

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Joseph J. Simons, Chairman**  
                                 **Noah Joshua Phillips**  
                                 **Rohit Chopra**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**

**In the Matter of**

**One Rock Capital Partners II, LP**  
**a limited partnership,**

**FXI Holdings, Inc.**  
**a corporation,**

**and**

**Bain Capital Fund XI, LP**  
**a limited partnership,**

**and**

**Innocor, Inc.**  
**a corporation.**

**DECISION AND ORDER**  
**DOCKET NO. C-4708**

Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent One Rock Capital Partners II, LP is a

## ORDER

### I. Definitions

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions apply:

- A. “FXI” means FXI Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by FXI Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “One Rock Capital” means One Rock Capital Partners II, LP, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by One Rock Capital Partners II, LP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Innocor” means Innocor, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Innocor, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Bain” means Bain Capital Fund XI, LP, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Bain Capital Fund XI, LP, and the  
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- X. “Kent Polyurethane Foam Facility” means Respondent FXI’s polyurethane foam production facilities located at 19635 78<sup>th</sup> Avenue and 7620 S. 196 Street in Kent, Washington, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.
- Y. “Key Employees” means the employees listed at Appendix II to this Order.
- Z. “Monitor” means the person approved by the Commission to serve as a Monitor pursuant to this Order or the Order to Maintain Assets.
- AA. “Polyurethane Foam Assets” means all of Respondent’s legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to the Polyurethane Foam Business (including any such assets removed and not replaced after the announcement of the Acquisition, other than in the ordinary course of business), including:
1. The Polyurethane Foam Facilities;
  2. Real property interests owned, leased or otherwise held, including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto;
  3. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone listings, internet sites and social media accounts;
  4. Tangible personal property, whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals;
  5. Inventories;
  6. Business Information;
  7. Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto; and
  8. Governmental Authorizations

- e. Enterprise software that Respondents also use in their businesses other than the Polyurethane Foam Business;
  - f. The portion of Business Information that contains information about any business other than the business divested to an Acquirer;
  - g. Any original document that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and
  - h. The following assets, unless the Commission, in its sole discretion and within 12 months of the date this Order is issued, determines in consultation with the Acquirer and the Monitor, that any such assets are necessary for the Acquirer to operate the Polyurethane Foam Assets or Polyurethane Foam Business in a manner that achieves the purposes of this Order:
    - i. Excluded Assets; and
    - ii. Shared Intellectual Property, but only if the Shared Intellectual Property License is granted pursuant to Paragraph II of this Order.
- BB. “Polyurethane Foam Business” means the applicable Respondent’s business of manufacturing, fabricating, and selling polyurethane foam and related products at the Polyurethane Foam Facilities.
- CC. “Polyurethane Foam Employees” means: (1) with respect to each of the Polyurethane Foam Facilities, each of Respondents employees who were employed or under contract by the Polyurethane Foam Business at any time between June 1, 2019, and the Divestiture Date; and (2) the Key Employees.
- DD. “Polyurethane Foam Facilities” means the Elkhart Polyurethane Foam Facility, the Kent Polyurethane Foam Facility, and the Tupelo Polyurethane Foam Facility.
- EE. “Relevant Area” means the states of Indiana, Michigan, Mississippi, Ohio, Oregon, and Washington.
- FF. “Shared Intellectual Property” means Intellectual Property that, at any time prior to the Divestiture Date, was used by both the Polyurethane Foam Business and Respondents’ retained businesses.
- GG. “Shared Intellectual Property License” means a perpetual, non-exclusive, fully paid-up, irrevocable, transferable, and royalty-free license(s), granted by Respondents to an Acquirer, to use Shared Intellectual Property (other than trademarks, domain names, and similar names and marks) in the operation of the Polyurethane Foam Business.
- HH. “Tupelo Polyurethane Foam Facility” means Respondent Innocor’s polyurethane foam production facilities located at 1665 South Veterans Boulevard in Tupelo, Mississippi, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.

II. “Transition Assistance” means services, assistance, cooperation, training and access to personnel regarding the transfer and operation



this Order, which may include entering into additional agreements or arrangements, or modifying a Divestiture Agreement.

- D. Respondents shall deliver the Business Information to the Acquirer as soon as practicable in a manner that ensures their completeness, accuracy and usefulness and meets the reasonable requirements of the Acquirer.
- E. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the Polyurethane Foam Assets, including Contracts and Governmental Authorizations. Respondents may satisfy this requirement for a required Consent by certifying that the Acquirer has equivalent arrangements or has otherwise directly obtained the necessary Consent.

*Provided, however,* it is not a violation of this provision for Respondents not to transfer a Contract or Governmental Authorization that Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents) so long as (i) prior to signing the Consent Order,

#### **IV. Transition Assistance**

**IT IS FURTHER ORDERED** that:

- A. Until Respondents have transferred all Business Information included in the Polyurethane Foam Assets, Respondents shall provide the Acquirer with access to records and information (wherever located and however stored) included in the Business Information that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondents shall provide the Acquirer with Transition Assistance sufficient to (i) effi(q)2 (u)4 (i)-1isR9.s06 Tw -325 pro1 (c)ecod6,MCID isir

- b. Allow the proposed Acquirer a reasonable opportunity to interview any Polyurethane Foam Employees;
2. Not later than 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
  - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the Polyurethane Foam Employees; and
  - b. Make offers of employment to any of the Polyurethane Foam Employees;
3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the Polyurethane Foam Employees, not offer any incentive to Polyurethane Foam Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any Polyurethane Foam Employees by a proposed Acquirer;
4. Respondents shall remove any impediments within the control of Respondents that may deter any Polyurethane Foam Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any Polyurethane Foam Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to ~~prov~~

2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

*Provided, however,* a violation of this Paragraph V.C will not occur if:

1. The employee's employment has been terminated by the Acquirer;
2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
3. Respondents hire an employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

to facilitate the Acquirer's acquisition of the Polyurethane Foam Assets and consistent with the purposes of the Order.

## **VII. Additional Obligations**

**IT IS FURTHER ORDERED** that:

- A. Respondents, in consultation with the proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Polyurethane Foam Business by the Acquirer is not delayed or impaired by the Respondents;
  2. Designate employees of Respondents knowledgeable about the operation of the Polyurethane Foam Assets and Polyurethane Foam Business, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Polyurethane Foam Assets and Polyurethane Foam Business;
  3. Allow the Acquirer reasonable access to all Business Information related to the Polyurethane Foam Assets and Polyurethane Foam Business and to employees who possess or are able to locate such information; and
  4. Establish projected timelines for accomplishing all tasks necessary to effectuate the transition to the Acquirer in an efficient and timely manner.
- B. Respondents shall:
1. Not provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order, the Order to Maintain Assets, or a Divestiture Agreement;
  2. Not use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order, the Order to Maintain Assets, or a Divestiture Agreement;
  3. To the extent practicable, maintain Confidential Business Information separate and apart from other data or information of the Respondents; and
  4. Following the Acquisition Date, ensure that Confidential Business Information is not shared with Respondents' employees engaged in polyurethane foam production or sales activities in any of the Relevant Areas, other than employees who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of VII.B.1 and VII.B.2 above.

*Provided, however,* that nothing in this Paragraph VII shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to this Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential



1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
  2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
  3. The Monitor shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of this Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in 1-2 (iii(h)11)-1 (n70.001

to the Commission concerning performance by Respondents of their obligations under the orders.

- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission's orders.





*provided, however,* that the Commission may extend the period only 2 times.

c.

f. Respondents shall indemnify any Divestiture Trustee and hold the



FXI and One Rock Capital shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.

3. Respondents FXI and One Rock Capital shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at

shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

#### **XIV. Purpose**

**IT IS FURTHER ORDERED** that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure an Acquirer can operate the Polyurethane Foam Business in a manner equivalent in all material respects to the manner in which Respondents operated the Polyurethane Foam Business prior to the Acquisition.

#### **XV. Term**

**IT IS FURTHER ORDERED** that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor  
Acting Secretary

SEAL

ISSUED:



**APPENDIX II**

**Key Employees**

**[Redacted From the Public Record Version, But Incorporated By Reference]**



**APPENDIX III**

**Excluded Assets**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**APPENDIX IV**  
**Monitor Agreement**

**APPENDIX IV-1**

**Monitor Compensation**

**[Redacted From the Public Record Version, But Incorporated By Reference]**