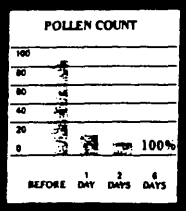

Newtron
The Physician's Choice
Newtron Electrostatic
Air Cleaner
eliminates up to 100%
of irritants from indoor air

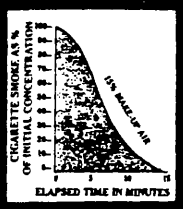
Complaint Exhibit D p.2

The Newtron Electr

significant decrease in ai







Hundreds of physicians agree: the Newtron relieves allergy symptoms safely and economically.

The Newtron removes pollen, dust, dander, smoke and mold spores from indoor air better than other, more expensive air cleaners. Hundreds of physicians have tested the Newtron Electrostatic A Cleaner in their homes and offices.

"Many of my patients who had seasonal allergy are able to stop their injections after using Newtron."

—Souheil Habbal, M.D., California, allerg.

"I was relieved of sinusitis and post-nasal drainage within one week —it had persisted for one and a half years. I have recommended the Newtron Air Cleaner to patients and acquaintances with allergy and lung conditions."

—Jack Haskins, M.D., Arkansas, general practition

"The Newtron keeps the air cleaner than any previous filter we've used."

—Harold Arien, M.D., New Jersey, otolaryngolog.

"The Newtron has helped both my son and me with allergic rhinitis."

—Allen White, M.D., Alabama, pediatric allerg.

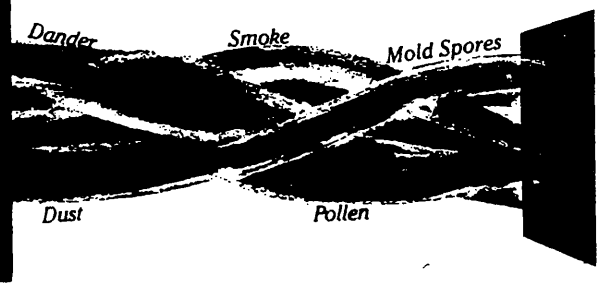
"(The Newtron) has significantly reduced my hay fever symptoms thi spring."

—J.E. Balz, M.D., North Carolina, interni

"(The Newtron) is the only one I am suggesting that patients buy.

—Charles Griffeth, M.D., Louisiana, allergi

When prescribed by a doctor, the Newtron is tax-deductible. It's also reimbursable under many medical insurance plans.



Complaint Exhibit D p.3

tic Air Cleaner causes a ne pollen and mold spores.

"...(The Newtron) is the most efficient and economical form of filtration for the home." ***—Lazarus Loeb, M.D., Texas, allergist***

The Newtron offers your family cleaner, healthier indoor air immediately, without expensive installation or tedious maintenance...at about half the cost of electronic air cleaners.

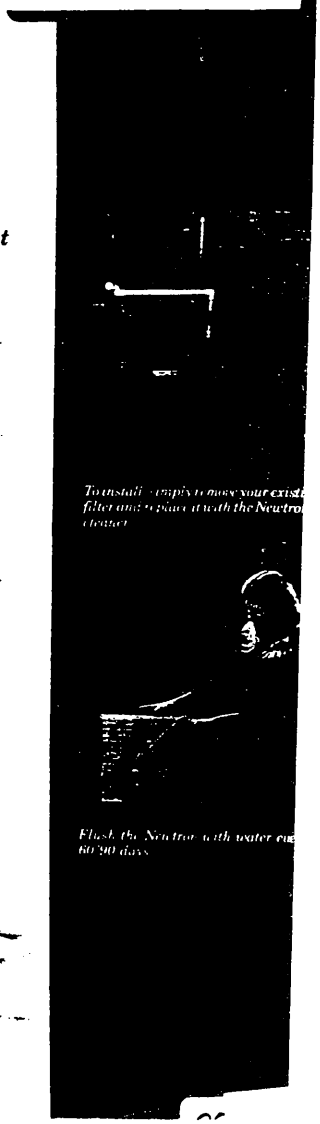
Installs easily...replaces your existing furnace filter.
The Newtron installs without wiring, duct changes, or other modifications to your heating and cooling system...it's also compatible with heat pumps.

Cleans the air without producing harmful ozone gas.
The Newtron cleans the air by generating natural static electricity without producing harmful ozone gas, like electronic systems. Ozone is a major component of smog, and it can irritate the eyes, nose, throat and respiratory system.

Easy to maintain.
Rinse the Newtron with plain tap water every 60 to 90 days, and use a household spray cleaner to remove any grease or nicotine build-up...that's all the maintenance the Newtron ever needs.

The initial cost is the final cost.
Because the Newtron is washable, it doesn't use expensive paper filter replacements. And the Newtron has no moving parts to wear out, so you'll never have to pay to have your Newtron serviced. The Newtron is also cost-efficient to operate—it consumes no electricity because it generates its own energy.

Removes cigarette smoke in minutes.
The Newtron is effective against cigarette smoke. In laboratory tests, the Newtron effectively eliminated cigarette smoke in just minutes (see chart).



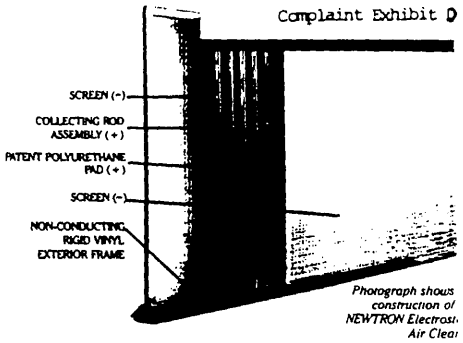
Complaint Exhibit D

The Newtron cleans safely and naturally. Here's how...

The Newtron cleans the air by using static electricity, which is a safe, naturally-occurring phenomenon.

The Newtron generates a static charge as air flows through grids of several types of highly static-prone materials, arranged in a patented configuration that achieves ultimate efficiency.

This static charge attracts and holds irritating airborne pollutants, until they are released by washing.



Photograph shows construction of NEWTRON Electrost Air Clea

Available in standard and custom sizes.

One-inch models recommended for residential applications; listed sizes are also available in a two-inch commercial/industrial model. Custom sizes are available at a slight extra charge.

When ordering a standard size Newtron, specify model number. For custom sizes, specify exact finish size required. (Custom Newtrons are not returnable; manufacturing tolerances are ± 1/8".)

Standard Sizes:

Model #	Actual Size	Minimum/Maximu Recommended Air Flow
1-1224	1-11½ x 23½	450-900 CF
1-1228	1-12 x 27½	500-1000 CF
1-1424	1-13½ x 23½	525-1050 CF
1-1425	1-13½ x 24½	550-1100 CF
1-1430	1-13½ x 29½	660-1315 CF
1-1620	1-15½ x 19½	500-1000 CF
1-1625	1-15½ x 24½	625-1250 CF
1-1628	1-15½ x 27½	700-1400 CF
1-1824	1-17½ x 23½	675-1350 CF
1-2020	1-19½ x 19½	625-1250 CF
1-2025	1-19½ x 24½	780-1560 CF
1-2028	1-19 x 27½	875-1750 CF
1-2030	1-19½ x 29½	940-1880 CF
1-2424	1-23½ x 23½	900-1800 CF
1-2328	1-22½ x 27½	1025-2050 CF

Air Flow vs. Resistance .16 WG at 1200 CFM

Non-Directional Air Flow

Continuous blower operation recommended.

Any air cleaner removes only those particles that circulate through it. For continuous air cleaning, set your system blower to operate constantly.

Continual blower operation also promotes more even cooling and heating throughout your home.

Five year warranty ensures problem-free operation.

The Newtron is covered by a limited warranty from defects in materials or workmanship for five years.

Properties of the Newtron

Shrinkage: Water 212°F ... None
Shrinkage: Air 250°F ..... None
Softening Range ... 320° to 330°F
Melting Range .... 330° to 335°F
Decomposition ..... +600°F
Odor ..... None
Burning ..... Slow
Specific Gravity 0.90

Patent no: 411508
Air Filter Units Classified By Underwriters Laboratories, In As To Flammability Only CLASS 2 862U

Give your family the ultimate answer to indoor air pollution. Ask your dealer about the Newtron Electrostatic Air Cleaner, or call 1-800-543-9149.

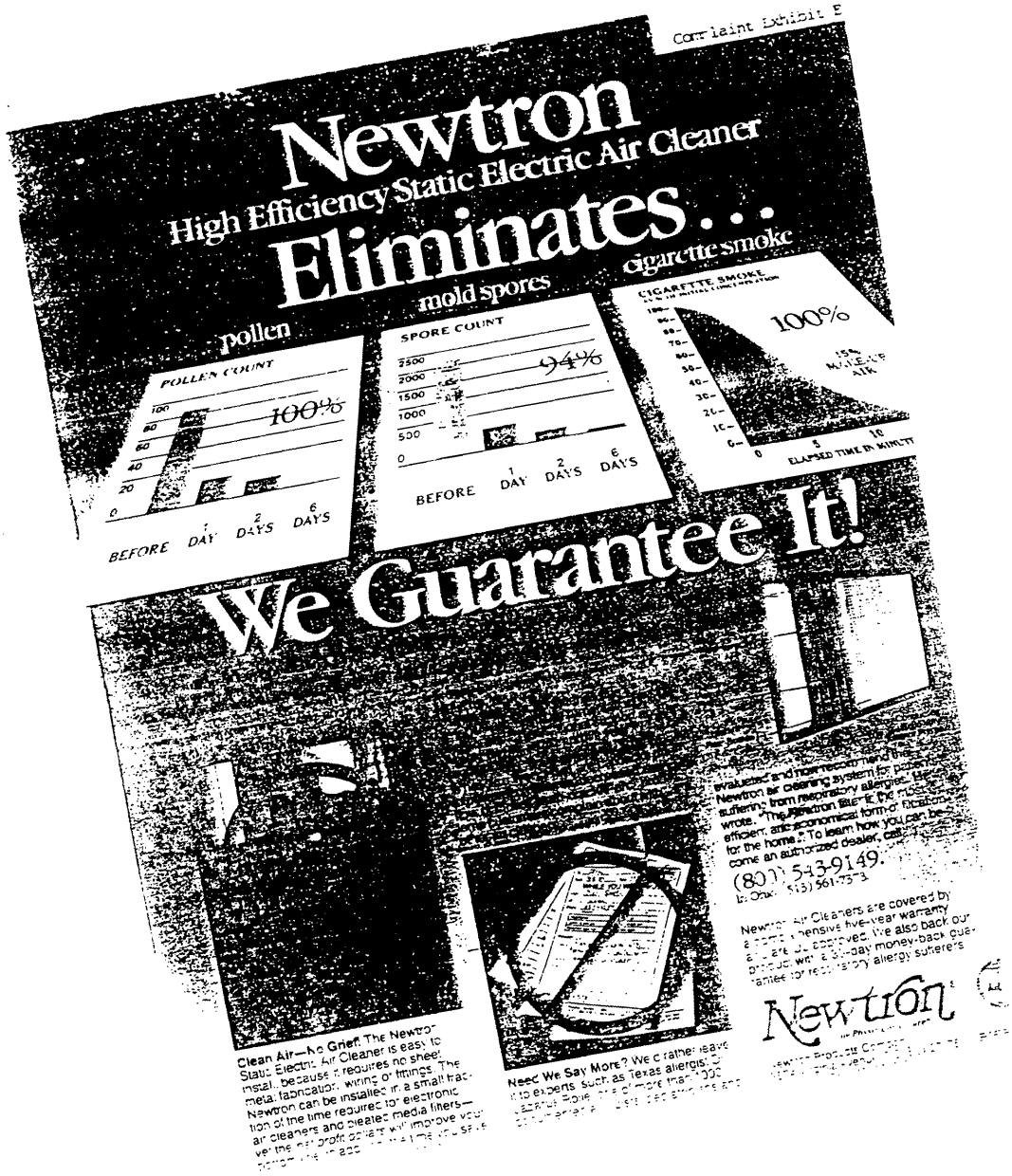
In Ohio, 1-800-544-3753 • In the 513 Area, Call 513-561-7373 • FAX # 513-561-3673

For additional information contact:

Newtron®
The Physician's Choice™

P.O. Box 27175
3874 Virginia Avenue
Cincinnati, Ohio 45227-0175

EXHIBIT E


Complaint Exhibit E
Newtron
High Efficiency Static Electric Air Cleaner
Eliminates...
pollen
mold spores
cigarette smoke
POLLEN COUNT
100%
BEFORE DAY 2 DAYS 6 DAYS
SPORE COUNT
94%
BEFORE 1 DAY 2 DAYS 6 DAYS
CIGARETTE SMOKE
100%
ELAPSED TIME IN MINUTES
We Guarantee It!
Clean Air—No Grief. The Newtron Static Electric Air Cleaner is easy to install...because it requires no sheet metal fabrication, wiring or timings. The Newtron can be installed in a small fraction of the time required for electronic air cleaners and pleated media filters—ve the profit dollars will improve your
Need We Say More? We'd rather leave it to experts such as Texas allergist
Newtron Air Cleaners are covered by a comprehensive five-year warranty
Newton

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules.

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Newtron is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Newtron's office and principal place of business is located at 3874 Virginia Avenue, P.O. Box 27175, Cincinnati, Ohio.

Michael S. Duty is Chief Executive Officer and director, and Donald G. Attermeyer is President and director of Newtron. Mr. Duty and Mr. Attermeyer formulate, direct, and control the acts and

practices of Newtron. Mr. Duty's and Mr. Attermeyer's address is the same as Newtron's.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For the purposes of this order, the following definitions apply:

1. The terms "*air cleaning product*" or "*product*" mean any product, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

2. The terms "*indoor air contaminant(s)*" or "*contaminant(s)*" refer to one or more of the following: fungal (mold) spores, pollen, tobacco smoke, household dust, animal dander or any other gaseous or particulate matter found in indoor air.

I.

It is ordered, That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of the Newtron Electrostatic Air Cleaner (hereinafter, "Air Cleaner") or any substantially similar device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that scientific tests conducted in the homes of allergy sufferers prove or establish that the Air Cleaner or device removes 94% of fungal spores or 100% of pollen from the air people breathe under household living conditions.

II.

It is further ordered, That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of the Air Cleaner or any other air cleaning product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

III.

It is further ordered, That respondent Newtron Products Co., Inc., a corporation, its successors and assigns, and its officers, and Michael S. Duty and Donald G. Attermeyer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of the Air Cleaner or any other air cleaning product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, any performance characteristic of any such product unless, at the time of making such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable evidence, which substantiates the representation. To the extent such evidence consists of tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures

generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondents possess and rely upon competent and reliable scientific evidence substantiating the representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

IV.

It is further ordered, That respondents, their successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any representation covered by this order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which the respondent relied for such representation, including complaints from consumers.

V.

It is further ordered, That respondent Newtron shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other sales materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

VII.

It is further ordered, That for a period of ten (10) years from the date of service of this order, each of the individual respondents named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged as well as a description of said respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any obligation arising under this order.

VIII.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the requirements of this order.

Commissioner Yao not participating.

IN THE MATTER OF

AMERICAN ENVIRO PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3376. Complaint, Mar. 18, 1992--Decision, Mar. 18, 1992

This consent order prohibits, among other things, a California-based disposable diapers company and its corporate officers from making unsubstantiated degradability or environmental benefit claims for any plastic product or plastic packaging in the future.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Phil Rudolph* and *Paul Blankenstein, Gibson, Dunn & Crutcher*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Enviro Products, Inc., a corporation, and Robert D. Chickering and Michael V. Zullo, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest alleges:

PARAGRAPH 1. Respondent American Enviro Products, Inc. ("American Enviro") is a California corporation with its office and principal place of business located at 950 Fee Anna Street, Placentia, California.

Respondents Robert D. Chickering and Michael V. Zullo are officers of the corporate respondent named herein. They formulate, direct, and control the acts and practices of the corporate respondent. Their business address is the same as that of the corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have, or have caused to be, advertised, offered for sale, sold, and distributed disposable diapers to the public under the trade name Bunnies.

PAR. 3. The acts or practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and package labels for Bunnies diapers, including, but not necessarily limited to, the attached Exhibits A, B, C, and D. The aforesaid advertising and package labeling contains the following claims, among others:

BIODEGRADABLE BUNNIES

These diapers can play a vital role in the disposal of plastic waste.

Disposable diapers are one of the most serious environmental problems we have today. Every day in the U.S.A. over 50 million disposable diapers are thrown away. Their polymer plastic outer backing will last from 200 to 400 years in our landfills before they biodegrade.

Bunnies are constructed with a revolutionary outer backing. This backing contains biodegrading agents which, when combined with the polymer matrix, dramatically accelerate the biodegrading process so they biodegrade within 3-5 years.

Bunnies and the plastic bag they are sold in are both made of this new biodegradable material and both will biodegrade before your child grows up.

"I felt sort of guilty when I threw away (my baby's) disposable diapers. Bunnies uses biodegradable plastic for the back sheet .... Even their bags are biodegradable."

PAR. 5. Through the statements referred to in paragraph four and others in advertisements and package labeling not specifically set forth herein, respondents have represented, directly or by implication that:

1. Compared to other disposable diapers, Bunnies disposable diapers offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill.

2. Bunnies disposable diapers and their plastic package bags will completely break down, decompose, and return to nature within 3 to 5 years.

3. Bunnies disposable diapers will break down, decompose, and return to nature significantly faster than other disposable diapers after consumers dispose of them as trash that is buried in landfills.

PAR. 6. Through the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made such representations, respondents possessed and relief upon a reasonable basis for such representations.

PAR. 7. In truth and in fact, at the time respondents made such representations, respondents did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

When your babies grow up... will they still be living in diapers?

Your choice today could make the difference.

A good choice for your baby today.

Bunnies have all of the features you look for in a disposable diaper (and cost no more than ordinary national brands).

- **Super absorbent centers** combine a specialized fabric with a non-toxic anti-wetness ingredient, locking moisture among the inner most layers - away from baby's skin.
- **Stay dry liners** provide a protective screen that repels wetness while caressing baby's skin with softness.
- **Elastic legs** with gentle gathering strands work to prevent leakage and give a trim and comfortable fit.
- **Reusable, no-tear closure tabs** hold diapers securely and let you check for wetness as often as you like.
- **Blue moisture barrier** at waist helps prevent leakage when your baby is lying down.

A better choice for your baby's tomorrow.

Disposable diapers are one of the most serious environmental problems we have today. Every day in the U.S.A. over 50 million disposable diapers are thrown away. Their polymer plastic outer backing will last from 200 to 400 years in our landfills before they biodegrade.

Bunnies™ are constructed with a revolutionary outer backing. This backing contains biodegrading agents which, when combined with the polymer matrix, dramatically accelerate the biodegrading process so they biodegrade within 3-5 years.

Bunnies and the plastic bag they are sold in are both made of this new biodegradable material and both will biodegrade before your child grows up.

Available at fine stores everywhere.

950 Fee Ana Street, Placentia, California 92670

EXHIBIT A

EXHIBIT B

PRODUCT BUNNIES DIAPERS
PROGRAM. CBS THIS MORNING 3/26/90 30 SEC.
CBS-TV (NEW YORK) 8:49AM

1. WOMAN: I have a confession to make about my baby.

2. I felt sort of guilty when I threw away her disposable diapers.

3. They're convenient but I just didn't want them to still be around when she grows up.

4. So we changed to Bunnies. Bunnies uses biodegradable plastic for the back sheet,

5. and they're ultra absorbent; have elastic legs, stay-dry liners and reusable tape tabs.

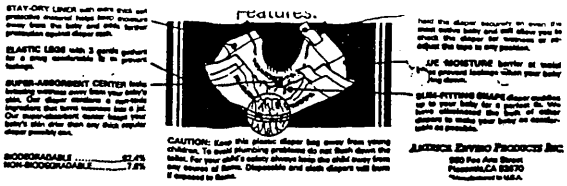
6. Even their bags are biodegradable.

7. Biodegradable Bunnies, it's definitely the right thing

8. for my baby,

9. and her babies.

EXHIBIT C



BIODEGRADABLE

ULTRA THIN AND ABSORBENT DISPOSABLE DIAPERS

BUNNIES™

SMALL

For babies 6 to 14 pounds

WITH

- Blue moisture barrier
- Refastenable closure tabs
- Stay dry liner
- Biodegradable outer shell

How to use and dispose of these diapers

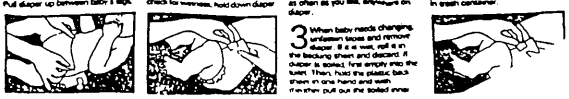


EXHIBIT C

EXHIBIT D

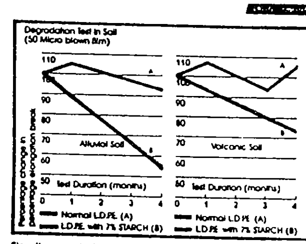
BIODEGRADABLE BUNNIES™

BIODEGRADABILITY

These diapers can play a vital role in the disposal of plastic waste. The plastic outer backing sheet and our plastic bag both contain biodegradable agents, which is protected by patents. When these biodegradable agents are combined in the proper proportions with initiators, the lengthy process of natural biodegradation of polymers is accelerated by one or two orders of magnitude, provided there is contact with soil. The result is a triggering of biodegradation through the utilization of normal disposal procedures.

Biodegradability is the breakdown of a substance as a result of the action of living organisms, such as bacteria, fungi, actinomycetes, and insects. Biodegradation is most likely to occur in a medium such as soil or water where these living organisms are normally present.

An autoxidant is also added. In the presence of oxygen and metal salts, such as those found in soil, the autoxidant forms peroxides which can attack the polymer chain.



Simultaneously, the starch granules are consumed by the micro organic flora in the soil which open the polymer matrix to attack, further accelerating the breakdown. The polymer chain is broken down to the point where it can be consumed harmlessly by micro organisms. As this process of degradation continues, all of the plasic is consumed or broken down into carbon dioxide and water.

In addition, both starch and the autoxidant are natural organic materials containing no harmful or toxic chemicals.

RATE OF BIODEGRADATION

Since the early 1970's much has been written about biodegradation in plastics. It is now known that all polymers are subject to some degradation. By using the Carbon-14 tracer test, a conversion of polymer molecules into carbon dioxide was proven on plastic buried in composted soil.

Starch products, as well as other ingredients, when included within the polymer matrix, accelerate this process. Under certain conditions they are capable of controlling the rate of degradation within narrow time limits.

The most practical way to measure the extent to which a product degrades is to measure its loss of strength, as opposed to loss of weight. In some cases, a loss in tensile strength of 50% is sufficient degradation, even though it will take additional time for all traces of the product to disappear.

Predictions as to the exact rate of degradation are impossible since soil composition, moisture and temperature are all factors which have a direct effect. However, assuming a temperate climate, normal rainfall and proper soil drainage, the following observations can be made:

- Based on extrapolation of Carbon-14 tests, the anticipated time for Polyethylene without the addition of biodegradation agents to reach full disintegration is 200 to 400 years.
- A Polyethylene Eva Copolymer Mulchfilm prepared with a 7% STARCH addition shows a sufficient loss of strength in one growing season to avoid interference with cultivation for the next crop. (CHART)

Based on this data, we estimate that Bunnies will biodegrade in 2-5 years depending on soil condition.

EXHIBIT D

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent American Enviro Products, Inc. is a California corporation, with its office and principal place of business at 950 Fee Anna Street, Placentia, California. The respondents Robert D. Chickering and Michael V. Zullo are officers of said corporation. In their respective capacities as officers, they formulate, direct and control the acts and practices of the corporate respondent. Their business address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

DEFINITION

For purposes of this order, the following definition shall apply:

"*American Enviro plastic product*" means any product or product packaging composed of plastic, in whole or in part, that is offered for sale, sold, or distributed to the public by respondents, its successors and assigns, under the "Bunnies" brand name or any other brand name; and also means any plastic product or product packaging that is sold or distributed to the public by third parties under private labeling agreements with respondents, its successors and assigns.

I.

A. *It is ordered*, That respondents American Enviro Products, Inc., a corporation, its successors and assigns, and its officers, and Robert D. Chickering and Michael V. Zullo, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any American Enviro plastic product, including, but not limited to, disposable diapers and their plastic packaging, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic product is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any other similar term or expression, that any such plastic product offers any environmental benefits com-

pared to other products when consumers dispose of them as trash that is ordinarily buried in a sanitary landfill or incinerated,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however*, respondents will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of American Enviro plastic products, if they truthfully represent that their plastic products will compost, degrade into usable compost, or otherwise be converted into usable compost, when disposed of in facilities that collect municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products and any advertising referring to the degradability of such products discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to degrade in landfills; and either

(2)(a) That facilities to compost such products are generally unavailable in the U.S., or

(2)(b) The approximate percentage of the U.S. population having access to composting programs for such products. If the advertising and labeling of respondents' plastic products otherwise complies with Subpart A of Part I of this order, respondents will not be in violation of this order if they do not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondents American Enviro Products, Inc., a corporation, its successors and assigns, and its officers, and Robert D. Chickering and Michael V. Zullo, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any American Enviro plastic product, including, but not limited to, disposable diapers and their plastic packaging, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any such product offers any environmental benefit, unless the specific nature of that benefit is clear from the context or is disclosed clearly, prominently, and in close proximity thereto; and, at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All tests, reports, studies, surveys, or other materials in their possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV.

It is further ordered, That respondent American Enviro Products, Inc. shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this order.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

VI.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale, or distribution of plastic products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of plastic products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

MANNESMANN, A. G.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3378. Complaint, Mar. 24, 1992--Decision, Mar. 24, 1992

This consent order requires, among other things, a German company to divest the Buschman Co. within 12 months to a Commission approved buyer, and to hold separate the assets in the interim. If the divestiture is not completed within 12 months, the Commission will appoint a trustee to complete the divestiture. In addition, respondent is required for 10 years to obtain Commission approval prior to acquiring any business that manufactures and sells in the United States certain conveyor systems.

Appearances

For the Commission: *Robert W. Doyle, Jr., Ann Malester* and *Michael R. Moiseyev*.

For the respondent: *Tom Smith, Jones, Day, Reavis & Pogue*, Washington, D.C. *Ira Sachs, Sried Frank, Larry Sands* and *Eric Queen, Sried, Frank, Harris, Schrivert & Jacobson*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Mannesmann, A.G. ("Mannesmann"), which for purposes of this proceeding, is a corporation subject to the jurisdiction of the Commission through the activities of its wholly-owned subsidiary Mannesmann Capital Corporation ("MCC"), proposes to acquire substantially all of the assets of Rapistan Corp. ("Rapistan") from Rapistan, a wholly-owned subsidiary of Lear Siegler Holdings Corp. ("LSH"), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that proceeding in respect thereof

would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. THE RESPONDENT

1. Respondent Mannesmann is a corporation organized and existing under the laws of the Federal Republic of Germany, with its offices and principal place of business at Mannesmannufer, 2, Postfach 55 01, 4000 Dusseldorf, l, F.R. Germany. Mannesmann's wholly-owned subsidiary, MCC, with its office and principal place of business at 450 Park Avenue, 24th Flr., New York, N.Y. does business in the United States.

2. The Buschman Company ("Buschman"), a wholly-owned subsidiary of MCC, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business at 10045 International Boulevard, Cincinnati, Ohio.

3. For purposes of this proceeding, Mannesmann and Buschman are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUIRED COMPANY

4. LSH is a corporation organized and existing under the laws of Delaware, with its office and principal place of business at Suite 105, 220 South Orange Avenue, Livingston, New Jersey.

5. LSH is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

6. Rapistan, the assets of which are to be acquired by Mannesmann, is a corporation whose voting securities are indirectly wholly-owned by LSH.

7. Rapistan is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

8. On or about June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, agreed to acquire all, or substantially all, of the assets of Rapistan from LSH. The parties wish to consummate the transaction in November 1991, or as soon thereafter as possible.

IV. THE RELEVANT MARKET

9. For purposes of this complaint, the relevant line of commerce in which to analyze Mannesmann's acquisition of all, or substantially all, of the assets of Rapistan, a wholly-owned subsidiary of LSH, is the manufacture and sale of high speed, light-to-medium duty unit handling roller and belt conveyor systems for distribution end uses. A "high speed, light-to-medium duty unit handling roller and belt conveyor system" transports, conveys, diverts, scans and sorts cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

10. For purposes of this complaint, the relevant geographic market is the United States.

11. The relevant market set forth in paragraphs 9 and 10 is highly concentrated, whether measured by Herfindahl-Hirschmann Indices or two-firm and four-firm concentration ratios.

12. Entry into the relevant market is difficult.

13. Mannesmann, through Buschman, and LSH, through Rapistan, are actual competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

14. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among other:

a. Actual competition between Mannesmann and LSH will be eliminated;

b. Mannesmann may acquire a dominant market position in the relevant market; and

c. The likelihood of collusion in the relevant market would be increased.

VI. VIOLATIONS CHARGED

15. The acquisition agreement described in paragraph eight constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

16. The acquisition described in paragraph eight, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an

admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charge in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmannufer 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany. Mannesmann's wholly-owned subsidiary, Mannesmann Capital Corporation ("MCC"), is a corporation organized, existing, and doing business under and by virtue of the laws of New York, with its office and principal place of business at 450 Park Avenue, 24th Flr., New York, New York. MCC does business in the United States.

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

A. "*Mannesmann*" means Mannesmann, A. G., its predecessors, successors and assigns, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Mannesmann A. G.

controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that Mannesmann A. G. controls, directly or indirectly, and their respective successors and assigns.

B. "*Acquisition*" means the acquisition by MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, of substantially all of the assets of Rapistan Corp., a wholly-owned subsidiary of Lear Siegler Holdings Corp.

C. "*The Buschman assets*" means all of the share capital and all, or substantially all, of the assets of The Buschman Company, a wholly-owned subsidiary of MCC.

D. "*Conveyor systems*" means high speed, light-to-medium duty unit handling roller and belt conveyors for distribution end uses that transport, convey, divert, scan and sort cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

II.

It is ordered, That:

A. Within twelve (12) months of the date this order becomes final, Mannesmann shall divest, absolutely and in good faith, the Buschman assets.

B. Mannesmann shall divest the Buschman assets only to an acquirer or acquirers that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission which approvals shall not unreasonably be withheld. The purpose of the divestiture of the Buschman assets is to ensure the continuation of the Buschman assets as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Mannesmann shall comply with all terms of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as Appendix I. Said Hold Separate Agreement shall continue to be in effect until such time as the Hold Separate provides.

D. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the Buschman assets as required by paragraph II of this agreement, Mannesmann shall consent to the appointment by the Commission of a trustee to divest the Buschman assets. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III. A. of this order, Mannesmann shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Mannesmann, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Buschman assets.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or by the court (in the case of a court-appointed trustee). *Provided, however*, the Commission may only extend the trustee's divestiture period one time for such reasonable time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Buschman assets, or any other relevant information as the trustee may reasonably request. Mannesmann shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Mannesmann shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Mannesmann shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Mannesmann's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II. B. of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer of the Buschman assets. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, if the trustee receives *bona fide* offers from more than one prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Mannesmann from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Mannesmann, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Mannesmann, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties

and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Mannesmann and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Buschman assets.

7. Mannesmann shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission or, in the case of a court-appointed trustee, of the court, Mannesmann shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture in accordance with this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III. A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture in accordance with this order.

11. The trustee shall have no obligation or authority to operate or maintain the Buschman assets.

12. The trustee shall report in writing to Mannesmann and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Mannesmann has fully complied with the provisions of paragraphs II and III of this order, Mannesmann shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Mannesmann shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Mannesmann also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

It is further ordered, That, for a period commencing on the date this order becomes final, and continuing for ten (10) years, Mannesmann shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, assets of, or the whole or any part of the stock or share capital of, any person or business that is engaged in the manufacture and sale in the United States of conveyor systems. One year from the date this order becomes final and annually thereafter for nine years on the anniversary date of this order, Mannesmann shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered, That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States, engaged in the manufacture or sale of conveyor systems (hereinafter "acquired entity"), Mannesmann announces its intention to acquire or com-

mences an acquisition of, any interest in the acquired entity and, before Mannesmann obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in assets used for the manufacture and sale of conveyor systems (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture and sale of conveyor systems, if approval of such acquisition would be required pursuant to paragraph V, Mannesmann may, in lieu of obtaining prior approval of such acquisition under paragraph V in this order, comply with each of the requirements of this paragraph VI of this agreement. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to paragraph V, Mannesmann shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of Mannesmann's learning of the acquisition by the acquired entity of any interest in a third entity, as described in paragraph VI of this order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. l8a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR Parts 801, 802, 803.

(B) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall comply with all terms of the Hold Separate, attached to this order and made a part hereof. Said Hold Separate shall take effect as soon as Mannesmann has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Mannesmann has divested all the conveyor systems assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Mannesmann has sufficient control over the acquired entity to do so, Mannesmann shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, divest, absolutely and in good faith, all the conveyor systems assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(D) Mannesmann shall divest the stock or share capital of the third entity or the conveyor systems assets of the acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall demonstrate the viability and competitiveness of the conveyor systems assets of the acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of conveyor systems, and to remedy any lessening of competition resulting from the acquisition.

(E) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall take such action as is necessary to maintain the viability, competitiveness and marketability of the conveyor systems assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

(F) If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the conveyor systems assets of the acquired entity within three (3) months of the date when Mannesmann has

sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or
2. The conveyor systems assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(F) of this order, Mannesmann shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph III. B. of this order. *Provided, however*, that each reference to "the Buschman assets" in paragraph III. B. of this order shall, for the purposes of this paragraph VI, mean either the "stock or share capital of the third entity" or the "conveyor systems assets of the acquired entity."

VII.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Mannesmann made to MCC, Mannesmann shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Mannesmann relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding such matters.

VIII.

It is further ordered, That Mannesmann shall notify the Commission at least thirty (30) days prior to any change that may affect compliance obligations arising out of the consent order, including but not limited to, any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change.

APPENDIX I

HOLD SEPARATE AGREEMENT

This Hold Separate Agreement ("Hold Separate") is by and among Mannesmann, A. G. ("Mannesmann" as defined in paragraph I of the proposed order), a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmann, 2, Postfach 55 0l, 4000 Dusseldorf, l, F.R. Germany; Mannesmann's wholly-owned subsidiary, Mannesmann Capital Corporation ("MCC"), with its offices and principal place of business at 450 Park Avenue, 24th Flr., New York, N.Y., which does business in the United States; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

Premises

Whereas, on June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, entered into an agreement of purchase and sale with Lear Siegler Holdings Corp. ("LSH") to acquire substantially all of the assets of Rapistan Corp. ("Rapistan"), LSH's wholly-owned indirect subsidiary ("acquisition"); and

Whereas, Rapistan, with its principal office and place of business located at 507 Plymouth Avenue, N.E., Grand Rapids, Michigan, manufactures and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order; and

Whereas, The Buschman Company ("Buschman"), with its principal office and place of business located at 10045 International Boulevard, Cincinnati, Ohio, manufactures and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order, and is a wholly-owned subsidiary of MCC; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of Mannesmann's conveyor systems, as defined in paragraph I of the proposed order, which it operates through Buschman, during the period prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Buschman assets, as defined in paragraph I of the proposed order, and the Commission's right to have Buschman continued as a viable competitor; and

Whereas, the purpose of the Hold Separate and the agreement is to:

1. Preserve Buschman as a viable, ongoing, independent manufacturer and supplier of conveyor systems, as defined in the order, pending divestiture of the Buschman assets as defined in paragraph I of the proposed order,

2. Remedy any anticompetitive effects of the Acquisition,

3. Preserve the Buschman assets as viable, ongoing assets engaged in the same business in which they are presently employed pending divestiture; and

Whereas, Mannesmann's entering into this Hold Separate shall in no way be construed as an admission by Mannesmann that the acquisition is illegal; and

Whereas, Mannesmann understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent agreement, it will not seek further relief from Mannesmann with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the agreement to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of Buschman pursuant to the agreement, as follows:

1. Mannesmann agrees to execute and be bound by the attached agreement.

2. Mannesmann agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) through 2(c), it will comply with the provisions of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the proposed order, unless by that date the Commission has issued its order in disposition of this proceeding; or

c. The day after the divestiture obligations required by the proposed order have been satisfied.

3. Mannesmann currently operates Buschman as an indirect, wholly-owned subsidiary, and as a direct wholly-owned subsidiary of MCC. Buschman management reports to The Buschman Company Board of Directors ("Buschman Board"). The Buschman Board is a five member body which consists of the following individuals: Michael D. Green, John Slater, Klaus Kirchesch, Dr. Helmut Noack, and Wolfgang Vogl. Dr. Helmut Noack and Wolfgang Vogl are current Mannesmann Demag A. G. officers having direct operational responsibility for Mannesmann's worldwide belt and roller conveyor business, and they will have responsibility for the operation of the Rapistan assets once the acquisition has been completed. Therefore, in order to ensure the complete independence and viability of Buschman and to assure that no competitive information is exchanged between Buschman and any of the other conveyor operations of Mannesmann, Mannesmann will hold Buschman's assets and businesses separate and apart on the following terms and conditions:

a. Buschman, as it is presently constituted, shall be held separate and apart and shall be operated independently of Mannesmann (meaning here and hereinafter, Mannesmann excluding Buschman); *provided however*, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

b. Mannesmann shall not exercise direction or control over, or influence directly or indirectly, Buschman or any of its operations or businesses; *provided, however*, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

c. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

d. Within five (5) days of the date this Hold Separate is accepted by the Commission, Mannesmann shall remove Dr. Helmut Noack and Wolfgang Vogl from the Buschman Board and appoint Johann Lottner, Director of the accounting department for Mannesmann Demag, and John P. Dunn, a partner with Jones, Day, Reavis & Pogue, neither of whom have any present responsibilities for the management of any of Mannesmann's conveyor systems business in any part of the world. Each Buschman Board member, who is also a director, officer, employee, agent, or representative of Mannesmann, shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of Appendix A, appended hereto.

e. The Buschman Board shall have exclusive authority for managing Buschman.

f. The individuals on the Buschman Board shall not be involved in any way in the marketing, selling, manufacturing, or management of Rapistan, or any other business of Mannesmann involved in the marketing, selling, manufacturing, or management of conveyor assets. Each of these individuals, the management of Buschman, and Mannesmann's directors, officers, or employees responsible for the operation or management of Rapistan and all other Mannesmann conveyor assets will receive the notification attached as Appendix A hereto.

g. If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the order, Mannesmann may, but is not required to, assign an individual to Buschman for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Buschman and such records of Buschman as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of Appendix A, appended hereto.

h. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Mannesmann shall not receive or have access to, or the use of, any material confidential information about Buschman or the activities of the Buschman Board in managing the business that is not in the public domain. Nor shall the Buschman Board, any individual member of the Buschman Board, or the on-site person receive or have access to, or the use of, any material confidential information about Mannesmann's conveyor assets or related businesses or activities not in the public domain. MCC may receive on a regular basis from Buschman aggregate financial information necessary and essential to allow MCC to prepare United States consolidated financial reports, tax returns, and personnel reports. Such information, when consolidated with data from other United States operations of Mannesmann by MCC, may be made available to Mannesmann. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Mannesmann from sources other than the Buschman Board and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

i. Except as required by subparagraph (d) above, Mannesmann shall not remove or replace any member of the Buschman Board, or the on-site person except as provided below:

(i) Mannesmann may remove and replace anyone for cause, death, disability, or resignation from service with Mannesmann;

(ii) Mannesmann may remove any member of the Buschman Board if a conflict of interest develops in that member's role as a potential purchaser of the Buschman Assets and that role as a manager of Buschman;

(iii) Subject to the requirements of paragraph 3 of the Hold Separate, Mannesmann may replace any member of the Buschman Board or officer of Buschman after providing the Commission with sixty (60) days advance written notice; and

(iv) Mannesmann may remove any individual who interferes in any way with Mannesmann's ability to comply with the terms of this Hold Separate, the agreement, or the order.

Provided, however, that each individual newly appointed to the Buschman Board, pursuant to this subparagraph, must conform to all terms and condition of this Hold Separate.

j. All earnings and profits of Buschman shall be retained separately in Buschman pending divestiture. Mannesmann shall provide Buschman with sufficient working capital to operate at the current rate of operation.

k. Should the Commission seek in any proceeding to compel Mannesmann to divest itself of the Buschman assets as defined in the proposed order, Mannesmann shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. Mannesmann also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or agreement requires Mannesmann to take, or prohibits Mannesmann from taking, certain actions which otherwise may be required or prohibited by contract, Mannesmann shall abide by the terms of the Hold Separate or order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Mannesmann made to MCC, its principal office in the United States, Mannesmann shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Mannesmann and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Mannesmann relating to compliance with this Hold Separate;

(b) Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

APPENDIX A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Mannesmann, A. G., ("Mannesmann") has entered into a Consent Agreement and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of its subsidiary, The Buschman Company ("Buschman"). Until after the Commission's order becomes final and Buschman is divested, it must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Mannesmann. All competitive information relating to Buschman must be retained and maintained by the persons responsible for the management of Buschman (including the Buschman Board of Directors) on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any competing Mannesmann business, including the operations of Rapistan Corp. Similarly, all such persons responsible for the management of Mannesmann's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Buschman.

Any violation of the Consent Agreement or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.