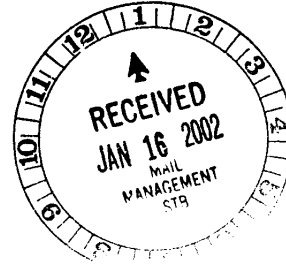


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BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



Docket No. 41230

GS ROOFING PRODUCTS COMPANY, INC.,)
BEAZER WEST, INC. d/b/a GIFFORD-HILL)
& COMPANY, BEAN LUMBER COMPANY and)
CURT BEAN LUMBER COMPANY,)

Complainants,)

v.)

ARKANSAS MIDLAND RAILROAD and PINSLY)
RAILROAD COMPANY, INC.,)

Defendants.)

Office of the Clerk

JAN 14 2002

By: [Signature]
[Name]

**VERIFIED STATEMENT OF BUTCH COWART
IN SUPPORT OF COMPLAINT OF
GS ROOFING PRODUCTS COMPANY, INC.**

1. My name is Butch Cowart. My business address is P.O. Box 649, Glenwood, Arkansas 71943. I am the Plant Manager at the production facility located at or near Birds Mill, Arkansas, known as the "Glenwood" facility. This facility, which is physically located at the end of the Norman Branch line, has been engaged in the processing of roofing granules since 1940. I have worked at the facility since 1983 and have occupied the position of Plant Manager since 1988. In December 1993, the Glenwood facility was owned and operated by GS Roofing Products Company, Inc. ("GS Roofing"). At that time, GS Roofing was served by the Arkansas Midland Railroad ("AMR"). GS Roofing was acquired by Certainteed in 1999.

2. In early December, a small portion of AMR's roadbed located to the south of GS Roofing was washed out by runoff from a nearby hill following heavy rains. Although AMR was able to remove several loaded and empty covered hopper cars from GS Roofing's facility several days later, AMR embargoed service to GS Roofing on December 16, 1993 and, thereafter, refused to repair the track or to provide further rail service.

3. I am aware that the United States Court of Appeals for the Eighth Circuit has determined that AMR's refusal to lift its embargo in a timely fashion was unlawful. I am also aware that the Court has also determined that GS Roofing is entitled to receive its lost profits associated with the cancellation of the annual-volume contract that had been entered into with Celotex governing the sale of roofing granules to its facility in Houston, Texas ("Celotex-Houston"). That contract committed Celotex-Houston to acquire between 20,000 and 25,000 tons of roofing granules for the delivered price of \$43.00 per ton between January 1, 1994 and December 31, 1994. It is my understanding that the Surface Transportation Board has reopened its proceeding in order to receive additional information concerning the computation of GS Roofing's damages related to the Celotex contract.

4. As Johnny Smith previously testified in his Verified Statement filed July 22, 1994 in this proceeding, the stone from which the roofing granules are made is mined at a quarry located across the highway from the crushing plant. The raw material is trucked from the quarry to the mill where it is crushed and sized. The finished product is loaded by conveyor belt into railcars that are spotted on a spur line, extending 1,491 feet off of the main line, which is capable of holding 30 rail cars at a time. Product is shipped by rail to GS Roofing's manufacturing facilities and customers located throughout the United States, with most shipments being destined to customers located in Texas, Alabama, Arizona, Louisiana, Mississippi and Georgia.

5. I have reviewed the December 13, 2001 Decision of the Surface Transportation Board ("Board") in this case. In its order, the Board has requested information concerning the "material, production, and overhead costs" that GS Roofing would have been incurred in the process of fulfilling the contract with Celotex-Houston in 1994. In addition, the Board has noted that a question has been raised as to "whether the profits were in fact lost or simply delayed for some period of time." In order to respond to the foregoing matters, I reviewed the year-end accounting data for 1994 for GS Roofing's Glenwood, Arkansas facility.

6. In response to the suggestion that profits may have been delayed for some period of time, rather than being lost, GS Roofing never sold any roofing granules as a result of the contract with Celotex-Houston. Any "delayed" sales, presumably, would have occurred during the period between June 1, 1994 and December 31, 1994. Based on my personal knowledge, as well as my review of the books and records maintained by GS Roofing during the ordinary course of business, GS Roofing did not sell any roofing granules to the Celotex facility in Houston, Texas during that period. GS Roofing had the current capacity to manufacture and sell an additional 25,000 tons of granules during 1994.

7. I will also confirm the accuracy of Mr. Smith's prior testimony whereby he responded to the argument that there is "no proof that GS Roofing did not sell the same granules to some other purchaser at an even greater profit." AMR/Pinsly Statement of Facts and Argument at 51." V.S. Smith, at ¶ 5, filed September 29, 1994. As Mr. Smith testified:

That assertion is baseless. In the first place, as reflected by the decline in rail shipments of which AMR/Pinsly is well aware, GS Roofing's Birds Mill facility is not operating to capacity. The Birds Mill facility has an operating capacity of 40 tons per hour. When multiplied by 365 days per year times 24 hours per day, its total capacity is 350,400 tons per year. The most that Birds Mill has ever produced in a year was approximately 172,400 tons. Hence, if the

full 25,000 tons to be sold to Celotex Corporation were added to the best year in the plant's history, substantial capacity would still exist. Thus, even if the sales to Celotex Corporation had not been lost, the Birds Mill facility would have had excess capacity this year to handle additional shipments. Of course, because GS Roofing currently is not operating to capacity, and would not be operating to capacity even with the sales to Celotex Corporation, the sales that were made to customers other than Celotex Corporation would have been made in any event.

Although Mr. Smith's testimony was submitted in late September 1994, GS Roofing's 1994 year-end data corroborate the accuracy of his testimony. In 1994, GS Roofing's Birds Mill facility produced a total of 141,332.4 tons of product. At no time during that year did the plant work to full capacity. Hence, it could have produced the full 25,000 tons that would have been sold to Celotex had it not been for the unlawful embargo which AMR placed on the Norman Branch line in December 1993. Furthermore, it could have done so without incurring any additional overhead or capital expenditures.

8. As Mr. Smith has previously testified, the rail transportation costs of rail transportation between Birds Mill and Celotex's Houston facility would have been \$21.00 per ton. This rate was quoted by Union Pacific Railroad ("UP"), which set all rail rates moving from GS Roofing's facility. Although the contract rate was originally established for movements to another customer in Houston, UP agreed to honor the rate for the Celotex-Houston movements.

FURTHER SAYETH THE AFFIANT NOT.

Verification Page

I, Butch Cowart, declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file the foregoing Verified Statement on behalf
of GS Roofing Products Company, Inc., executed on January 14, 2002.


Butch Cowart