

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

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STATE OF MISSOURI, ex rel.
Attorney General JEREMIAH W. (JAY) NIXON,

STATE OF ALABAMA, ex rel.
Attorney General BILL PRYOR,

STATE OF ALASKA, ex rel.
Attorney General BRUCE M. BOTELHO,

STATE OF ARIZONA, ex rel.
Attorney General GRANT WOODS,

STATE OF ARKANSAS, ex rel.
Attorney General WINSTON BRYANT,

STATE OF CALIFORNIA, ex rel.
Attorney General DANIEL E. LUNGREN,

STATE OF COLORADO, ex rel.
Attorney General GALE A. NORTON,

STATE OF CONNECTICUT, ex rel.
Attorney General RICHARD BLUMENTHAL,

STATE OF DELAWARE, ex rel.
Attorney General M. JANE BRADY,

DISTRICT OF COLUMBIA, ex rel.
Corporation Counsel CHARLES F.C. RUFF,

STATE OF FLORIDA, ex rel.
Attorney General ROBERT A. BUTTERWORTH,

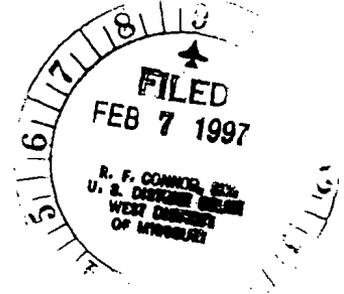
STATE OF GEORGIA, ex rel.
Attorney General MICHAEL J. BOWERS,

STATE OF HAWAII, ex rel.
Attorney General MARGERY S. BRONSTER,

CASE NO.

~~97 4024-CV-C.~~ *Sou*

CONSENT DECREE
and
FINAL JUDGMENT



ORIGINAL

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STATE OF IDAHO, ex rel.
Attorney General ALAN G. LANCE,

STATE OF ILLINOIS, ex rel.
Attorney General JIM RYAN,

STATE OF INDIANA, ex rel.
Attorney General JEFFREY A. MODISSETT,

STATE OF IOWA, ex rel.
Attorney General THOMAS J. MILLER,

STATE OF KANSAS, ex rel.
Attorney General CARLA J. STOVALL,

COMMONWEALTH OF KENTUCKY, ex rel.
Attorney General A.B. CHANDLER III,

STATE OF LOUISIANA, ex rel.
Attorney General RICHARD P. IEYOUB,

STATE OF MAINE, ex rel.
Attorney General ANDREW KETTERER,

STATE OF MARYLAND, ex rel.
Attorney General J. JOSEPH CURRAN, JR.,

COMMONWEALTH OF MASSACHUSETTS, ex rel.
Attorney General SCOTT HARSHBARGER,

STATE OF MICHIGAN, ex rel.
Attorney General FRANK J. KELLEY,

STATE OF MINNESOTA, ex rel.
Attorney General HUBERT H. HUMPHREY III,

STATE OF MISSISSIPPI, ex rel.
Attorney General MIKE MOORE,

STATE OF MONTANA, ex rel.
Attorney General JOSEPH P. MAZUREK,

STATE OF SOUTH CAROLINA, ex rel.
Attorney General CHARLES MOLONY CONDON,

STATE OF SOUTH DAKOTA, ex rel.
Attorney General MARK W. BARNETT,

STATE OF TENNESSEE, ex rel.
Attorney General CHARLES W. BURSON,

STATE OF TEXAS, ex rel.
Attorney General DAN MORALES,

STATE OF UTAH, ex rel.
Attorney General JAN GRAHAM,

STATE OF VERMONT, ex rel.
Attorney General JEFFREY L. AMESTOY,

COMMONWEALTH OF VIRGINIA, ex rel.
Attorney General JAMES S. GILMORE, III,

STATE OF WASHINGTON, ex rel.
Attorney General CHRISTINE O. GREGOIRE,

STATE OF WEST VIRGINIA, ex rel.
Attorney General DARRELL V. MCGRAW, JR.,

STATE OF WISCONSIN, ex rel.
Attorney General JAMES E. DOYLE,

STATE OF WYOMING, ex rel.
Attorney General WILLIAM U. HILL,

Plaintiffs,

v.

AMERICAN CYANAMID COMPANY,

Defendant.

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CONSENT DECREE and FINAL JUDGMENT

Plaintiffs, the States of Missouri, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and the District of Columbia and Puerto Rico, commenced this action on the 30th day of January, 1997, and the defendant American Cyanamid Company was duly served with copies of the Summons and Complaint; and

Plaintiffs, by their respective Attorneys General, and defendant American Cyanamid Company, have agreed to entry of this Consent Decree and Final Judgment, and without this Consent Decree and Final Judgment constituting any evidence against or admission by any party with respect to any matter or issue raised in the Complaint;

Now, therefore, prior to taking any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against

Defendant under 15 U.S.C. section 1, 15 U.S.C. section 26, and related pendent state antitrust claims.

II. DEFINITIONS

As used in this Consent Decree and Final Judgment:

A. "American Cyanamid" or "Defendant" means American Cyanamid Company and its affiliates, subsidiaries, divisions and other organizational units of any kind that sold crop protection chemicals as those chemicals are defined herein; their successors and assigns; their officers, directors, employees, agents, representatives and other persons acting on their behalf.

B. "Crop Protection Chemicals" (hereinafter "CPC") means chemical products that are used, among other things, to control or eliminate unwanted disease, insects, plants, and fungi around crops.

C. "Dealer" means any person, corporation or entity not owned by American Cyanamid, that in the course of its business purchases any CPC from American Cyanamid or a distributor and sells that CPC in or into the United States of America.

D. "Plaintiffs," "Plaintiff States" and "States" are used interchangeably and mean those States (including the District of Columbia and the Commonwealth of Puerto Rico) filing this action, by and through their Attorneys General, in their sovereign capacities.

E. "Rebate" means a payment of money by Defendant to a dealer based, in whole or in part, on the dealer's conduct or performance;

F. "Resale Price" means any price, price floor, price ceiling, price range, mark-up formula, discount or margin of profit used by any dealer for pricing any CPC. "Resale price"

includes, but is not limited to, any established or customary resale price.

III. APPLICABILITY

The provisions of this Consent Decree and Final Judgment shall apply to Defendant and to its successors, assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Consent Decree and Final Judgment by personal service or otherwise.

IV. INJUNCTION

For a period of ten (10) years from the date of entry of this Consent Decree and Final Judgment, Defendant, directly or indirectly, or through any person or entity in active concert or participation with Defendant who receives notice of the terms of this Consent Decree and Final Judgment, in connection with the manufacturing, offering for sale, sale, or distribution of any CPC in or into the United States of America, is hereby enjoined and restrained from, directly or indirectly:

- A. Conditioning the payment of any rebate or other incentive to any dealer, in whole or in part, on the resale price at which the dealer offers for sale or sells any CPC; or
- B. Otherwise agreeing with any dealer to control or maintain the resale price at which the dealer may offer for sale or sell any CPC.

V. DISCLAIMER

It is further ordered that, for a period of three (3) years from the date on which this order is entered, Defendant shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any CPC to any dealer:

ALTHOUGH AMERICAN CYANAMID MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL SELL AMERICAN CYANAMID PRODUCTS.

VI. PAYMENT TO THE STATES

A. In complete settlement of all of the States' claims set forth in the Complaint, Defendant shall pay to the States the settlement sum of a total of seven million three hundred thousand dollars (\$7.3 million). Such payment shall be made to the Attorney General of New Mexico, either by certified check or by wire transfer within ten (10) business days after Defendant receives notice of the court's entry of this Consent Decree and Final Judgment. A portion of the settlement sum shall be deposited in the previously-established account at the National Association of Attorneys General to enhance future state antitrust enforcement. An additional portion of the settlement sum shall be apportioned among those states identified in **Appendix A** and shall be used to benefit the agricultural community in individual states, at the sole discretion of the Attorney General of each State so designated. Each designation is

specified in **Appendix A**, attached hereto and incorporated by reference in this Consent Decree and Final Judgment.

B. The remainder of the settlement sum not covered by paragraph A, shall be apportioned among the states in the amounts determined exclusively by the attorneys general of the States as indicated on **Appendix B**, attached hereto and incorporated by reference in this Consent Decree and Final Judgment. Each State's share of the amount indicated in **Appendix B** shall be used by such state for one or more of the following six (6) purposes, as determined by the attorney general of each such state at his or her exclusive option, and as otherwise consistent with law:

1. Reimbursement of the costs and expenses of this investigation that were incurred by such states or their agencies;
2. Antitrust, or consumer protection enforcement by the attorney general of such state;
3. Deposit into a state antitrust/consumer protection revolving account for use in accordance with the state laws governing that account;
4. Deposit into a fund exclusively dedicated to assisting the state attorney general to defray the cost of experts, economists, and consultants in multistate antitrust investigations and litigations;
5. Deposit into the National Association of Attorneys General Antitrust Education and Training Fund; and/or
6. Such other use the respective States' attorneys general deem appropriate.

VII. JURISDICTION RETAINED

Jurisdiction is retained by this Court during the term of this Consent Decree and Final Judgment for the purpose of enabling any party to this Consent Decree and Final Judgment to apply at any time for such further orders and directions as may be necessary or appropriate, including orders and directions for the construction of any of the provisions of this Consent Decree and Final Judgment or of the Settlement Agreement filed herewith, for the enforcement of compliance with this Consent Decree and Final Judgment or with the Settlement Agreement filed herewith, and for the punishment of violations hereof, or for modification.

VIII. COMPLIANCE WITH CONSENT DECREE

A. For purposes of determining or securing compliance with this Consent Decree and Final Judgment, representatives of the undersigned states shall be permitted, upon written request and reasonable notice, subject to the right of American Cyanamid to have counsel present, and subject to any legally recognized privilege, during normal office hours to inspect and copy all files, sales records, contracts, correspondence, memoranda, journals, minutes, agendas, calendars, books, accounts, advertising copy or other documents, or electronically stored files, in the possession or under the control of American Cyanamid relating to the subject matter of this Consent Decree and Final Judgment.

B. In addition to the rights and obligations for monitoring compliance with this Consent Decree and Final Judgment, American Cyanamid shall:

1. Distribute, in a timely manner, a copy of the injunctive provisions of this Consent Decree and Final Judgment to all of its officers, management employees, dealers,

distributors, agents, and representatives having sales or policy responsibilities with respect to CPC sold in or into the United States of America.

2. For a period of three (3) years after the date on which this Consent Decree and Final Judgment becomes final, provide the letter attached as **Appendix C**, together with a copy of this Consent Decree and Final Judgment, to each person who becomes an officer, management employee, agent, or representative having sales or policy responsibilities with respect to American Cyanamid's CPC sold in or into the United States of America, within thirty (30) days of the commencement of such person's employment or affiliation with American Cyanamid.

3. Require each of its officers, management employees, agents, and representatives having sales or policy responsibilities with respect to American Cyanamid's CPC sold in or into the United States of America, to sign and submit to American Cyanamid within thirty (30) days of the receipt thereof a statement that: (a) acknowledges receipt of this Consent Decree and Final Judgment; (b) represents that the undersigned has read and understands this Consent Decree and Final Judgment; and (c) acknowledges that the undersigned has been advised and understands that non-compliance with this Consent Decree and Final Judgment may subject American Cyanamid to penalties for violation of this Consent Decree and Final Judgment.

4. For a period of three (3) years, submit to the Chief Counsel for Antitrust Unit, Missouri Attorney General's Office, Post Office Box 899, Jefferson City, MO 65102, an annual declaration under oath, as to the fact and manner of its compliance with the provisions of this section. The declaration may be executed by a company designee who

has responsibility for ensuring compliance with this section.

C. No information or documents obtained pursuant to Section VIII shall be divulged by Plaintiffs to any person other than a duly authorized employee or agent of Plaintiffs, except for the purpose of securing compliance with this Consent Decree and Final Judgment, or as otherwise required by law.

IX. SCOPE OF CONSENT DECREE - AFFECTED PARTIES

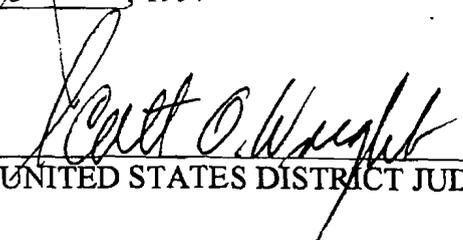
This Consent Decree and Final Judgment is entered into between the Plaintiffs and American Cyanamid for the purposes of settlement. This Consent Decree and Final Judgment and the Settlement Agreement, which are to be filed contemporaneously with the court in this case, represent the complete agreement of the parties. Except as provided herein, or in the Settlement Agreement or by operation of the judgment entered herewith, this Consent Decree and Final Judgment does not constitute a release or discharge of any person or entity from relief sought by Plaintiffs nor does this Consent Decree and Final Judgment create any rights or obligations for any person or entity that is not a party to this Consent Decree and Final Judgment.

X. PUBLIC INTEREST

The terms of this Consent Decree and Final Judgment are fair, reasonable, and adequate. Entry of this Consent Decree and Final Judgment is in the public interest. Except as provided in section VII herein, this Consent Decree and Final Judgment resolves all claims set forth in Plaintiffs' complaint against Defendant and it shall constitute a final disposition of this action as

to this Defendant. The Complaint filed herewith is in all respects hereby dismissed with respect to Defendant.

~~DONE IN OPEN COURT~~ this 7th day of February, 1997


UNITED STATES DISTRICT JUDGE

APPENDIX A

ALABAMA	\$ 0
ALASKA	\$ 0
ARIZONA	\$ 0
ARKANSAS	\$ 0
CALIFORNIA	\$ 0
COLORADO	\$ 0
CONNECTICUT	\$ 0
DELAWARE	\$ 0
DISTRICT OF COLUMBIA	\$ 0
FLORIDA	\$ 0
GEORGIA	\$ 0
HAWAII	\$ 0
IDAHO	\$ 0
ILLINOIS	\$ 100,000.00
INDIANA	\$ 0
IOWA	\$ 0
KANSAS	\$ 0
KENTUCKY	\$ 43,826.39
LOUISIANA	\$ 0
MAINE	\$ 0
MARYLAND	\$ 166,323.67
MASSACHUSETTS	\$ 0
MICHIGAN	\$ 0
MINNESOTA	\$ 0
MISSISSIPPI	\$ 0
MISSOURI	\$ 0
MONTANA	\$ 10,000.00
NEBRASKA	\$ 0
NEVADA	\$ 0
NEW HAMPSHIRE	\$ 0
NEW JERSEY	\$ 0
NEW MEXICO	\$ 251,236.39
NEW YORK	\$ 200,000.00
NORTH CAROLINA	\$ 189,567.93
NORTH DAKOTA	\$ 100,000.00
OHIO	to be determined ¹
OKLAHOMA	\$ 0
OREGON	\$ 0
PENNSYLVANIA	\$ 0
PUERTO RICO	\$ 0
RHODE ISLAND	\$ 0
SOUTH CAROLINA	\$ 0
SOUTH DAKOTA	\$ 87,104.42

¹ Amount to be determined by the Ohio Attorney General and deducted from the amount in Appendix B.

APPENDIX A (cont.)

TENNESSEE	\$	0
TEXAS	\$	142,300.00
UTAH	\$	0
VERMONT	\$	10,000.00
VIRGINIA	\$	0
WASHINGTON	\$	215,282.31
WEST VIRGINIA	\$	0
WISCONSIN	\$	343,940.13
WYOMING	\$	0

APPENDIX B

ALABAMA	\$ 10,000.00
ALASKA	\$ 10,000.00
ARIZONA	\$ 295,245.58
ARKANSAS	\$ 90,057.00
CALIFORNIA	\$ 233,952.01
COLORADO	\$ 339,254.76 ¹
CONNECTICUT	\$ 10,000.00
DELAWARE	\$ 119,208.84
DISTRICT OF COLUMBIA	\$ 10,000.00
FLORIDA	\$ 239,331.63
GEORGIA	\$ 10,000.00
HAWAII	\$ 10,000.00
IDAHO	\$ 175,122.79
ILLINOIS	\$ 107,227.21
INDIANA	\$ 10,000.00
IOWA	\$ 163,218.03
KANSAS	\$ 10,000.00
KENTUCKY	\$ 175,305.58
LOUISIANA	\$ 87,104.42
MAINE	\$ 10,000.00
MARYLAND	\$ 40,903.54
MASSACHUSETTS	\$ 75,995.13
MICHIGAN	\$ 87,104.42
MINNESOTA	\$ 175,122.79
MISSISSIPPI	\$ 10,000.00
MISSOURI	\$ 415,368.36
MONTANA	\$ 0
NEBRASKA	\$ 10,000.00
NEVADA	\$ 87,104.42
NEW HAMPSHIRE	\$ 10,000.00
NEW JERSEY	\$ 10,000.00
NEW MEXICO	\$ 0
NEW YORK	\$ 39,331.63
NORTH CAROLINA	\$ 17,659.28
NORTH DAKOTA	\$ 31,113.60
OHIO	\$ 251,236.39
OKLAHOMA	\$ 119,208.84
OREGON	\$ 471,282.31
PENNSYLVANIA	\$ 10,000.00
PUERTO RICO	\$ 10,000.00
RHODE ISLAND	\$ 10,000.00
SOUTH CAROLINA	\$ 10,000.00
SOUTH DAKOTA	\$ 0
TENNESSEE	\$ 219,131.97

¹ \$65,000.00 of this amount to be used for reimbursement of costs and attorneys fees.

APPENDIX B (cont.)

TEXAS	\$ 317,077.55
UTAH	\$ 10,000.00
VERMONT	\$ 0
VIRGINIA	\$ 119,208.84
WASHINGTON	\$ 256,000.00
WEST VIRGINIA	\$ 119,208.84
WISCONSIN	\$ 83,333.00
WYOMING	\$ 10,000.00

APPENDIX C

[AMERICAN CYANAMID LETTERHEAD]

Dear :

In January, 1997, American Cyanamid agreed, without admitting any violation of the law, to allow a federal court to enter a Consent Decree and Final Judgment prohibiting certain practices relating to the resale prices of crop protection chemicals. By agreeing to the Consent Decree and Final Judgment, American Cyanamid was able to expeditiously resolve an investigation by a number of state attorneys general into American Cyanamid's C.R.O.P. and A.P.E.X. rebate programs, which were in effect from mid-1989 through August 1995. A copy of the Consent Decree and Final Judgment is enclosed.

The Consent Decree and Final Judgment spells out our obligations in greater detail, but we want you to know and understand that our dealers can sell our products at any prices they choose. While the materials we send our dealers may contain suggested retail prices, the dealers remain free to sell our products at any prices they choose.

This letter and the enclosed Consent Decree and Final Judgment are being provided to each person who becomes an officer, management employee, agent, or representative of American Cyanamid and has sales or policy responsibilities with respect to the sale of crop protection chemicals.

Sincerely yours,

President