IN THE MATTER OF

ESTEE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3126. Complaint, Nov. 16, 1983—Decision, Nov. 16, 1983

This consent order requires a Parsippany, N.J. manufacturer and marketer of health-related food products, among other things, to cease representing that any of its products have been accepted or recommended for use by diabetics or persons with hypoglycemia unless the identity of the endorser and the material qualifications or limitations placed on the endorsement are disclosed. If the company promotes a food as being appropriate for diabetics, it is required to disclose that the product is "not a reduced calorie food" in advertising and on package labels pursuant to FDA regulations. Representations that a food will or will not affect blood sugar levels, or that it has any health-related property for diabetics or hypoglycemics must be substantiated. Further, the firm is barred from misrepresenting the existence or truthfulness of endorsements; the identity of any sweetener; or that food containing fructose contains no sugar, is reduced in calories and is appropriate for weight control. The order additionally requires the company to provide the American Diabetes Association, Inc. or the Juvenile Diabetes Foundation with the sum of $25,000 and to maintain files substantiating advertising claims for a period of three years.

Appearances

For the Commission: *Robert C. Cheek* and *Joel Winston.*

For the respondent: *Daniel L. Goldberg, Bingham, Dana & Gould,* Boston, Mass.

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 Estee Corporation (hereinafter "Estee"), hereinafter at times referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Estee is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 169 Lackawanna Avenue, Parsippany, New Jersey.

PAR. 2. Estee has been and now is engaged in the business of marketing and advertising health-related foods, including but not limited to foods promoted as appropriate for diabetics.

PAR. 3. The above-named respondent, in connection with the manufacture and marketing of said foods, has disseminated, published and distributed, and now disseminates, publishes and distributes, advertisements and promotional material for the purpose of promoting the sale of Estee's "special foods." These foods are sweetened with fructose, sorbitol, or high fructose corn syrup. Each of these foods, as advertised, is a "food" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of certain advertisements concerning its special foods through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to the insertion of advertisements in magazines and newspapers with national circulations, the mailing of promotional booklets entitled "Estee . . . Special Foods For Special Diets" and "The Rationale For Special Dietary Foods Made With Fructose" for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of Estee's special foods.

PAR. 5. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the positions of the Food and Drug Administration and American Diabetes Association on the consumption by diabetics of the sweeteners used in Estee's special foods. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

The nutritive sweeteners Sorbitol and Fructose have been accepted by the ADA and the FDA as being useful in the diets of diabetics on the advice of a physician.

* * * * * * *

Estee cookies are now sweetened with FRUCTOSE. The use of this all natural sweetener was recently reviewed by the American Diabetes Association. They concluded: "Thus, from short-term studies there appears to be *no need to restrict intake of Fructose* as compared with *complex carbohydrates* as it relates to changes in plasma glucose levels in diabetes." [Emphasis in original.]

PAR. 6. Through the use of the statements set forth in Paragraph Five and others, in the context in which they appeared, respondent has represented, directly or by implication, that the Food and Drug Administration and the American Diabetes Association each has concluded that the sweeteners in Estee's special foods are useful without significant qualifications in the diabetic's diet.

PAR. 7. In truth and in fact, the statements and representations set forth in Paragraphs Five and Six, in the context in which they appeared, were and are false, misleading and deceptive, in that:

(a) The Food and Drug Administration has made no conclusions about the usefulness of fructose, sorbitol, or high fructose corn syrup —the sweeteners in Estee's special foods—in the diabetic's diet.

(b) The American Diabetes Association has made no conclusions about the usefulness of Estee's high fructose corn syrup in the diabetics's diet, and its conclusions (as stated in Olefsky and Crapo, "Fructose, Xylitol, and Sorbitol," *Diabetes Care,* Vol. 3, No. 2 (March-April, 1980)) about the usefulness of fructose and sorbitol contain significant qualifications.

Therefore, neither the Food and Drug Administration nor the American Diabetes Association has concluded that the sweeteners in Estee's special foods are useful without significant qualifications in the diabetic's diet. For the foregoing reasons, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, false advertisements.

PAR. 8. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the dietary qualities of Estee's special foods. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

We know what it's like to live on a diet in a world filled with cookies, candies, and mouthwatering desserts. That's why we've created the world's largest assortment of diet treats. . . . We know you're always looking for ways to satisfy your desire for sweets while still staying within your diet.

* * * * * * *

In an advertisement with the heading "LIFE CAN BE SWEET WITHOUT A LOT OF SUGAR" and with an image of Estee's "DIETETIC" coconut cookies prominently pictured:

Fructose is nature's sweetest sugar, commonly found in many fruits and berries. It's up to 50% sweeter than regular sugar, and it's even recommended for use by diabetics and hypoglycemics . . . . We'd like you to try our products made without sugar. . . .

PAR. 9. Through the use of the statements set forth in Paragraph Eight and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) Estee's foods are significantly reduced in calories compared with comparable foods.

(b) Estee's foods are useful or appropriate for weight control.

PAR. 10. In truth and in fact:

(a) Many of Estee's foods are not significantly reduced in calories compared with comparable foods.

(b) Many of Estee's foods are not useful or appropriate for weight control.

Therefore, the advertisements referred to in Paragraphs Four and Eight were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraphs Eight and Nine, in the context in which they appeared, were and are false, misleading and deceptive.

PAR. 11. Respondent has, directly or by implication, through the advertisements referred to in Paragraph Four and others, made statements concerning the identity and properties of the sweeteners used in Estee's special foods, and the usefulness or appropriateness of Estee's special foods for diabetics. Typical of the statements in said advertisements, but not necessarily all-inclusive thereof, are the following:

Estee Cookies are sweetened with FRUCTOSE, the natural sweetener that delivers the clean, sweet sugar taste that diabetics and hypoglycemics have always been denied.

* * * * * * *

At Estee, our business is making life a little sweeter for people who can't afford a lot of ordinary table sugar (sucrose) in their diets. *Instead, we use sorbitol and fructose,* the slowly absorbed sweeteners that avoid the "highs and lows" of ordinary table sugar. [Emphasis in original.]

* * * * * * *

Here is a special cookie designed for people with diabetes, hypoglycemia and hypertension, who must restrict their intake of ordinary sugar and salt.

* * * * * * *

It's [fructose] up to 50% sweeter than regular sugar, and it's even recommended for use by diabetics and hypoglycemics.

* * * * * * *

We'd like you to try our products made without sugar. . . .

* * * * * * *

Meet the newest member of the Estee family of fine products—LOW CALORIE AND NO SUGAR FOODS.

PAR. 12. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) The sweetener in all of Estee's "fructose"-sweetened special foods is fructose.

(b) Estee's special foods, including its "fructose"-sweetened special foods, do not contain any sugar.

PAR. 13. In truth and in fact:

(a) The sweetener in certain of Estee's "fructose"-sweetened foods is not fructose, but rather is high fructose corn syrup.

(b) Estee's "fructose"-sweetened foods contain fructose, which is a sugar, or high fructose corn syrup, which is comprised of sugars.

Therefore, the advertisements referred to in Paragraphs Four and Eleven were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraphs Eleven and Twelve, in the context in which they appeared, were and are false, misleading and deceptive.

PAR. 14. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that Estee's fructose- and sorbitol-sweetened special foods are useful or appropriate for the diabetic's diet.

PAR. 15. At the time of the disseminations of the statements and representations contained in Paragraphs Eleven and Fourteen, respondent did not possess and rely upon a reasonable basis for making such unqualified statements and representations, in that:

(a) Estee's fructose- and sorbitol-sweetened special foods should not be eaten in more than limited amounts by any diabetic.

(b) Many diabetics are on weight loss or weight control diets, and many of Estee's fructose- and sorbitol-sweetened special foods are not reduced in calories and therefore are not useful or appropriate for purposes of weight loss or weight control.

(c) Estee's fructose- and sorbitol-sweetened special foods are not appropriate for diabetics who are untreated or who are out-of-control.

Therefore, the making of said statements and representations as alleged constituted, and now constitutes, unfair and deceptive acts or practices in or affecting commerce.

PAR. 16. Through the use of the statements set forth in Paragraph Eleven and others, in the context in which they appeared, respondent has represented, directly or by implication, that:

(a) the sweetener in Estee's cookies and other high fructose corn syrup-sweetened special foods has the same characteristics as fructose, including its effects on diabetics' blood sugar levels.

(b) Estee's cookies and other high fructose corn syrup-sweetened special foods are useful or appropriate for the diabetic's diet and will not cause undesirable elevations of diabetics' blood sugar levels.

PAR. 17. At the time of the disseminations of the statements and

representations contained in Paragraphs Eleven and Sixteen respondent did not possess and rely upon a reasonable basis for making such statements and representations. Therefore, the making of said statements and representations as alleged constituted, and now constitutes, unfair and deceptive acts or practices in or affecting commerce.

PAR. 18. In the course and conduct of its aforesaid business and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the food industry.

PAR. 19. The use by respondent of the aforesaid unfair and deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 20. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair and deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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 Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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, makes the following jurisdictional findings and enters the following order:

1. Respondent Estee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 169 Lackawanna Avenue, in the City of Parsippany, State of New Jersey.

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

For the purposes of this order, the term *food* shall mean and include any article used for food or drink for humans, chewing gum, and any article used for a component of any such article.

Any provision of this order shall not cover labels or labeling if such provision is inconsistent with regulations of the Food and Drug Administration or with the statutes it enforces.

The provisions of this order shall not apply to any label or labeling printed by respondent before the date of service of this order and shipped by respondent to distributors or retailers prior to January 1, 1984 or the date of service of this order, whichever is later.

I

It is ordered, That respondent Estee Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any food 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, that any food is accepted or recommended by an individual or organization other than the advertiser for use by a diabetic or hypoglycemic, unless in immediate conjunction with such representation the following is disclosed with equal prominence:

1. the identity of the individual or organization, and

2. all material qualifications or material limitations, if any, placed on the acceptance or recommendation by the individual or organization.

B. Failing to clearly and prominently disclose in a non-label advertisement: "This food is not a reduced calorie food," when:

1. respondent makes a representation, directly or by implication, in the advertisement that any food is an appropriate part of a diabetic's diet, and

2. a disclosure is required on the label that the food is not a reduced calorie food pursuant to regulations promulgated by the Food and Drug Administration.

Provided, That, where more than one food is promoted by a single advertisement, and a label disclosure is required pursuant to regulations promulgated by the Food and Drug Administration for one or more of the advertised foods, this section shall be satisfied if the following statement is clearly and prominently disclosed in the advertising: "Some of these foods are not reduced calorie foods."

C. Making any representation, directly or by implication, about the health-related comparability of one sweetener to another sweetener, unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

D. Representing, directly or by implication, that a food:

1. will or will not affect blood sugar levels in any manner, or

2. has any health-related property or quality for diabetics or hypoglycemics,

unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

E. Misrepresenting, directly or by implication:

1. the existence or truthfulness of any endorsement or recommendation,

2. the identity of any sweetener,

3. that any food which contains fructose or high fructose corn syrup does not contain any sugar, *provided,* that, this provision shall not prohibit respondent from truthfully representing that a food does not contain "sucrose" or "table sugar."

4. that a food is reduced in calories compared to other foods or is appropriate for weight control.

II

It is further ordered, That respondent shall, within twenty-four (24) months after the date of service of this order, provide the aggregate sum of $25,000 to the American Diabetes Association, Inc. or the Juvenile Diabetes Foundation. Said funds shall be designated as "for the purposes of research into dietary management of diabetes," *provided* that, if any of such funds are not used by the recipient organization(s) for said purposes, such funds shall revert to the general research funds of the organization(s).

III

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure 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.

V

It is further ordered, That respondent shall maintain files and records of all substantiation for claims made under Parts IC and ID of this order for a period of three (3) years after the dissemination of any advertisement containing such claim. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written demand for such material.

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

ENDICOTT-JOHNSON CORPORATION

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

Docket C-1009. Consent Order, Oct. 29, 1965—Modifying Order, Nov. 17, 1983

On Nov. 17, 1983, the Federal Trade Commission modified the order issued against Endicott-Johnson Corp. on Oct. 29, 1965 (68 F.T.C. 842). The modification eliminates the provision which prohibited the company from acquiring any concern engaged in the manufacture and sale of footwear in the U.S. without prior Commission approval.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED ON OCTOBER 29, 1965

On October 29, 1965, the Federal Trade Commission, pursuant to Section 5 of the Federal Trade Commission Act and Section 11 of the Clayton Act, issued the consent order in this case against Endicott-Johnson Corporation prohibiting, for a period of twenty years, acquisitions of certain firms engaged in the manufacture or sale of shoes or footwear in the United States or the District of Columbia, without prior approval of the Commission.

The Commission has determined that absent special circumstances an order provision that requires prior Commission approval of acquisitions by the respondent should not exceed ten years in duration. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The order in this case has been in effect for 17 years and the Commission has determined that no special circumstances warrant continued prior approval of respondent's acquisitions. The Commission therefore has determined that it would be in the public interest to modify its order in Docket No. C-1009 to provide that prior approval will not be required after October 31, 1983.

On October 7, 1983 the Commission issued an order to show cause why the order in Docket No. C-1009 should not be modified. The proposed modification was accepted by respondent.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the order in Docket No. C-1009 be modified.

IN THE MATTER OF

TEAC CORPORATION OF AMERICA

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2752. Consent Order, Oct. 24, 1975—Modifying Order, Nov. 25, 1983

The Federal Trade Commission has modified the order issued against TEAC Corporation of America on Oct. 24, 1975 (86 F.T.C. 981) to allow the company to prevent transshipment of its products to dealers who do not meet reasonable, non-discriminatory standards of promotion, service and display.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED ON OCTOBER 24, 1975

On October 24, 1975, the Federal Trade Commission ("Commission") issued an order against TEAC Corporation of America ("TEAC") in Docket No. C-2752, 86 F.T.C. 981 (1975), prohibiting TEAC from, among other things, restricting or limiting in any manner the customers or classes of customers to whom dealers may sell TEAC's products.

On March 8, 1983, the Commission issued a modified order in *U.S. Pioneer Electronics Corporation,* Docket No. C-2755 [101 F.T.C. 372], allowing Pioneer (one of TEAC's competitors) to prevent transshipment of its products to dealers who do not meet reasonable, nondiscriminatory standards of promotion, service and display. The initial *Pioneer* order contained the same provisions that are contained in the TEAC order. Both orders contain a most favored respondent clause pursuant to which the Commission may modify the respective orders in order to bring them into conformity with less stringent restrictions imposed on the respondents' competitors.

On August 1, 1983, the Commission issued an order to show cause why the proceeding in Docket No. C-2752 should not be reopened to modify Paragraph I(11) of the order in this case to read as follows:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any persons or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and non-discriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability, nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.

The proposed modification was accepted by TEAC. In view of the Commission's action in *Pioneer,* the Commission believes that this modification is in the public interest.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that Paragraph I(11) of the order in Docket No. C–2752 be modified as indicated above.

IN THE MATTER OF

JIM WALTER CORPORATION, ET AL.

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

Docket 8986. Amended Complaint, June 15, 1982—Decision, Nov. 30, 1983

This consent order requires a leading manufacturer of shell housing and construction materials, and its wholly-owned subsidiary, among other things, to timely divest, to a Commission-approved buyer, the asphalt roofing plants located in Wilmington, Ill., Philadelphia, Pa., Chester, W. Va. and Memphis, Tenn., including their adjacent felt mills. Should any of the plants not be divested within 15 months of the effective date of the order, a trustee appointed by the Commission will effect divestiture of the remaining plant or plants. The order requires respondents to cooperate with the trustee in the discharge of his/her duties, and compensate him/her for the reasonable value of his/her services, including expenses. Further, for a period of 10 years, respondents are prohibited from acquiring any asphalt roofing plant in 41 specified states without prior Commission approval.

Appearances

For the Commission: *David W. Long.*

For the respondents: *W. Donald McSweeney, William A. Montgomery, John J. Voortman* and *Walter C. Greenough, Schiff, Hardin & Waite,* Chicago, Ill.

AMENDED COMPLAINT

In the exercise of authority vested in it by the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that respondents Jim Walter Corporation, a corporation, and The Celotex Corporation, a corporation, have violated Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a further proceeding in respect thereof concerning the acquisition of and merger with Panacon Corporation, would be in the public interest, issues this amended complaint charging as follows:

I. DEFINITIONS

1. For the purpose of construing this complaint the following definitions shall be controlling:

(a) *Saturated felts* consist of a dry felt base, made from rags, wood,

and other cellulose fibers or from glass fibers or asbestos, which is saturated, coated or impregnated with an asphalt or tar saturant.

(b) *Roll roofing* is made from a saturated felt by applying an additional coating of more viscous, weather-resistant asphalt.

(c) *Asphalt shingles* are mineral-surfaced roll roofing machine-cut into squares or strips.

(d) *Asphalt and tar roofing materials* and *asphalt roofing materials* are used interchangeably herein to refer to saturated felts, roll roofing, and asphalt shingles, but specifically excludes accessory items such as asphalt cements, adhesives, primers, and mineral granules.

(e) *Elastomeric roofing materials* includes both solid pre-formed sheets and liquids made of synthetic polymer materials. The principal elastomeric roofing materials, available in either liquid or sheet applied systems, include acrylic, butyl, chlorosulphinated polyethylene, EPDM, neoprene, polyvinyl chloride (PVC), vinyl, rubberized asphalt, silicone and urethane.

II. RESPONDENTS

2. Jim Walter Corporation (hereafter "JWC") is a publicly-held corporation chartered and operating under the laws of the State of Florida, with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida.

3. The Celotex Corporation (hereafter "Celotex" or the "Celotex Division") is a fully-owned subsidiary of JWC, chartered under the laws of the State of Delaware. Its principal place of business is 1500 North Dale Mabry Highway, Tampa, Florida.

4. In addition to being the leading manufacturer of shell (partially finished) housing, JWC also ranks as a major producer of construction materials. At the time of the acquisition in question here (*see* IV, *infra*), most of the corporation's activities were conducted through eight operational groups: mineral and fiber products; metals and wood products; stone and concrete products; pipe products; homebuilding supplies; paper; sugar operations; and oil and gas operations. Since its incorporation in 1955, JWC has managed to increase its share of the shell house market by internal expansion, and diversified into homebuilding supplies via acquisition. During the period 1964 to 1974 alone, JWC acquired no fewer than seventeen separate companies. For its fiscal year ending August 31, 1972, the year of the acquisition in question, JWC reported revenues of $881,737,000; total assets of $983,217,000; and a net income of $44,568,000. On the basis of these figures, the May 1973 *Fortune 500* issue ranked JWC as the 161st largest industrial corporation in the United States.

5. On July 12, 1962, JWC revealed the details of its agreement to purchase a 34 percent stock interest in Celotex. A principal manufac-