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Mr. Bateman,

Certain-teed Products Corporation

In accordance with your request, I have now examined the many files connected with the sale of the pipe plants of K.& M.Co. to Certain-teed Products Corporation in order to ascertain whether there was at any time any misrepresentation on the part of Certain-teed in figures submitted to us. There is no written evidence on our files of any supplementary information supplied by Mr. Malcolm Meyer and as you know the transaction was completed as a result of several discussions with him.

I was present at one of these discussions and I think I am right in saying that Mr. Meyer provided a draft of the annual report of Certain-teed for 1961 which showed very satisfactory results, and there was in general an air of optimism with marked emphasis on the high market value of the Certain-teed shares. The final audited accounts for 1961 disclosed net income of $5,910,625 compared with $2,346,046 for the year 1960. The net earnings were stated to be equivalent to $2.40 per share for 1961 compared with $0.98 per share for the previous year. According to notes dated 29th March 1962 prepared by Mr. J. A. Smith, Certain-teed expected to earn $3 per share with their own business (excluding the pipe plants) in the 1962 financial year and before long to be earning $4 per share, and presumably this information must have been provided by Mr. Meyer. To this we estimated that Certain-teed would add approximately $2,000,000 per annum from the operation of the K.& M.Co. pipe plants, and on the issue of 580,000 shares this would give a return of approximately $3.3 per share which would thus help to maintain the total profits of Certain-teed at their anticipated level.

I think it was on the basis of the 1961 accounts that we originally endeavoured to obtain 800,000 shares for the pipe plants. There is a note of Mr. Smith's dated 22nd January 1962 that on earnings of $2.35 per share our proportion would amount to $1,880,000 which compared with K.& M.Co's anticipated future earnings on the pipe plants of $2,000,000 per annum, and of course there would be no management problems. It was about this time that I was present at one of the meetings with Mr. Meyer and it was obvious that there was no hope of receiving 800,000 shares and that he had in mind something in the region of 600,000 shares. From our point of view this would have been equal to a price of $30,000,000 at the then existing market price of the shares. In the event we settled for 580,000 shares and we then estimated that on earnings of $3 per share our proportion of net profits would equal $1,740,000 on which we would receive an actual dividend of $348,000 at the existing dividend rate of 60¢ per share, and we were evidently given to understand that there was not much likelihood of an increase in the rate of dividend in the near future.

As I have indicated earlier, I think we relied to a large extent on the 1961 accounts of Certain-teed and in addition we had a copy of the Argus Research Corporation report on Certain-teed dated 10th January 1962. Both these documents expressed

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confidence in the future. The annual report was dated 27th March 1962 and Mr. Meyer, as President, stated that he faced the coming year with confidence and enthusiasm, that the company was playing a leading roll in the changing building materials construction economy and that 1962 should add significantly to its further growth. On the Institute for Essential Housing (I.E.H.) it was stated that considerable progress was made in the year 1961 and that they were confident of increased sales and profits in 1962. The Argus report stated that in 1961 the company sold about 10,000 units and completed and included in profits 7,000 or so units. They projected the sale of 15,000 homes in 1962 domestically and 10,000 abroad. Neither of these expectations came to fruition and according to the 1962 accounts of Certain-teed only 5,971 houses were completed in that year as compared with 7,010 completed in 1961. The question might be asked, "Was Mr. Meyer aware of this reduced level of activity at the time we were in negotiation with him?"

In addition, we now knew that the company adopted a change in accounting in 1962 relating to customer instalment notes received in connection with sales of houses by I.E.H. and the further question might be asked, "Was Mr. Meyer aware of this possible change in accounting whilst we were in negotiation with him?" Certainly the brief quarterly reports issued by Certain-teed for the periods ended 31st March and 30th September 1962 (I cannot trace the June report) did not mention this matter or the reduced level of activities of I.E.H. The March report showed earnings at the rate of $0.35 for the quarter compared with $0.13 for the previous year, but by September 1962 the net income had fallen considerably and net earnings were only $1.02 for the nine months compared with $1.78 for the same period of the previous year.

The adjustment for the changed accounting procedure appears to have been dealt with in the December quarter of 1962 and it was then disclosed that if the new basis had been applied to the year 1961 the figure of profit would have been reduced by $1,387,836 and the adjusted profit for 1961 would then have been equal to $1.84 per share as compared with $0.34 earned on the new basis for 1962. I think there is no doubt that had we been basing our calculations on a yield in 1961 of $1.84 we would have endeavoured to obtain more Certain-teed shares for our K.& M.Co. pipe plants, but whether we should have been successful is another matter.

Presumably Mr. Meyer would tell us that both the recession in the I.E.H. activities and the change in the basis of accounting arose after the completion of our agreement for the sale of the pipe plants, and under such circumstances I cannot see that we have any possibility of re-opening the transaction. As mentioned earlier, we have no written evidence on our files of any supplementary information supplied by Mr. Meyer but I obviously cannot comment on what he may have disclosed verbally at the various meetings; in any case I would expect Mr. Meyer to honestly believe at that time any statements he may have made regarding the immediate future.

I trust that the above observations are sufficient for your immediate requirements. An additional copy is enclosed in case you require it for submission to Mr. Soothill.

(H. Creswell)