

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WIENERBERGER AG,

GENERAL SHALE BRICK, INC.,

BORAL LIMITED,

LSF9 STARDUST SUPER HOLDINGS,
L.P.,

and,

MERIDIAN BRICK LLC,

Defendants.

Civil Action No.: 21-cv-2555

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order (“Stipulation and Order”):

A. “Boral” means Defendant Boral Limited, an Australian public company with its headquarters in North Sydney, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “General Shale” means Defendant General Shale Brick, Inc, a subsidiary of Wienerberger and a Delaware corporation with its headquarters in Johnson City, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Meridian” means Defendant Meridian Brick LLC, a joint venture between Boral and LSF9 and a Delaware limited liability company with its headquarters in Alpharetta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “LSF9” means Defendant LSF9 Stardust Super Holdings, L.P., a Bermuda limited partnership with its principal place of business in Hamilton, Bermuda, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Wienerberger” means Wienerberger AG, an Austrian corporation with its headquarters in Wien, Austria, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “RemSom” means RemSom LLC, a South Carolina limited liability company with its headquarters in Columbia, South Carolina, its successors and assigns, and its subsidiaries (including US Brick, LLC), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Acquirer” means RemSom or another entity approved by the United States in its sole discretion to which Defendants divest the Divestiture Assets.

H. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to:

1. the manufacturing facilities and mines listed in Appendix A;
2. the distribution yards and stores listed in Appendix B;
3. all property and assets, tangible and intangible, wherever located, relating to or used in connection with the manufacturing facilities and mines listed in Appendix A or the distribution yard and stores listed in Appendix B, including:

- a. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

- b. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

- c. all contracts, contractual rights, and customer and distributor relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, leases, and all outstanding offers or solicitations to enter into a similar arrangement;

- d. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

- e. all records and data, including (a) customer and distributor lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, distributors, suppliers, agents, or licensees, (d) records and research data concerning

historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

f. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

g. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

Provided, however, that the assets specified in Paragraphs I.H.3.a–g above do not include the assets identified in Appendix C or any trademarks, trade names, service marks, or service names containing the names “General Shale,” “Meridian,” “Watson town,” “Columbus,” “Arriscraft,” or “Wienerberger”.

I. “Divestiture Date” means the date on which the Divestiture Assets are divested to Acquirer pursuant to the proposed Final Judgment.

J. “Including” means including, but not limited to.

K. “Relevant Personnel” means all full-time, part-time, or contract employees of General Shale or Meridian, located at one of the facilities, mines, yards, or stores included in the

Divestiture Assets at any time between January 1, 2019, and the Divestiture Date. *Provided, however,* Relevant Personnel does not include employees of Defendants that the United States, in its sole discretion, deems to be primarily engaged in human resources, legal, or other general or administrative support functions. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Relevant Personnel.

L. “Transaction” means the proposed acquisition of Meridian by General Shale.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the design, manufacture, and sale of residential bricks by Defendants in Alabama, Kentucky, Indiana, Michigan, Ohio and Tennessee in order to remedy the anticompetitive effects that the United States alleges would otherwise result from the Transaction. This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets remain economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over the parties to it. Venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and Defendants, may be filed with and entered by the Court as the Final Judgment, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by Defendants until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants must comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XIV of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. Defendants agree to arrange, at their expense, publication of the newspaper notices required by the APPA, which will be drafted by the United States in its sole discretion. The publications must be arranged as quickly as possible and, in any event, no later than three business days after Defendants' receipt of (1) the text of the notice from the United States and (2) the identity of the newspapers within which the publications must be made. Defendants must

promptly send to the United States (1) confirmation that publication of the newspaper notices have been arranged and (2) the certification of the publication prepared by the newspapers within which the notices were published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and filed with the Court.

F. Defendants represent that the divestiture ordered by the proposed Final Judgment can and will be performed and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions of the proposed Final Judgment or this Stipulation and Order.

VI. ASSET PRESERVATION

From the date of the signing of this Stipulation and Order by Defendants and until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must take all actions necessary to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) operating the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the products provided by the Divestiture Assets and must maintain at 2021 or previously approved levels for 2022, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, research and development, and merchandising support for the Divestiture Assets.

C. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. Defendants must maintain, in accordance with sound accounting principles, accurate, and complete financial ledgers, books, or other records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

E. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel must not be transferred or reassigned except to Acquirer or via transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with 10 calendar days' notice of the transfer of Relevant Personnel, and, upon objection by the United States to such transfer, Relevant Personnel may not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by Defendants, and financial incentives may not be structured so as to disincentivize employees from accepting employment with Acquirer.

F. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

G. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and level of sales, with the same level of quality, functionality, access, and customer support, and must, consistent

with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

H. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

I. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

J. Within 20 calendar days after the entry of this Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestiture required by the proposed Final Judgment or unless otherwise ordered by the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: October 1, 2021

Respectfully submitted,

FOR DEFENDANT
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ORDER

IT IS SO ORDERED by the Court, this 5th day of October, 2021.




United States District Judge

APPENDIX A

1. General Shale's Mooresville, IN manufacturing facility at 148 Sycamore Lane, Mooresville, IN 46158;
2. General Shale's Edwards Mine, at West Merriman Road, Mooresville, IN;
3. Meridian's Gleason, TN manufacturing facility at 4970 Old State Highway 22, Gleason, TN 38229;
4. Meridian's Rich Mine at 179 Cypress Lane, Gleason TN;
5. Meridian's Collins Mine at 1300 Finch Road, Gleason, TN;
6. Meridian's Lease agreement for the Wingo Mine, Humphrey Road, Hickman, KY;
7. Meridian's Bessemer, AL manufacturing facility at 8250 Hopewell Road SE, Bessemer, AL 35022;
8. Meridian's Vulcan Mine at Vulcan Road SE, Bessemer, AL 35022; and
9. Meridian's Centreville Mine, Parcel 1 and Parcel 2 Highway 5, Brent, AL 35034.

APPENDIX B

1. General Shale's Mooresville, IN distribution yard located at 148 Sycamore Lane, Mooresville, IN 46158;
2. General Shale's Evansville, IN distribution yard located at 3401 Mt Vernon Ave, Evansville, IN 47712;
3. General Shale's Sterling Heights, MI distribution yard located at 42374 Mound Rd, Sterling Heights, MI 48314;
4. General Shale's Whitmore Lake, MI distribution yard located at 6556 Whitmore Lake Rd, Whitmore Lake, MI 48189;
5. Meridian's Bessemer AL distribution yard located at 8250 Hopewell Road SE, Bessemer, AL 35022;
6. Meridian's Clarksville, TN distribution yard located at 181 Terminal Road, Clarksville, TN 37040
7. Meridian's Florence, AL distribution yard located at 3309 Hough Road, Florence, AL 35630;
8. Meridian's Huntsville, AL distribution yard located at 154 Slaughter Rd, Madison, AL 35758;
9. Meridian's Knoxville, TN distribution yard located at 641 Corporate Point Way, Knoxville, TN 37932
10. Meridian's Memphis, TN distribution yard located at 9525 Macon Road, Cordova, TN 38016;
11. Meridian's Nashville, TN distribution yard located at 7140 Centennial Place, Nashville, TN 37209;
12. Meridian's Nashville, TN leased property located at 7230 Centennial Place, Nashville, TN 37209;
13. Meridian's Pelham Store located at Pelham Town Center, 381 Huntley Pkwy, Pelham, AL 35124; and
14. Meridian's Tupelo, MS distribution yard located at 1735 McCullough Blvd, Tupelo, MS 38801.

APPENDIX C: List of Retained Assets

1. With respect to the Centennial (Nashville), Tennessee Distribution Yard only, all equipment used in or related to Meridian's "tint center" operations for its stucco business;
2. With respect to the Whitmore Lake (Detroit), Michigan Distribution Yard, one trailer with a purchase order dated February 11, 2021; and
3. With respect to the Mooresville Plant, the non-essential real property, being approximately 78+/- acres, Parcel 55-05-12-400-003.000-005, Morgan County, Indiana.