

1 JOHN SCHMOLL  
2 PETER H. GOLDBERG  
3 JOSEPH ALLEN  
4 Antitrust Division, Litigation I Section  
5 Judiciary Center Building, Rm. 10-814  
6 U.S. Department of Justice  
7 555 4th Street, N.W.  
8 Washington, D.C. 20001  
9 Telephone: (202) 724-5780  
10 Attorneys for the United States

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, )  
14 )  
15 Plaintiff, )  
16 ) Civil No. C 87-0689 RFP  
17 v. )  
18 ) SUIT FOR PRELIMINARY  
19 ) AND PERMANENT INJUNCTION  
20 ) AGAINST ACQUISITION  
21 )  
22 ) 15 U.S.C. § 18  
23 )  
24 ) ANTITRUST  
25 )  
26 ) Defendants. ) Filed: February 25, 1987

27 COMPLAINT

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

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1 I.

2 JURISDICTION AND VENUE

3 1. This complaint is filed and this action is instituted  
4 under Section 15 of the Clayton Act, as amended, 15 U.S.C.  
5 § 25, to prevent and restrain the violation by defendants, as  
6 hereinafter alleged, of Section 7 of the Clayton Act, as  
7 amended, 15 U.S.C. § 18.

8 2. Domtar Gypsum America, Inc. transacts business,  
9 maintains offices, and is found within the Northern District of  
10 California.

11 3. The Flintkote Company, Inc. transacts business,  
12 maintains offices, and is found within the Northern District of  
13 California.

14 4. Genstar Gypsum Products Company transacts business,  
15 maintains offices, and is found within the Northern District of  
16 California.

17 5. Domtar Inc. proposes to acquire all of the gypsum  
18 operations of Imasco Limited ("Imasco") through a Stock  
19 Purchase Agreement dated October 10, 1986 between its wholly  
20 owned subsidiary, Domtar Industries, Inc., and two wholly owned  
21 subsidiaries of Imasco: The Flintkote Company, Inc., an  
22 indirect Imasco subsidiary, and Imasco Enterprises, Inc.  
23 ("IEI"), a direct Imasco subsidiary. The acquisition is

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1 scheduled to be consummated after midnight February 25, 1987. The  
2 United States alleges that this proposed acquisition will violate  
3 Section 7 of the Clayton Act.

4 II.

5 DEFINITIONS

6 6. "HHI" means the Herfindahl-Hirschman Index, a measure of  
7 market concentration calculated by squaring the market share of  
8 each firm competing in the market and then summing the resulting  
9 numbers. For example, for a market consisting of four firms with  
10 shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared  
11 + 30 squared + 20 squared + 20 squared = 2600). The HHI, which  
12 takes into account the relative size and distribution of the firms  
13 in a market, ranges from virtually zero to 10,000. The index  
14 approaches zero when a market is occupied by a large number of  
15 firms of relatively equal size. The index increases as the number  
16 of firms in the market decreases and as the disparity in size  
17 between the leading firms and the remaining firms increases.

18 7. "Pacific Southwest market" means the southern portion of  
19 the state of California, the southern portion of the state of  
20 Nevada, and the state of Arizona.

21 8. "Domtar" means Domtar Inc., and each division, subsidiary  
22 or affiliate thereof.

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III.

DEFENDANTS

9. Domtar Inc. is made a defendant herein. Domtar is a corporation organized and existing under the laws of Canada. It maintains its principal offices in Montreal, Quebec, Canada. In 1985, Domtar Inc.'s total revenues were about \$2.1 billion (Canadian) for all product lines and businesses.

10. Domtar Industries, Inc. ("DII") is made a defendant herein. DII is a Delaware corporation and a wholly owned subsidiary of Domtar.

11. Domtar Gypsum America, Inc. ("DGAI") is made a defendant herein. DGAI is a California corporation and a wholly owned subsidiary of DII. DGAI manufactures and sells gypsum board in the western United States, including the Pacific Southwest market. DGAI operates gypsum board plants located in Long Beach, California; Antioch, California; and Tacoma, Washington, as well as a mill for the manufacture of gypsum board paper located in San Leandro, California. In 1985, DGAI's net sales were about \$118 million.

12. The Flintkote Company, Inc. ("Flintkote") is made a defendant herein. Flintkote is a Delaware corporation which maintains its principal offices in San Francisco, California. It is an indirect wholly owned subsidiary of IEI.

13. Genstar Gypsum Products Company ("Genstar Gypsum") is made a defendant herein. Genstar Gypsum is a Delaware corporation

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1 which maintains its principal offices in Irving, Texas. Genstar  
2 Gypsum is a wholly owned subsidiary of Flintkote. Genstar Gypsum  
3 manufactures and sells gypsum board throughout the United States  
4 including in the Pacific Southwest market. Genstar Gypsum  
5 operates gypsum board plants located in Las Vegas, Nevada;  
6 Sweetwater, Texas; Florence, Colorado; Savannah, Georgia; and  
7 Camden, New Jersey, as well as associated gypsum deposits in the  
8 United States and Canada and a mill for manufacturing gypsum board  
9 paper in Vernon, California. In 1985, Genstar Gypsum's net sales  
10 were about \$151.3 million.

11 IV.

12 TRADE AND COMMERCE

13 14. Gypsum board is a material consisting primarily of a  
14 solid, flat core of processed gypsum between two sheets of paper  
15 surfacing. It is manufactured in standard widths, lengths, and  
16 thicknesses. In 1985, total gypsum board production in the United  
17 States amounted to 19.5 billion square feet, valued at  
18 \$2.4 billion.

19 15. Gypsum board is the principal material used in the  
20 construction of interior walls and ceilings in residential and  
21 commercial buildings. It differs from all other construction  
22 materials in physical composition, functional characteristics,  
23 customary uses, means of production, and pricing. Buyers and  
24 sellers of gypsum board do not view other construction materials  
25 as acceptable substitutes for gypsum board.

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1           16. The sale by manufacturers of gypsum board constitutes a  
2 line of commerce, or relevant product market, for antitrust  
3 purposes.

4           17. Gypsum board is a heavy, bulky material in relation to  
5 its value. It is also subject to breakage in transport when  
6 handled improperly. Transportation costs are a substantial  
7 portion of the delivered price of gypsum board. Because of its  
8 heavy weight, bulkiness, and fragile nature, the delivered cost of  
9 gypsum board increases significantly as the distance of customers  
10 from the producing plant increases. As a result, most gypsum  
11 board is sold within a radius of approximately 300 miles of the  
12 plant at which it is made. Geographic markets for the manufacture  
13 and sale of gypsum board therefore are primarily of limited  
14 regional scope.

15           18. The demand for gypsum board in any given geographic  
16 region, including the Pacific Southwest market, is highly  
17 cyclical. Demand is heavily dependent upon, and fluctuates widely  
18 with, changes in the levels of residential and commercial  
19 construction. When demand is high, prices and profits tend to be  
20 high. When demand is low, prices and profits tend to decrease  
21 substantially.

22           19. The vast majority of sales to gypsum board consumers  
23 located in the Pacific Southwest market historically have been  
24 made by gypsum board manufacturing plants located in that market.  
25 Demand for gypsum board in the Pacific Southwest market is

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1 currently high. Prices have increased by approximately 44 percent  
2 since 1983, and most or all of the gypsum board manufacturing  
3 plants located in the market are operating at or near full  
4 capacity. Even at the cyclically high prices at which gypsum  
5 board currently is being sold in the Pacific Southwest market,  
6 only three manufacturers whose plants are located outside of that  
7 market have been selling significant amounts of gypsum board into  
8 the market. Two of these firms are located in New Mexico: Centex  
9 American Gypsum Co., Inc. ("Centex"), in Albuquerque, New Mexico;  
10 and Western Gypsum Co., Inc. ("Western"), in Santa Fe, New  
11 Mexico. When demand slackens and prices in the market decline,  
12 neither these nor other firms will be able profitably to sell  
13 gypsum board in the market from plants located outside of the  
14 market. The third firm is the Georgia Pacific Corporation  
15 ("Georgia Pacific"). Georgia Pacific has recently been shipping  
16 gypsum board into the market from its plants outside the market,  
17 but only in anticipation of constructing a plant within the  
18 Pacific Southwest market in Las Vegas, Nevada beginning in 1987.  
19 Upon completion of the Las Vegas plant, Georgia Pacific expects to  
20 cease such shipments from outside the market.

21 20. The Pacific Southwest market constitutes, for antitrust  
22 purposes, a section of the country or relevant geographic market  
23 for the sale by manufacturers of gypsum board.

24 21. The sale by manufacturers of gypsum board in the Pacific  
25 Southwest market is highly concentrated. As measured by total

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1 gypsum board manufacturing capacity of the plants located within  
2 the Pacific Southwest market and the Centex and Western plants,  
3 and the anticipated capacity of the Georgia Pacific plant  
4 identified in paragraph 19, Domtar is the fifth largest firm in  
5 the Pacific Southwest market with a market share of approximately  
6 11.0 percent, while Genstar Gypsum is the sixth largest firm with  
7 a market share of approximately 10.9 percent. If Domtar were to  
8 acquire Genstar Gypsum, it would become the second largest firm in  
9 the Pacific Southwest market with a market share of 21.9 percent,  
10 and the HHI in the market would increase by 240 points to 1747.

11 22. This increase in concentration, however, understates the  
12 competitive effect of the violation alleged herein. First, it is  
13 based on the improbable assumption that the entire output of the  
14 Centex and Western plants in New Mexico would be directed to the  
15 Pacific Southwest market in response to a significant,  
16 non-transitory price increase at current high demand levels.  
17 Second, it does not account for the fact that, when demand  
18 slackens in the future and prices fall, the New Mexico plants will  
19 not be able to sell profitably in the Pacific Southwest market  
20 even in response to a non-transitory increase in those lower price  
21 levels. For these reasons, the New Mexico plants would not  
22 constrain pricing in that market by those firms with plants  
23 located in the market.

24 23. Entry into the manufacture and sale of gypsum board is  
25 difficult. Among the reasons that entry is difficult are the time

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1 and expense required to enter, limited supplies of gypsum ore  
2 available to a new entrant in the Pacific Southwest market, the  
3 existence of longstanding customer relationships and the need to  
4 establish a reputation for reliability in fulfilling orders both  
5 when demand is strong and when it is weak.

6 24. Domtar and Genstar Gypsum regularly purchase substantial  
7 quantities of materials that are used in manufacturing gypsum  
8 board in the Pacific Southwest market in interstate commerce, and  
9 sell substantial quantities of gypsum board that has been  
10 manufactured in the Pacific Southwest market in interstate  
11 commerce. Domtar and Genstar Gypsum are each engaged in  
12 interstate commerce and their activities substantially affect  
13 interstate commerce.

14 V.

15 VIOLATION ALLEGED

16 25. Under the terms of the Stock Purchase Agreement  
17 ("Agreement") dated October 10, 1986, between Flintkote, IEI, and  
18 DII, Domtar proposes to acquire all of the gypsum operations of  
19 Imasco. The Agreement provides that Domtar will acquire all of  
20 the outstanding common stock of Genstar Gypsum and the other  
21 gypsum operations of Imasco for \$241 million, plus interest from  
22 October 1, 1986 to the date of closing.

23 26. The Agreement provides that, prior to the closing,  
24 Flintkote will transfer to Genstar Gypsum all of its business and

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1 assets relating to the manufacture and sale of gypsum board  
2 products, paper and paper products and plaster products.

3 27. The defendants will be free to consummate the acquisition  
4 after midnight February 25, 1987.

5 28. The effect of the acquisition of Imasco's gypsum  
6 operations by Domtar may be substantially to lessen competition in  
7 the manufacture and sale of gypsum board in the Pacific Southwest  
8 market in violation of Section 7 of the Clayton Act, in the  
9 following ways, among others:

10 (a) actual and potential competition between DGAI and Genstar  
11 Gypsum will be eliminated; and

12 (b) competition generally in the manufacture and sale of  
13 gypsum board may be substantially lessened.

14 PRAYER

15 WHEREFORE, plaintiff prays:

16 1. That pursuant to Section 15 of the Clayton Act, 15 U.S.C.  
17 § 25, the Court issue a summons to Domtar Inc. and DII, commanding  
18 each to appear in these proceedings and bring each within the  
19 jurisdiction of this Court for purposes of this litigation.

20 2. That pending final adjudication of the merits of this  
21 Complaint, a temporary restraining order and a preliminary  
22 injunction be issued against the defendants preventing and  
23 restraining each of them and all persons acting on their behalf  
24 from taking any action, either directly or indirectly, in  
25 furtherance of the proposed acquisition;

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1 3. That the proposed acquisition of Imasco's gypsum  
2 operations by Domtar be adjudged to be in violation of Section 7  
3 of the Clayton Act;

4 4. That the defendants be permanently enjoined from carrying  
5 out any agreement, understanding, or plan, the effect of which  
6 would be to combine the gypsum operations of Domtar and Imasco;

7 5. That the plaintiff have such other and further relief as  
8 the Court may deem just and proper; and

9 6. That the plaintiff recover the costs of this action.

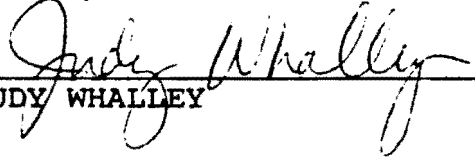
10 Dated:

11   
12 CHARLES F. RULE  
13 Acting Assistant Attorney General

JOHN SCHMOLL

14   
15 ROGER B. ANDEWELT

PETER H. GOLDBERG

16   
17 JUDY WHALLEY

JOSEPH ALLEN

18 ANTHONY V. NANNI

Attorneys, Antitrust Division  
U.S. Department of Justice

20 ROBERT E. BLOCH  
21 Attorneys, Antitrust Division  
22 U.S. Department of Justice

24 JOSEPH P. RUSSONIELLO  
25 United States Attorney  
Northern District of California

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