

1 Richard H. Stern  
2 Patent Section  
3 Antitrust Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530  
6 202/376-3000

7 Anthony E. Desmond  
8 Antitrust Division  
9 U.S. Department of Justice  
10 450 Golden Gate Avenue  
11 San Francisco, California 94102  
12 415/556-6300

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, )  
16 )  
17 Plaintiff, )  
18 )  
19 v. )  
20 )  
21 UNION CARBIDE CORPORATION, )  
22 )  
23 Defendant. )

Civil No. C-76-854 SAW

STIPULATION

Filed: FEB 23 1977

Entered: September 16, 1977

24 It is stipulated by and between the plaintiff, the United  
25 States of America, and the defendant, Union Carbide Corporation,  
26 by their respective attorneys, that:

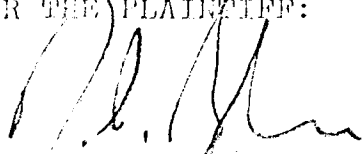
27 1. A Final Judgment in the form hereto attached may be  
28 filed and entered by the Court, upon the motion of either party  
29 or upon the Court's own motion, at any time after compliance  
30 with the requirements of the Antitrust Procedures and Penalties  
31 Act (15 U.S.C. § 16), and without further notice to any party  
32 or other proceedings, provided that plaintiff has not withdrawn  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 defendant  
and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if  
the proposed Final Judgment is not entered pursuant to this  
stipulation, this stipulation shall be of no effect whatever


1 and the making of this stipulation shall be without prejudice  
2 to plaintiff and defendant in this and any other proceeding.

3 Dated: FEB 23 1977

4 FOR THE PLAINTIFF:

5   
6 \_\_\_\_\_  
7 DONALD I. BAKER  
8 Assistant Attorney General

  
\_\_\_\_\_ RICHARD H. STERN

9   
10 \_\_\_\_\_  
11 WILLIAM E. SWOPE


  
\_\_\_\_\_ BERNARD H. MEYERS

12   
13 \_\_\_\_\_  
14 CHARLES F. B. MCALEER

  
\_\_\_\_\_ KENNETH M. FRANKEL

15 Attorneys, Antitrust Division  
16 U.S. Department of Justice

  
\_\_\_\_\_ ROBERT S. SCHWARTZ

  
\_\_\_\_\_ BRUCE T. REESE  
Attorneys, Antitrust Division  
U.S. Department of Justice

21 FOR THE DEFENDANT:

22  
23 KIRKLAND, ELLIS & ROWE

24  
25 By:

26   
27 \_\_\_\_\_  
28 JAMES M. JOHNSTONE

  
\_\_\_\_\_ ROBERT K. HUFFMAN

29   
30 \_\_\_\_\_  
31 THOMAS C. ARTHUR

  
\_\_\_\_\_ BETHANI AUERBACH

32 Attorneys for Defendant  
Union Carbide Corporation

Attorneys for Defendant  
Union Carbide Corporation

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MORRISON & FORSTER

By:

Robert D. Raven  
ROBERT D. RAVEN

H. Preston Moore, Jr.  
H. PRESTON MOORE, JR.

Attorney for Defendant  
Union Carbide Corporation

James J. Garrett  
JAMES J. GARRETT

Attorneys for Defendant  
Union Carbide Corporation

STIPULATION APPROVED FOR FILING

Dated: FEB 23 1977

BY STANLEY A. WEISBERG  
United States District Judge

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FILED

SEP 16 1977

WILLIAM L. WHITTAKER, CLERK

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNION CARBIDE CORPORATION, )  
 )  
Defendant. )

Civil No. C-76-854 SAW  
Filed: Feb. 23, 1977  
Entered: Sept. 16, 1977

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 28, 1976, and defendant having filed its answer on June 21, 1976, and plaintiff and the defendant by their respective attorneys having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue;

1 NOW THEREFORE, before any testimony or evidence has  
2 been taken herein and without trial or adjudication of any issue  
3 of fact or law herein, and upon the consent of the parties hereto;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 I

6 This Court has jurisdiction of the subject matter hereof  
7 and the parties hereto. The Complaint states a claim upon which  
8 relief may be granted against the defendant under Section 1 of the  
9 Sherman Act (15 U.S.C. § 1, as amended).

10 II

11 As used in this Final Judgment:

12 (A) "Defendant" means the defendant, Union Carbide  
13 Corporation, a New York corporation.

14 (B) "Person" means an individual, partnership,  
15 firm, corporation, association, or other business or  
16 legal entity.

17 (C) "Carbaryl" means 1-naphthyl methylcarbamate.

18 (D) "Technical Carbaryl" means 1-naphthyl methyl-  
19 carbamate in a form approximately 99 percent pure.

20 (E) "Carbaryl Product" means technical carbaryl  
21 or any product containing as an active ingredient  
22 carbaryl.

23 (F) "EPA" means United States Environmental Pro-  
24 tection Agency, and any predecessors or successors  
25 thereof.

26 (G) "Formulator" means any person (other than a  
27 manufacturer of 1-naphthyl methylcarbamate) that regu-  
28 larly engages in the business of manufacturing pes-  
29 ticial products; possesses, leases, or contracts for  
30 the use of facilities that are reasonably useable

1 for producing pesticidal products from technical  
2 carbaryl and are registered as pesticide-producing  
3 establishments by the EPA; and possesses an EPA  
4 registered label or labels for one or more pesticidal  
5 products containing carbaryl.

6 (H) "Customer Formulator" means any formulator  
7 in the United States that, during the period  
8 November 1, 1975, to October 31, 1976, received  
9 technical carbaryl from defendant pursuant to a  
10 "Formulator Agreement" with defendant under which  
11 such formulator processed such technical carbaryl  
12 into a pesticidal product or products to be sold  
13 under the formulator's label.

14 (I) "Converter" means any person who has  
15 entered into an agreement with defendant to process  
16 technical carbaryl for defendant's account into a  
17 pesticidal product or products bearing defendant's  
18 label.

19 (J) "Registration" includes "reregistration."

### 20 III

21 The provisions of this Final Judgment applicable to  
22 the defendant shall apply to and only to such defendant; each of  
23 its officers, directors, agents, employees, subsidiaries, suc-  
24 cessors, and assigns; and all persons in active concert or par-  
25 ticipation with any of them that have received actual notice of  
26 this Final Judgment by personal service or otherwise. For the  
27 purpose of this Final Judgment, the defendant and its officers,  
28 directors, employees and subsidiaries, when acting in such  
29 capacity, shall be deemed to be one person.

IV

1  
2 (A) Defendant is enjoined and restrained from:

3 (1) Entering into or renewing the "Formulator Agree-  
4 ments" in effect between defendant and customer  
5 formulators prior to November 1, 1976;

6 (2) Entering into, adhering to, maintaining, or  
7 claiming any rights under any contract, combination,  
8 conspiracy, agreement, or understanding, including but  
9 not limited to, any formulation allowance or similar  
10 program, with any person in the United States,  
11 prohibiting, limiting, or restraining such person from:

12 (a) reselling any carbaryl product purchased  
13 in the United States from defendant, or

14 (b) making any other product from a carbaryl  
15 product purchased in the United States from  
16 defendant;

17 (3) Refusing to sell technical carbaryl to any person  
18 in the United States for the reason that such person will  
19 not enter into, adhere to, or maintain any contract,  
20 combination, conspiracy, agreement, or understanding not  
21 to do one or more of the following:

22 (a) resell technical carbaryl purchased in  
23 the United States from defendant;

24 (b) make any other product from technical  
25 carbaryl purchased in the United States from  
26 defendant;

27 (4) Refusing to permit persons making or selling  
28 products containing SEVIN brand carbaryl manufactured  
29 by defendant to state on the label or in advertising  
30 that such products contain SEVIN carbaryl.

1 (B) Nothing in this Article IV shall in any way apply to  
2 or affect any right that defendant may have unilaterally to:  
3 establish prices, terms, and conditions (not prohibited by  
4 Paragraph (A) of this Article IV) on which defendant will sell  
5 carbaryl products; enter into or renew defendant's present  
6 converter agreements or any lawful arrangements with any  
7 person for the manufacture for defendant's account of carbaryl  
8 products bearing defendant's labels; or enter into and enforce  
9 any lawful agreement with any person requiring such person  
10 to maintain the confidentiality of defendant's trade secrets,  
11 technical data, "know-how," or other proprietary information  
12 with respect to any carbaryl product.

13 V

14 Defendant is ordered to send (within 60 days of the date  
15 this Judgment becomes final) letters to its customer formulators  
16 advising them that defendant will not enforce the following  
17 provisions of its "Carbaryl Insecticide Technical Grade Sales  
18 Agreements" effective November 1, 1976:

19 (A) Article 7, except the portion reading: "BUYER  
20 shall be entitled to an allowance of 20¢ per pound for  
21 each pound of Product";

22 (B) Exhibit B.

23 VI

24 (A) Defendant is ordered, for as long as it sells  
25 technical carbaryl in the United States to any formulator,  
26 but in no event more than five years after the date  
27 upon which this Judgment becomes final, to sell technical  
28 carbaryl on non-discriminatory terms to any formulator  
29 in the United States making a written request therefor for  
30 delivery in the United States in quantities sufficient to



1 meet such formulator's bona fide stated requirements in the United  
2 States for the period between the date of such request and the fol-  
3 lowing October 31 for formulation of carbaryl products. Nothing  
4 in this Paragraph VI(A) shall prohibit defendant from offering to  
5 sell or selling technical carbaryl to any person on terms defendant  
6 sets in good faith to meet the terms of a competitor.

7 (B) Defendant shall not be obligated under this Article VI  
8 to sell technical carbaryl to any person who does not meet reason-  
9 able credit requirements (except if such person pays cash), or to  
10 ship technical carbaryl to, or for production into pesticidal pro-  
11 ducts in, any establishment that the EPA has not registered as a  
12 pesticide producing establishment.

13 (C) Defendant may take reasonable and non-discriminatory  
14 steps consistent with this Final Judgment to protect itself from  
15 any risk of product liability (or other similar legal liability)  
16 suits, or violation of federal or state regulations or statutes,  
17 arising from any sales of technical carbaryl, including those sales  
18 required by this Article VI.

19 (D) If, at the time of any requests under this Article VI,  
20 defendant's production capacity is insufficient to meet such re-  
21 quests, defendant shall make a reasonable allocation among its own  
22 needs and those of its United States customers purchasing technical  
23 carbaryl, including customers purchasing under this Article VI.  
24 In case of such allocation, the class of formulators (other than  
25 customer formulators) purchasing under this Article VI shall have  
26 allocated to it during the year ending October 31 not less than  
27 25% of the amount of technical carbaryl allocated to customer  
28 formulators during such year; except that no such allocation shall  
29 require defendant to sell to the class of formulators (other than  
30 customer formulators) purchasing under this Article VI, in any  
31 year ending October 31, more than 25% of the amount of technical  
32 carbaryl it shipped to customer formulators during the preceding  
year ended October 31.

VII

(A) During the period in which defendant is obligated under Article VI to sell technical carbaryl, whenever any formulator, or any person who would become a formulator upon obtaining registration of a carbaryl product, makes application to the EPA for registration (under the Federal Insecticide, Fungicide, and Rodenticide Act) of any carbaryl product made from defendant's technical carbaryl and in writing requests defendant's assistance in securing such registration, defendant shall:

(1) authorize the EPA to utilize, in support of such application, any data that defendant submits or has submitted to the EPA in connection with the registration of any carbaryl product; and

(2) identify such data to such applicant in sufficient detail to enable such applicant to comply with EPA requirements for data identification in connection with applications for registration.

(B) During such period, defendant shall not require compensation for such assistance, or for the utilization in support of such application of any such data that defendant permits or has permitted any formulator (or any person who would become a formulator upon obtaining registration of a carbaryl product) to utilize without compensation. Defendant may require any such applicant to pay reasonable and non-discriminatory compensation for permitting utilization of other such data in support of such application.

(C) Nothing in this Article VII shall in any way apply to or affect any right that defendant may have: (1) to assert

1 to the EPA that any data are not subject to disclosure under  
2 the Freedom of Information Act, or otherwise, and to contest  
3 any contrary determination in any judicial proceeding; or (2)  
4 to require compensation for the utilization of any such data  
5 in circumstances not within the scope of Paragraphs (A) - (B)  
6 of this Article VII.

#### 7 VIII

8 Except as may be required by Paragraph (A) (4) of Article IV  
9 or Article VII, nothing in this Final Judgment shall require  
10 defendant to license any person to use any trademark belonging  
11 to defendant or to disclose any trade secrets, technical data,  
12 "know-how," or other proprietary information to any person;  
13 or prohibit defendant from enforcing any rights it may have  
14 under present or future United States patents or trademarks, under  
15 any federal or state statute or common law provision protecting  
16 defendant's trade secrets or trademarks, or any lawful such  
17 provision protecting defendant against unfair competition.

#### 18 IX

19 (A) For the purpose of determining or securing compliance  
20 with this Final Judgment and subject to any legally recognized  
21 privilege, from time to time:

22 (1) Duly authorized representatives of the Department  
23 of Justice shall, upon written request of the Attorney  
24 General or of the Assistant Attorney General in charge  
25 of the Antitrust Division, and on reasonable notice  
26 to the defendant made to its principal office, be  
27 permitted:

28 (a) Access during office hours of such  
29 defendant to inspect and copy all books, ledgers,

1 accounts, correspondence, memoranda, and other  
2 records and documents in the possession or  
3 under the control of the defendant, who may  
4 have counsel present, relating to any of the  
5 matters contained in this Final Judgment; and

6 (b) Subject to the reasonable convenience  
7 of such defendant and without restraint or  
8 interference from it, to interview officers,  
9 employees, and agents of such defendant, who  
10 may have counsel present, regarding any such  
11 matters.

12 (2) Upon written request of the Attorney General or the  
13 Assistant Attorney General in charge of the Antitrust  
14 Division made to the defendant's principal office, such  
15 defendant shall submit such written reports, under oath  
16 if requested, with respect to any of the matters contained  
17 in this Final Judgment as may be requested.

18 (B) No information or documents obtained by the means  
19 provided in this Article IX shall be divulged by any representative  
20 of the Department of Justice to any person other than a duly  
21 authorized representative of the Executive Branch of the United  
22 States, except in the course of legal proceedings in which the  
23 United States is a party, or for the purpose of securing com-  
24 pliance with this Final Judgment, or as otherwise required by law.

25 (C) If at the time information or documents are furnished by  
26 the defendant to plaintiff, said defendant represents and identi-  
27 fies in writing the material in any such information or documents  
28 which is of a type described in Rule 26(c)(7) of the Federal  
29 Rules of Civil Procedure, and said defendant marks each pertinent  
30

1 page of such material, "Subject to Claim of Protection under  
2 the Federal Rules of Civil Procedure," then ten (10) days notice  
3 shall be given by plaintiff to such defendant prior to divulging  
4 such material in any legal proceeding (other than a Grand Jury  
5 proceeding) to which that defendant is not a party.

6 X

7 Jurisdiction of this cause is retained for the purpose of  
8 enabling any of the parties to this Final Judgment to apply to  
9 this Court at any time for such further orders and directions  
10 as may be necessary or appropriate in relation to the construc-  
11 tion of any of the provisions thereof, and for the purpose of  
12 the enforcement of compliance therewith and the punishment of  
13 violations thereof.

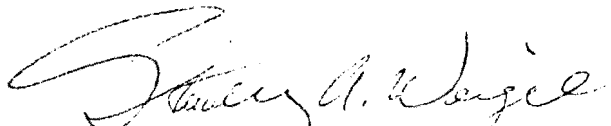
14 XI

15 Except insofar as shorter terms are expressly provided,  
16 this Judgment shall terminate ten (10) years after the date on  
17 which it becomes final.

18 XII

19 Entry of this Judgment is in the public interest.

20  
21 DATED: *September 16, 1977*

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25 

26 UNITED STATES DISTRICT JUDGE

27  
28  
29 ENTERED IN CIVIL DOCKET 9-16 1977