

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

UNITED STATES OF AMERICA

and

STATE OF MARYLAND,

Plaintiffs,

v.

MARTIN MARIETTA MATERIALS, INC.,

LG PANADERO, L.P.,

PANADERO CORP.,

PANADERO AGGREGATES HOLDINGS, LLC,

and

BLUEGRASS MATERIALS COMPANY, LLC,

Defendants.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” or “Acquirers” means the entity or entities to whom Defendants divest the Divestiture Assets.

B. “Acquirer of the Georgia Divestiture Assets” means Midsouth Paving, Inc., or another entity to which Defendants divest the Georgia Divestiture Assets.

C. “Acquirer of the Maryland Divestiture Assets” means the entity to which Defendants divest the Maryland Divestiture Assets.

D. “Closing” means the consummation of the divestiture of all the Divestiture Assets pursuant to either Section IV or Section V of the Final Judgment.

E. “Completion of the Transaction” means the closing of Martin Marietta’s acquisition of Panadero Corp. and Panadero Aggregates Holdings, LLC, including Bluegrass Materials Company, LLC.

F. “Martin Marietta” means Defendant Martin Marietta Materials, Inc., a North Carolina corporation with its headquarters in Raleigh, North Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “LG Panadero” means Defendant LG Panadero, L.P., a Delaware limited partnership with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. “Panadero” means Defendant Panadero Corp., a Delaware corporation with its headquarters in Jacksonville, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. “Panadero Aggregates” means Defendant Panadero Aggregates Holdings, LLC, a Delaware limited liability company with its headquarters in Jacksonville, Florida, its successors

and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. “Bluegrass” means Defendant Bluegrass Materials Company, LLC, a Delaware limited liability company with its headquarters in Jacksonville, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

K. “Bluegrass Entities” means LG Panadero, Panadero, Panadero Aggregates, and Bluegrass.

L. “Midsouth” means Midsouth Paving, Inc., a Delaware corporation with its headquarters in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. Midsouth is a subsidiary of CRH plc and CRH Americas Materials, Inc.

M. “Forsyth Quarry” means Martin Marietta’s quarry located at 3561 Peachtree Pkwy., Suwanee, Georgia 30024.

N. “Beaver Creek Quarry” means Bluegrass’s quarry located at 10101 Mapleville Rd., Hagerstown, Maryland 21740.

O. “Georgia Divestiture Assets” means:

1. Martin Marietta’s lease to the Forsyth Quarry;
2. all tangible assets used at the Forsyth Quarry, including, but not limited to, all manufacturing equipment, tooling, and fixed assets, mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities, and all other tangible property and assets used in connection with the Forsyth Quarry; all licenses, permits, and authorizations issued by any governmental organization

relating to the Forsyth Quarry; all contracts, agreements, teaming arrangements, leases (including renewal rights), commitments, certifications and understandings, including sales agreements and supply agreements relating to the Forsyth Quarry, except for regional or national service agreements; all customer lists, contracts, accounts, and credit records relating to the Forsyth Quarry; all repair and performance records and all other records relating to the Forsyth Quarry; and

3. all intangible assets used in the production and sale of aggregate at the Forsyth Quarry, including but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (provided, however, that such marks and names shall not include the term “Martin Marietta”), technical information, computer software (including dispatch software and management information systems) and related documentation (provided, however, that the Acquirer may elect to acquire extracted data relating to the Forsyth Quarry without the accompanying software), know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Martin Marietta provides to its own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the Forsyth Quarry.

P. “Maryland Divestiture Assets” means:

1. the Beaver Creek Quarry;
2. all tangible assets used at the Beaver Creek Quarry, including, but not limited to, all manufacturing equipment, tooling, and fixed assets, mining equipment, aggregate

reserves, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities, and all other tangible property and assets used in connection with the Beaver Creek Quarry; all licenses, permits, and authorizations issued by any governmental organization relating to the Beaver Creek Quarry; all contracts, agreements, teaming arrangements, leases (including renewal rights), commitments, certifications and understandings, including sales agreements and supply agreements, except for regional or national service agreements; all customer lists, contracts, accounts, and credit records relating to the Beaver Creek Quarry; all repair and performance records and all other records relating to the Beaver Creek Quarry; and

3. all intangible assets used in the production and sale of aggregate at the Beaver Creek Quarry, including but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (provided, however, that such marks and names shall not include the word “Bluegrass”), technical information, computer software (including dispatch software and management information systems) and related documentation (provided, however, that the Acquirer may elect to acquire extracted data relating to the Beaver Creek Quarry without the accompanying software), know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Bluegrass provides to its own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the Beaver Creek Quarry.

Q. “Divestiture Assets” means the Georgia Divestiture Assets and the Maryland Divestiture Assets.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestitures of the Divestiture Assets for the purpose of establishing one or more viable competitors in the production and sale of Georgia and Maryland Department of Transportation-qualified aggregate (“State DOT-Qualified Aggregate”) in order to remedy the effects that Plaintiffs allege would otherwise result from Martin Marietta’s acquisition of Bluegrass. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the ordered divestitures.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court’s own motion, at any time 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 other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the final order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court 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, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Defendants' other operations. Defendants shall not coordinate their production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the production and sale of State DOT-Qualified Aggregate; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive

sales, marketing and pricing information, and decision-making concerning the production, distribution, engineering, development, sale, or servicing of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold via the Divestiture Assets, and shall maintain at 2017 or previously approved levels for 2018, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Paragraphs V(A) and (B).

E. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of the divestitures approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. The Bluegrass Entities shall until the Completion of the Transaction, and Martin Marietta shall until Closing maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and 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.

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

I. Defendants' employees with primary responsibility for the production, operation, distribution, and sale of State DOT-Qualified Aggregate at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice of such transfer.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

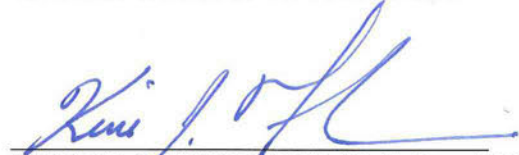
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final

Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: April 25, 2018

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



KERRIE J. FREEBORN (D.C. Bar #503143)

United States Department of Justice

Antitrust Division

Defense, Industrials, and Aerospace Section

450 Fifth Street, N.W., Suite 8700

Washington, D.C. 20530

Tel: (202) 598-2300


Fax: (202) 514-9033

Email: kerrie.freeborn@usdoj.gov

*Attorney of Record

FOR PLAINTIFF
STATE OF MARYLAND

BRIAN E. FROSH
Maryland Attorney General



GARY HONICK

Senior Assistant Attorney General
200 St. Paul Place, 19th Floor
Baltimore, MD 21202
Tel: (410) 576-6470
Fax: (410) 576-7830
Email: ghonick@oag.state.md.us

FOR DEFENDANT
MARTIN MARIETTA MATERIALS, INC.



JON B. DUBROW (D.C. Bar #442479)

RAYMOND A. JACOBSEN, JR. (D.C. Bar #913988)

McDermott Will & Emery LLP

500 North Capitol Street, N.W.

Washington, DC 20001

Tel: (202) 756-8122

Fax: (202) 756-8087

Email: jdubrow@mwe.com

FOR DEFENDANTS
LG PANADERO, L.P.
PANADERO CORP.
PANADERO AGGREGATES HOLDINGS, LLC
BLUEGRASS MATERIALS COMPANY, LLC



JEFF L. WHITE (D.C. Bar #495619)
Weil, Gotshal & Manges LLP
2001 M Street, N.W.
Washington, DC 20036
Tel: (202) 682-7059
Fax: (202) 857-0940
Email: jeff.white@weil.com