

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 exchange 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 1, 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 SW1X 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(1) 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,

