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FEDERAL DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
SAN FRANCISCO

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 ) Civil No. 88 01452 MRP(BX)  
 Plaintiff, )  
 ) COMPLAINT FOR EQUITABLE  
 v. ) RELIEF FOR VIOLATION  
 ) OF TITLE 15 U.S.C.  
 BNS INC.; and ) SECTION 18  
 GIFFORD-HILL & COMPANY, INC., )  
 ) ANTITRUST  
 Defendants. )  
 Judge Mariana R. Pfaelzer

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) to prevent and restrain the violation by the defendants, as hereinafter

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1 alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

2 2. BNS Inc. and Gifford-Hill & Company, Inc. transact  
3 business within the Central District of California.

4 II

5 DEFINITIONS

6 3. "Aggregate" means rock, sand and gravel suitable for  
7 mixture in asphalt concrete, Portland cement concrete, or other  
8 paving compounds or mixtures, or for other civil construction  
9 purposes.

10 4. "Beazer" means Beazer PLC, a United Kingdom corporation,  
11 with its principal place of business in Bath, England.

12 5. "Blue Diamond" means Blue Diamond Materials, a division  
13 of Sully-Miller Contracting Co., a California corporation and a  
14 wholly-owned subsidiary of Koppers Company, Inc., with its  
15 principal place of business in Long Beach, California.

16 6. "HHI" means the Herfindahl-Hirschman Index, a measure of  
17 market concentration calculated by squaring the market share of  
18 each firm competing in the market and then summing the resulting  
19 numbers. For example, for a market consisting of four firms with  
20 shares of 30, 30, 20, and 20 percent, the HHI is  $2600 (30^2 +$   
21  $30^2 + 20^2 + 20^2 = 2600)$ . The HHI, which takes into account  
22 the relative size and distribution of the firms in a market,  
23 ranges from virtually zero to 10,000. The index approaches zero  
24 when a market is occupied by a large number of firms of relatively  
25 equal size and reaches its maximum of 10,000 when a market is  
26 controlled by a single firm. The HHI increases both as the number

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1 of firms in the market decreases and as the disparity in size  
2 between the leading firms and the remaining firms increases.

3 7. "Irwindale Aggregate District" means that area of Los  
4 Angeles County and Orange County with the following boundaries:  
5 on the west and southwest, the Pacific Ocean; on the northwest, a  
6 line connecting the city centers of the City of Topanga Beach and  
7 the City of Altadena; on the north, the crest of the San Gabriel  
8 Mountain Range; and on the east and southeast, a line connecting  
9 the city centers of the City of San Dimas, the City of Santa Ana,  
10 and the City of Newport Beach.

11 8. "Koppers" means Koppers Company, Inc., a Delaware  
12 corporation, with its principal place of business in Pittsburgh,  
13 Pennsylvania.

14 9. "Permitted reserves" means deposits of aggregate in the  
15 ground for which necessary regulatory approval allowing removal  
16 has been obtained.

17 III

18 DEFENDANTS

19 10. BNS Inc. ("BNS") is made a defendant herein. BNS is a  
20 corporation organized and existing under the laws of the State of  
21 Delaware. It maintains its principal offices in Dallas, Texas.  
22 BNS is controlled by Bright Aggregates, Inc., a Delaware  
23 corporation and an indirect, wholly-owned subsidiary of Beazer,  
24 with its principal place of business in Dallas, Texas. BNS was  
25 recently incorporated for the purpose of making a tender offer for  
26 the stock of Koppers.

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1 11. Gifford-Hill & Company, Inc. ("Gifford-Hill") is made a  
2 defendant herein. Gifford-Hill is a corporation organized and  
3 existing under the laws of the State of Delaware. It maintains  
4 its principal place of business in Dallas, Texas, and is an  
5 indirect, wholly-owned subsidiary of Beazer. Gifford-Hill's  
6 principal businesses include extracting, processing and selling  
7 aggregate, and manufacturing and selling Portland cement and  
8 Portland cement concrete. Gifford-Hill, through its Riverside  
9 Cement Company and Livingston-Graham, Inc. subsidiaries, owns and  
10 operates an aggregate pit in the Irwindale Aggregate District, and  
11 directly or indirectly owns and operates aggregate pits in other  
12 locations.

13 IV

14 TRADE AND COMMERCE

15 12. Aggregate is an essential material for building and  
16 construction. It is used principally as an ingredient in asphalt  
17 concrete and Portland cement concrete, and for road base.  
18 Aggregate is a natural resource often found in stream channel,  
19 floodplain, and alluvial fan deposits, such as the San Gabriel  
20 River alluvial fan deposit in the Irwindale Aggregate District.  
21 Aggregate is extracted from the ground and processed, which may  
22 include crushing, sizing and washing, prior to sale.

23 13. There is no competitive substitute for aggregate to  
24 which a significant number of customers would turn in response to  
25 a small but significant and nontransitory increase in the price of  
26 aggregate.

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1           14. The extraction, processing and sale of aggregate  
2 constitutes a line of commerce and a relevant product market for  
3 antitrust purposes.

4           15. Aggregate is a heavy, bulky material in relation to its  
5 value. Transportation costs are a substantial portion of the  
6 delivered price of aggregate. Geographic markets for the  
7 extraction, processing and sale of aggregate therefore are  
8 regional or local.

9           16. The vast majority of sales of aggregate to customers  
10 located in the Irwindale Aggregate District historically have been  
11 made by producers located within the District. Producers located  
12 outside the Irwindale Aggregate District would not begin to ship  
13 aggregate to customers in the District in response to a small but  
14 significant and nontransitory price increase by producers located  
15 in the District.

16           17. The Irwindale Aggregate District constitutes, for  
17 antitrust purposes, a section of the country and a relevant  
18 geographic market for the extraction, processing and sale of  
19 aggregate.

20           18. The extraction, processing and sale of aggregate in the  
21 Irwindale Aggregate District is highly concentrated and would  
22 become substantially more concentrated as a result of the  
23 violation alleged. Gifford-Hill, through its Livingston-Graham  
24 subsidiary, and Koppers, through its Blue Diamond subsidiary, are  
25 direct competitors in the extraction, processing and sale of  
26 aggregate in the Irwindale Aggregate District and are two of the

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1 four largest firms in that market. Total annual sales in the  
2 relevant market are approximately \$100 million. The acquisition  
3 of Blue Diamond by BNS would increase the HHI in the relevant  
4 market, based on permitted reserves, by over 500 to over 3400.

5 19. Successful new entry into the extraction, processing and  
6 sale of aggregate in the Irwindale Aggregate District is unlikely  
7 and, if it were to occur, would require considerable time. The  
8 principal reason that entry is unlikely is the unavailability of  
9 aggregate deposits suitable for development in the Irwindale  
10 Aggregate District. If entry were possible, it would require  
11 considerable time to, among other things, develop a new extraction  
12 and processing site and obtain state and local government permits  
13 and approval for site development and operation.

14 20. Aggregate produced in the Irwindale Aggregate District  
15 is used as a constituent product in asphalt concrete, Portland  
16 cement concrete and other products used to construct, pave and  
17 repair roads that are part of a network of interconnecting  
18 highways throughout the United States over which motor vehicles  
19 move in a continuous and uninterrupted stream of interstate  
20 commerce from and through one state to another. The construction  
21 and maintenance of some of these highways is financed directly or  
22 indirectly by the federal government. A substantial amount of the  
23 nation's goods moves in interstate commerce over these highways.

24 21. Substantial quantities of equipment and material used in  
25 the extraction, processing and sale of aggregate in the Irwindale  
26 Aggregate District are purchased from sources outside the State of

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1 California and shipped across state lines into the State of  
2 California. Substantial quantities of money move across state  
3 lines from one state to another as a direct result of the  
4 defendants' business activities related to the extraction,  
5 processing and sale of aggregate in the Irwindale Aggregate  
6 District.

7 22. The activities engaged in by the defendants in the  
8 extraction, processing and sale of aggregate are within the flow  
9 of, and substantially affect, interstate commerce.

10 V

11 VIOLATION ALLEGED

12 23. On or about March 3, 1988, in a Form 14D-1 and attached  
13 Offer to Purchase filed with the United States Securities and  
14 Exchange Commission, BNS announced a tender offer for all of the  
15 outstanding stock of Koppers. BNS' stated purpose in the tender  
16 offer is to acquire control of, and the entire equity interest in,  
17 Koppers, and then to effect a merger of Koppers with BNS or an  
18 affiliate. The acquisition would, in effect, give BNS control of  
19 Koppers and its Blue Diamond operations.

20 24. The effect of the proposed acquisition by BNS of Koppers  
21 may be substantially to lessen competition in the aforesaid trade  
22 and commerce in violation of Section 7 of the Clayton Act, in the  
23 following ways, among others:

- 24 a. actual and potential competition between  
25 Gifford-Hill and Koppers in the extraction, processing  
26 and sale of aggregate in the Irwindale Aggregate

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1 District will be eliminated; and

2 b. competition generally in the extraction, processing  
3 and sale of aggregate in the Irwindale Aggregate  
4 District may be substantially lessened.

5 PRAYER

6 WHEREFORE, plaintiff prays:

7 1. That the proposed acquisition by BNS of Koppers be  
8 adjudged and decreed to be unlawful and in violation of Section 7  
9 of the Clayton Act;

10 2. That such relief by way of preservation of assets and  
11 divestiture be ordered as is necessary and appropriate to prevent  
12 the effects of the unlawful activities alleged in this complaint;  
13 and to maintain competitive conditions in the relevant market;

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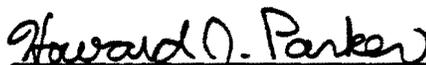
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3. That the plaintiff have such other and further relief as the case requires and the Court deems proper; and

4. That the plaintiff recover the costs of this action.

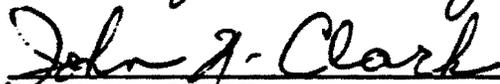
Dated: 3/18/88

  
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