In the Matter of

BENEFICIAL CORPORATION, ET AL.

Docket 8922. Interlocutory Order, Dec. 20, 1977

Order rejecting proposed form of order submitted by respondents and directing the submission, by both parties, of a new form of order within sixty days. If no joint proposal is submitted, parties are directed to submit, within sixty days, briefs fully addressing the issues raised in the Commission's order of July 15, 1977.

In response to our order of July 15, 1977, calling for briefs directed to issues presented by the order of the United States Court of Appeals for the Third Circuit remanding this matter, respondents have submitted a proposed order and sample advertisement which is not opposed by complaint counsel. We have examined the proposed order and sample advertisement and find them deficient in several respects. First, only a proposed print advertisement has been submitted with the proffered order as an example of what the order would permit, although the record establishes that respondents use radio and television advertising extensively. It is not at all clear how the parties believe the order would apply to such advertising.

Moreover, our review of the proposed advertisement does not convince us that the deception that we earlier found in respondents' use of the "instant tax refund" slogan would be cured. The proposed advertisement still suggests that there is *some* relationship (even if not a dependency) between the loan and the amount of the expected refund. In fact, as we have previously held, and the court of appeals has affirmed, the eligibility for, or amount of, any income tax refund is entirely unrelated to an applicant's eligibility for, or the amounts of, any loan.

Under the circumstances, we believe that the best course is to conduct further proceedings.

It is ordered, That the parties submit, within 60 days, such other order (if any) as they may jointly propose. Any such proposed order shall be accompanied by proposed advertisements for the media customarily used by respondents and by a detailed proposed protocol for objective consumer perception surveys of those and other representative advertisements. The proposed protocol should be designed to test whether the proposed advertisements cure the deception which we previously found in respondents' use of the "instant tax refund" slogan.

It is further ordered, That if the parties do not submit such a joint proposal, they submit within 60 days briefs as required by our order of July 15, 1977, fully addressing the issues raised in that order.

IN THE MATTER OF

JIM WALTER CORPORATION

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket 8986. Complaint, July 29, 1974 — Final Order, Dec. 20, 1977

This order, among other things, requires a Tampa, Fla. manufacturer of shell housing and construction material to divest itself within one year of all interests in the Philip Carey Company and Carey-Canadian Mines, Ltd., divisions of Panacon Corporation; and prohibits the firm from acquiring for a period of ten years, any interest in a manufacturer, seller, or distributor of asphalt or tar roofing products without prior Commission approval.

Appearances

For the Commission: *Joseph J. O'Malley, Peter W. Kitson, Harold J. Lamboley, Jr.* and *Gilbert E. Geldon.*

For the respondent: *W. Donald McSweeney, William A. Montgomery* and *Susan A. Henderson, Schiff, Hardin & Waite,* Chicago, Illinois.

COMPLAINT

In the exercise of authority vested in it by the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that respondent, Jim Walter Corporation, a corporation, has violated Section 7 of the Clayton Act (15 U.S.C. 18), and that a proceeding in respect thereof would be in the public interest, issues this complaint charging as follows:

I. DEFINITIONS

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

(a) "Asphalt and tar roofing" shall include both built-up roofing and shingles which are made from a dry felt, asbestos, or fiber glass base, saturated or coated with asphalt flux or coal tar pitch.

(b) "Built-up roofing" includes both tar and asphalt multi-layer, flat-topped roofing. This type of roof covering normally consists of from two to four plys of roll roofing sheets "built-up" with alternating coats of asphalt or coal tar pitch. [2]

(c) "Saturated felts" consist of a dry felt base, made from rags, wood, and other cellulose fibers, impregnated with an asphalt or tar saturant.

(d) "Roll roofing" is made from a saturated felt by applying an additional coating of more viscous, weather-resistant asphalt. Roll roofing serves as the laminations in a built-up roof.

(e) "Asphalt shingles" are mineral-surfaced saturated felts machine-cut into squares of strips.

(f) "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.

II. RESPONDENT

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

3. In addition to being the leading manufacturer of shell (partially finished) housing, JWC also ranks as a major producer of construction materials. Most of the corporation's activities are conducted through eight operational groups: mineral and fiber products; metal 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 acquisitions. In the past ten years alone JWC has [3] acquired no fewer than seventeen separate companies. For its fiscal year ending August 31, 1972, 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 Jim Walter Corporation as the 161st largest industrial corporation in the United States.

4. On July 12, 1962, JWC revealed the details of its agreement to purchase a 34 percent stock interest in the Celotex Corporation. A principal manufacturer of insulation fiberboard, mineral wool, gypsum, and asphalt roofing materials, Celotex became a fully-owned subsidiary of Jim Walter Corporation by the close of 1964. JWC further expanded its capacity to produce building materials and, in particular, roofing products by acquiring the Barrett Building Materials Division of Allied Chemical Corporation in 1967. The merger of Barrett into JWC's Celotex Division extended "Celotex' capabilities in roofing materials from one plant to eight."

5. At all times relevant to this complaint JWC has sold and shipped, and continues to sell and ship, its products in interstate

commerce throughout the United States. Consequently, JWC was, at the date of the acquisition in question here, and is now, engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12).

III. PANACON CORPORATION

6. Prior to April 17, 1972, Panacon Corporation (hereafter "Panacon") was a corporation chartered and operating under the laws of the State of Michigan, with a principal place of business at 320 South Wayne Ave., Cincinnati, Ohio. The Glen Alden Corporation owned 89 percent of the outstanding common stock of Panacon prior to April 1972.

7. At the time of its acquisition, Panacon was a substantial manufacturer of "a wide range of products for residential and commercial construction and industrial applications." Organized in six operating divisions, Panacon produced and marketed such diverse products as vitreous china, porcelain-on-steel plumbing ware, floor tiles, roofing materials, insulations, bathroom cabinets, lighting fixtures, ventilating fans, electric [4] fireplaces, and water heaters. For its fiscal year ending December 31, 1971, Panacon reported revenues of $181,129,000; total assets of $106,008,000; and a net profit of $10,591,000.

8. On April 9, 1970, the Plan and Agreement of Merger executed on December 31, 1969, by the Philip Carey Corporation and Briggs Manufacturing Company was consummated. Under the terms of this agreement Carey was merged into Briggs and Briggs, as the surviving entity, adopted the new name of Panacon Corporation. Each share of the Briggs common stock was exchanged for one share in Panacon; all of the Carey common stock was converted into 4,644,000 shares of common and 7,356,000 shares of Class A common stock in Panacon.

9. At all times relevant to this complaint Panacon sold and shipped products in interstate commerce and was, therefore, engaged in commerce as that term is defined in the Clayton Act (15 U.S.C. 12).

IV. THE ACQUISITION

10. Pursuant to an agreement signed earlier in the month, JWC purchased an 89 percent stock interest in Panacon from Glen Alden Corporation for $62,000,000 on April 17, 1972. On June 29, 1972, the shareholders of Panacon voted to approve the merger of Panacon into the Celotex Division of JWC. Thereafter, JWC completed its

takeover by giving the remaining shareholders cash for their 11 percent interest. The total cost of the acquisition was approximately $73,000,000.

V. TRADE AND COMMERCE

11. Functionally, the production of asphalt and tar roofing materials breaks down into two distinct processes: (1) the preparation of a base (dry felt, asbestos, or fiberglass) mat; and (2) the conversion of this mat into saturated felts, roll roofing, or shingles. The overwhelming proportion of asphalt roofing materials derive from a dry felt base saturated with asphalt flux, coated with mineral granules, and cut into sheets or shingles. [5]

12. Today over 80 percent of all roofing applied in the United States is produced by the asphalt roofing industry. There are approximately 29 manufacturers of asphalt roofing materials operating a total of 120 plants in the United States.

13. Asphalt roofing materials are manufactured, transported, sold, and applied throughout the United States. For the year (1971) preceding the acquisition in question here total sales of asphalt roofing materials, as defined herein, amounted to $654.7 million, of which $457.9 million represented sales of shingles and $196.8 million was sales of built-up roofing (saturated felts and roll roofing). The eight largest manufacturers of these products reported sales of $539.6 million, or 82.4 percent of all sales; the four largest manufacturers realized $336.3 million in sales, or 51.4 percent of all sales of asphalt roofing materials. These same eight manufacturers operated 92, or 76.7 percent, of all plants producing these materials in the United States.

14. For the year 1971, Jim Walter Corporation ranked fifth in sales of all asphalt roofing materials; third in sales of built-up roofing materials; and seventh in the sale of shingles. JWC represented 8.8 percent, 12.3 percent, and 7.3 percent of all sales of asphalt roofing materials, built-up roofing, and shingles. During the same year Panacon ranked sixth, fifth, and sixth in sales of all asphalt roofing materials, built-up roofing, and shingles, respectively. After this acquisition, Jim Walter Corporation ranked second, first, and second in the sales of all asphalt roofing materials, built-up roofing, and shingles, respectively, with total sales of asphalt roofing materials of $123.5 million.

VI. EFFECTS OF THE ACQUISITION

15. The effect of the acquisition of Panacon by JWC may be

substantially to lessen competition or to tend to create a monopoly in the manufacture, sale, and distribution of all asphalt roofing materials and of built-up roofing and shingles in the United States, as a whole, and in certain states in the following ways: [6]

(a) By eliminating actual competition between JWC and Panacon in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles.

(b) The ability of JWC's competitors to compete in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles has been, and may be, further substantially diminished.

(c) The probability of JWC's competitors pricing their asphalt roofing products on an independent basis has been, and may be, further substantially impaired as a result of the increased potential for price leadership among manufacturers of asphalt roofing materials.

(d) The entry of new asphalt roofing materials manufacturers may have been, and may be, significantly discouraged or retarded.

(e) The ability of purchasers of asphalt roofing materials, as defined herein, to select from alternative manufacturers has been and may be substantially limited.

(f) The dominant position of JWC in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing materials and shingles has been, and may be, further enhanced and solidified vis-a-vis its competitors with the result that any reduction in such dominance will be extremely remote.

VII. VIOLATION

16. The acquisition of Panacon Corporation by Jim Walter Corporation constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18).

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW JUDGE

MAY 6, 1976

PRELIMINARY STATEMENT

In a complaint dated July 29, 1974, the Commission charged Jim Walter Corporation (JWC) with violation of Section 7 of the Clayton Act (15 U.S.C. 18). The gravamen of the charges was that the effect of the purchase by JWC of the stock of Panacon Corporation (Panacon) for approximately $73,000,000 in April 1972 (Complaint, par. 10) may have been, or be, substantially to lessen competition or to tend to create a monopoly in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing and shingles in the United States as a whole and in certain states (Complaint, par. 15). [2]

The complaint definition of asphalt and tar roofing materials includes saturated felts, roll roofing, and asphalt shingles made from a dry felt, asbestos or fiber glass base, saturated or coated with asphalt flux or coal tar pitch, but excludes accessory items such as asphalt cements, primers, and mineral granules (Complaint, par. 1(a), (f)).

It was alleged that adverse effects on competition would come about in the following ways:

(a) By eliminating actual competition between JWC and Panacon in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles.

(b) The ability of JWC's competitors to compete in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles has been, and may be, further substantially diminished.

(c) The probability of JWC's competitors pricing their asphalt roofing products on an independent basis has been, and may be, further substantially impaired as a result of the increased potential for price leadership among manufacturers of asphalt roofing materials.

(d) The entry of new asphalt roofing materials manufacturers may have been, and may be, significantly discouraged or retarded.

(e) The ability of purchasers of asphalt roofing materials, as defined herein, to select from alternative manufacturers has been and may be substantially limited.

(f) The dominant position of JWC in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing materials and shingles has been, and may be, further enhanced and solidified vis-a-vis its competitors with the result that any reduction in such dominance will be extremely remote. (Complaint, par. 15)

[3] In its answer, JWC denied the allegations and denied making the acquisition, but admitted that its wholly-owned subsidiary, The Celotex Corporation (Celotex), had acquired approximately 89 percent of the two classes of common stock of Panacon. The answer also raised the defenses (1) that the acquisition of Panacon by Celotex enhanced competition, (2) that neither asphalt roofing materials, built-up roofing, nor shingles, as referred to in the complaint, is a proper line of commerce under Section 7 of the Clayton Act, and (3) that the entire United States is not a proper section of the country under Section 7 for purposes of this case.

Prehearing conferences were held on October 24, 1974, and January 7, 1975; however, participation by counsel for JWC in other antitrust proceedings involving Celotex interfered with the completion of discovery and the start of the adjudicative hearings. The start of the hearings also was delayed due to the filing of numerous (23) motions and applications for review having to do with such things as the date for the hearings to begin, discovery, and the protection of competitively sensitive information.

The hearings began on October 28, 1975. Presentation of the case-in-chief was completed on December 1, 1975. A motion for dismissal was orally argued on December 1, 1975 (Tr. 1152-1197), and denied on January 21, 1976. Presentation of the case-in-defense was completed on January 21, 1976. The record was closed for the receipt of evidence on February 11, 1976, but was reopened for the receipt of additional testimony on February 17, 1976. March 12, 1976, was the date by which proposed findings of fact, conclusions and a proposed order were to be filed and March 29, 1976, was the date by which the parties replied to the proposals and briefs of the other side.

The findings of fact below are based on a review of the complaint, respondent's answer, stipulations, testimony and exhibits, and consideration of the demeanor of the witnesses at the hearings. In addition, the proposed findings of fact, conclusions and order, together with reasons and briefs in support thereof filed by both sides have been given careful consideration. To the extent not adopted in this decision in the form proposed or in substance, they are rejected as not supported by the record or as immaterial. [4]

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony, evidence and exhibits supporting the findings of fact. They do not represent complete summaries of the evidence considered in arriving at such findings. The following abbreviations have been used:

CX - Commission's Exhibit, followed by number of exhibit being referenced.

RX - Respondent's Exhibit, followed by number of exhibit being referenced.

Tr. - Transcript, preceded by the name of the witness, followed by the page number.

Admissions - Respondent's response to Complaint Counsel's Request for Admissions filed May 16, 1975.

Findings of Fact

I. RESPONDENT JIM WALTER CORPORATION

A. Jim Walter Corporation

1. The Jim Walter Corporation (JWC) is a publicly held corporation organized and existing under the laws of the State of Florida, with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida (Complaint and Answer, par. 2). It was incorporated in 1955 (Complaint and Answer, par. 3).

2. JWC is one of the nation's largest building and construction materials companies (CX 28, at 22; CX 29U; CX 31B). Prior to December 31, 1969, JWC was engaged in the sale, construction and financing of shell-type homes. As of January 1, 1970, JWC home building activities were transferred to its wholly-owned subsidiary, Jim Walter Homes, Inc. (Admissions, pars. 6, 9). [5]

3. JWC conducts its business through a large number of subsidiary corporations which are organized into operating groups (Complaint and Answer, par. 3; *see* CX 8B). In 1972, these groups included mineral and fiber products; pipe products; home building; metal and wood products; stone and concrete products; paper; sugar; savings and loan operations; and oil and gas operations (CX 29L-T).

4. JWC and its subsidiaries had approximately 26,400 employees on August 31, 1974 (CX 37E).

5. As of August 31, 1972, JWC owned all of the outstanding voting securities of the following corporations:

Jim Walter Homes, Inc.
Dixie Building Supplies, Inc.
J.W. Walter, Inc.
Best Insurors, Inc.
Mid-State Homes, Inc.
Coast to Coast Advertising, Inc.
Jim Walter Advisers, Inc.
The Celotex Corporation
First Brentwood Corporation
The South Coast Corporation
Knight Paper Company
The Georgia Marble Company
United States Pipe and Foundry Company
The Columbia Moulding Company
Walter Land Company
Gamble Brothers, Inc.

Monarch America, Inc.

At the same time Celotex owned all of the outstanding voting securities of the following subsidiaries:

Jim Walter Export, Inc.
Celotex Canada Limited
Jim Walter Research Corp.
Celotex Limited
Miami Carey Ltd.
Carey Canadian Mines, Ltd.

(CX 35M).

[6] 6. For its fiscal year ending August 31, 1971, consolidated sales and revenues of JWC and its subsidiaries were $710,029,000 and consolidated earnings were $32,449,000 (CX 28, at 12; CX 33X). For its fiscal year ending August 31, 1972, JWC reported consolidated revenues of $885,172,000; total assets of $983,217,000; and a net income of $44,568,000 (Complaint and Answer, par. 3; CX 29X; CX 35G). For its fiscal year ending August 31, 1973, JWC reported consolidated sales and revenues of $1,068,636,000; total assets of $1,081,999,000; and net income of $54,097,000 (CX 30B; CX 36F).

7. The JWC organization has grown through a series of acquisitions. In the ten year period preceding the filing of the complaint in July 1974, JWC or its subsidiaries acquired no fewer than 17 separate companies with cash and/or stock (Complaint and Answer, par. 3). The following were among the more prominent acquisitions by JWC:

a. Celotex stock – 34% in 1962, the balance by 1964 (CX 28, at 20, 21; CX 33B; CX 35B);

b. Edwards Power Door Company, Inc., Mount Vernon, New York, in 1965, which became a part of Celotex in 1971 (CX 8A; CX 17I; CX 28, at 21);

c. Brentwood Financial Corporation, Los Angeles, California, in 1966, an operator of savings and loan companies and an insurance agency (CX 8A; CX 17I);

d. Barrett Building Materials Division of Allied Chemical Corporation in 1967. The Division later became a part of Celotex (CX 8A; CX 28, at 21; CX 45; CX 47);

e. Alger-Sullivan Company, Inc., Century, Florida, in 1967, a producer of laminated railroad flooring. In 1971, it also became a part of Celotex. (CX 8A; CX 17I);

f. Marquette Paper Corp. of Chicago, Illinois, in 1968 (CX 8A; CX 17J);

g. Gilbert C. Van Camp Insurance Agency in 1968 through the Brentwood subsidiary (CX 8A; CX 17J); [7]

h. Majestic Carpet Mills, Inc., Georgia, in 1968, which later became a part of Celotex (CX 8A; CX 28, at 21; CX 17J);

i. Knight Paper Corporation, Jacksonville, Florida, in 1968 (CX 8A; CX 28, at 21);

j. Georgia Marble Company, in 1969, which mines or quarries granite, marble, limestone and other minerals (CX 8A; CX 17K);

k. Mohawk Tablet Company, in 1969, through its Marquette Paper subsidiary (CX 8A; CX 17J);

l. United States Pipe and Foundry Company of New Jersey, in 1969 (CX 8A; CX 17J);

m. Columbia Moulding Company, in 1970 (CX 8A; CX 17L; CX 28, at 22);

n. Aetna Savings and Loan Association of Los Angeles, in 1971, through its Brentwood subsidiary (CX 8A; CX 53);

o. Monarch America, Inc. of St. Louis, Missouri, in 1972, a manufacturer of metal weather stripping (CX 17L; CX 29F; CX 54);

p. North American Door Corporation, Lindenhurst, New York, in 1972, which became a part of Celotex (CX 17M; CX 55);

q. Gamble Brothers, Louisville, Kentucky, in 1972 (CX 9B; CX 29F; CX 56);

r. Marble Products Company, Atlanta, Georgia, in 1972, which became a part of Georgia Marble (CX 9B; CX 30E);

s. D.J. Dinsmore of South Dakota in 1972, a producer of window sash products (CX 9B; CX 30E);

t. Christian Wood Products in 1972, which was combined with Gamble Brothers (CX 9B; CX 30E);

u. Crown Tough Carpets Division from Johns-Manville Corporation in 1973 (CX 9B). [8]

8. William Frack, a JWC Vice-President in charge of corporate expansion programs and with no employment relationship to Celotex, participated in the negotiations for most of JWC's acquisitions from 1968 through 1974 (Frack, Tr. 389, 397–404).

9. The companies acquired by JWC during the period 1968–1973 were headquartered in various states and did business in interstate commerce (Frack, Tr. 411–12).

10. JWC was, at the date of the acquisition, engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12) (Findings 11–14).

11. JWC subsidiaries are operated as integral parts of the JWC

organization (*see, e.g.,* CX 28, CX 29; Findings 3, 23), and these subsidiaries engage in interstate commerce (Findings 9, 22).

12. In connection with the negotiations for the acquisition of Panacon, officers of JWC traveled several times between JWC headquarters in Tampa, Florida, and New York City (Frack, Tr. 390–93).

13. JWC has borrowed money from commercial banks located in a number of states. It has long term loan agreements with Continental Illinois National Bank and Trust of Chicago, Chase Manhattan Bank, First National City Bank, First National Bank of Chicago, Bank of New York, National Bank of Detroit, Chemical Bank, and Cleveland Trust Company (CX 49B). The funds used by Celotex to purchase the Panacon stock were borrowed by JWC from a group of commercial banks (CX 39B).

14. The common stock of JWC has been registered and traded on the New York Stock Exchange since 1964 (CX 28, at 21). JWC has listed securities on the New York, Midwest, and Pacific Stock Exchanges (CX 32B; CX 33A; CX 35A; CX 36A; CX 37A; CX 52; CX 53; CX 54; CX 55; CX 56). Its transfer agents have included the First National City Bank in New York, the Central National Bank of Cleveland, Ohio, and the First National Bank of Chicago, Illinois (CX 28, at 27). [**9**]

B. The Celotex Corporation

15. Celotex is a corporation organized and existing under the laws of the State of Delaware. It was in 1972, and is now, a wholly-owned subsidiary of JWC (CX 35M, Admissions No. 1).

16. Celotex and its subsidiaries manufacture and distribute a variety of building material products throughout the United States. Among these products are asphalt roofing products, including residential roofing, roll roofing, and felts, and asphalt coatings and accessories. Celotex also produces gypsum wallboard insulation products, acoustical products, and siding (CX 33B; CX 35B; CX 36B; McMurry, Tr. 1267).

17. In 1971, Celotex operated a total of 22 plants in the U.S. and one in Canada (CX 33J). In 1972, after the merger of Panacon, Celotex operated 29 plants located throughout the U.S. and one in Canada (CX 35K). By 1973 the number of plants had grown to 31 (CX 36L).

18. In 1967, Celotex increased its roofing capacity from one plant to eight when the Barrett Building Materials Division of Allied Chemical Corporation was acquired by JWC and merged into Celotex (CX 28, at 21; CX 45).

19. In 1972, Celotex operated roofing plants at Birmingham, Alabama; Camden, Arkansas; Chester, West Virginia; Chicago, Illinois; Edgewater, New Jersey; Los Angeles, California; Philadelphia, Pennsylvania; and San Antonio, Texas. It had dry felt mills at Camden, Arkansas; Peoria, Illinois; Los Angeles, California; Philadelphia, Pennsylvania; and San Antonio, Texas (CX 2B).

20. As of August 31, 1971, JWC estimated that Celotex was the fourth or fifth largest manufacturer of asphalt roofing products in the United States (CX 33D) and in all of 1971 shipped asphalt roofing products into 47 states and the District of Columbia (CX 70, *in camera*). By August 31, 1972, after the merger of Panacon into Celotex, JWC estimated that Celotex was the second largest manufacturer of asphalt roofing products (CX 35E). [10]

21. At the time of the acquisition, Celotex was in the process of building a new roofing plant in Goldsboro, North Carolina. The Goldsboro plant was an entirely new, high speed, large capacity plant which was planned to include a felt mill and to produce a full line of roofing products. Its capacity was at least twice that of Panacon's proposed plant at Hopewell, Virginia (*see* Findings 42–43). The plant cost $9–12 million (Cordell, Tr. 1232; Di Salvo, Tr. 1829–30), and was scheduled to become operational in 1973 (CX 28, at 4).

22. Celotex was in 1972, and is now, engaged in trade or commerce among several states (Admissions, par. 12), and is engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12).

C. *Relationship Between Jim Walter Corporation and Celotex*

23. Although Celotex is maintained as a separate corporate entity, having its own officers and separate books of accounts, corporate minutes and other corporate records (Cordell, Tr. 1208–09; RX 55; RX 56), it is operated as an integral part of the JWC organization. In its annual reports, JWC refers to Celotex as the "Celotex Division" (CX 28F; CX 29L; CX 30L) and publishes consolidated financial statements which include the assets, earnings and liabilities of Celotex and other subsidiaries (CX 27–31). JWC also incorporates the accounts of all companies which are over 50 percent owned by it, including Celotex, in reports filed with the Securities and Exchange Commission (Admissions, par. 5; CX 32–39).

24. JWC sets the general policies regarding salaries and promotions for Celotex, but specific decisions on salaries, hiring and promotions are made by the Celotex management (Di Salvo, Tr. 1767–68).

25. JWC operates a stock option program for employees of Celotex (Di Salvo, Tr. 1769–70). The plan allows full-time employees of all JWC domestic subsidiaries, including Celotex, to purchase JWC common stock (CX 58; CX 60). [11]

26. Celotex does not operate a separate legal department. Legal services are secured from JWC on a request basis either from in-house attorneys or from outside sources (Di Salvo, Tr. 1775–76).

27. Celotex is in charge of its own advertising, which often bears the name of JWC (Di Salvo, Tr. 1776–77). Top management of JWC tries to establish and promote the name and image of the Jim Walter Corporation itself, rather than the brand names of its corporate subsidiaries, such as Celotex (Cordell, Tr. 1212–13).

28. Celotex does not maintain a research department for its exclusive use. The Jim Walter Research Corporation, a wholly-owned subsidiary of Celotex, conducts research for all the divisions of Celotex and for the other companies within the JWC organization. The Jim Walter Research Corporation is maintained as a separate profit center. Celotex is billed for its services on a monthly basis, and maintains an annual budget for research expenditures (Di Salvo, Tr. 1756–57; Hasselbach, Tr. 1476, 1495B; *see* RX 600–603).

29. JWC exercises extensive control over the business activities of Celotex. JWC appoints or elects all of the members of the Board of Directors of Celotex (Admissions, par. 2), and there is substantial overlap between the officers and directors of the two corporations.

30. The following chart identifies the positions that the members of the Board of Directors of Celotex occupied with JWC at the time of the acquisition of Panacon in April 1972:

	Celotex	*JWC*
J. O. Alston	Director	Vice-Chairman Director
William Herbert	President Director	(Herbert became Vice-President in 1972 and Sr. Vice-President and Director in June 1973)
Eugene Katz	Director	Vice-President Director
Richard Thompson	Vice-President Director	Vice-President Secretary
James Walter	Chairman	Chairman

(CX 8B; CX 10; CX 30I; CX 37-0; CX 42; CX 43C).