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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 MERCK & CO., INC.,

24 Defendant.

)
)
) Civil Action No. 79-0962-T

)
) FINAL JUDGMENT

)
) Filed: September 2, 1980

)
) Entered: December 1, 1980
)

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26 Plaintiff, United States of America, having filed its
27 complaint herein on August 17, 1979, defendant having filed its
28 answer thereto, and plaintiff and defendant, by their respective
29 attorneys, having consented to the entry of this Final Judgment
30 without trial or adjudication of any issue of fact or law herein
31 and without this Final Judgment constituting any evidence against
32 or an admission by any party with respect to any such issue;

1 NOW, THEREFORE, before the taking of any testimony and without
2 trial or adjudication of any issue of fact or law herein and upon
3 consent of the parties hereto, it is hereby,

4 ORDERED, ADJUDGED, AND DECREED as follows:

5 I

6 This Court has jurisdiction of the subject matter of this action
7 and of each of the parties consenting hereto. The complaint states
8 a claim upon which relief may be granted against defendant under
9 Section 7 of the Clayton Act (15 U.S.C. § 18).

10 II

11 As used in this Final Judgment:

12 (A) "Alginate" means alginic acid derived from Seaweed; its
13 various salts, such as sodium alginate, potassium alginate, and
14 ammonium alginate; and its esters, such as PGA.

15 (B) "Alginate Industries" means Alginate Industries Limited, an
16 indirect wholly-owned subsidiary of defendant, organized and
17 existing under the laws of the United Kingdom; and any subdivision,
18 subsidiary, or affiliate thereof.

19 (C) "Antimigrant" means a substance added to a bath containing
20 dye or pigment for coloring textiles that prevents or retards
21 movement of the dye or the pigment.

22 (D) "Buttered Syrup" means any and/or all Table Syrups
23 containing at least two (2) percent butter by weight of the syrup.

24 (E) "Dental Impression Material" means any type of material
25 that is used to register or make a negative form or impression of a
26 part of the oral cavity, including some or all of the oral tissues
27 in an edentulous mouth and some or all of the oral tissues and/or
28 teeth in other mouths.

29 (F) "Emulsifier" means a substance that facilitates or assists
30 in the formation of an Emulsion.

31 (G) "Emulsion" means an intimate mixture of two immiscible
32 liquids, such as oil and water, in which one liquid phase is

1 dispersed throughout the other in the form of small discrete
2 droplets.

3 (H) "Foam Stabilizer" means a substance or combination of
4 substances that helps protect or maintain foam on a Malted Beverage.

5 (I) "Kelco" means the Kelco Division of Merck.

6 (J) "Malted Beverage" means a "malt beverage" as that term is
7 defined in 27 C.F.R. § 7.10 and includes such products as beer, ale,
8 malt liquor, porter, stout, lager, or lager beer.

9 (K) "Merck" means defendant, Merck & Co., Inc., a corporation
10 organized and existing under the laws of the State of New Jersey;
11 and any subdivision, subsidiary, or affiliate thereof.

12 (L) "Person" means any individual, partnership, association,
13 firm, corporation, proprietorship, joint venture, or other legal or
14 business entity.

15 (M) "PGA" means propylene glycol alginate.

16 (N) "Pourable Dressing" means a liquid food that is used to
17 flavor salads and that is prepared from, among other things, oil,
18 water, vinegar, lemon juice, lime juice, sugar, and/or flavoring
19 agents, or from a combination of dry ingredients to which oil,
20 water, vinegar, or another liquid is added.

21 (O) "Print Paste Thickener" means a substance added to a print
22 paste for printing textiles to increase viscosity.

23 (P) "Purchaser" means one or more Persons acquiring all the
24 stock of Scotia Marine or all the business and assets of Scotia
25 Marine pursuant to this Final Judgment.

26 (Q) "Sale of Scotia Marine" means the sale of all the stock of
27 Scotia Marine or all the business and assets of Scotia Marine
28 pursuant to this Final Judgment.

29 (R) "Scotia Marine" means Scotia Marine Products Limited, a
30 wholly-owned subsidiary of defendant, organized and existing under
31 the laws of Nova Scotia, Canada.

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1 (S) "Seaweed" means all seaweed containing alginic acid, other
2 than seaweed of the genus Macrocystis and seaweed of the genera and
3 species Durvillea potatorum and Lessonia flavicans.

4 (T) "Specified Function" means to serve as a Stabilizer,
5 Emulsifier, or Thickener in a Pourable Dressing; as a gelling agent
6 in a Dental Impression Material; as a Foam Stabilizer in a Malted
7 Beverage; as a foaming or gelling agent in antacids; as a
8 Stabilizer, Emulsifier, or Thickener in a Buttered Syrup; or as an
9 Antimigrant or a Print Paste Thickener.

10 (U) "Specified Product" means, for each Alginate product
11 offered for sale by Kelco for one or more Specified Functions within
12 two (2) years preceding the date of entry of this Final Judgment,
13 the Alginate Product produced by Alginate Industries during that
14 period that is the closest functional equivalent of that Kelco
15 Alginate product.

16 (V) "Stabilizer" means a substance that helps protect and
17 maintain an Emulsion or a Suspension.

18 (W) "Suspension" means a system in which solid particles are
19 dispersed throughout a continuous liquid phase.

20 (X) "Table Syrup" means any type or kind of syrup defined or
21 described in 21 C.F.R. § 168.180.

22 (Y) "Thickener" means a substance that increases viscosity.

23 III

24 This Final Judgment applies to defendant and to its officers,
25 directors, agents, employees, subsidiaries, successors, and assigns,
26 and to all other Persons in active concert or participation with any
27 of them who shall have received actual notice of this Final Judgment
28 by personal service or otherwise. This Final Judgment shall apply
29 to Scotia Marine until it is sold pursuant to this Final Judgment,
30 and the Purchaser shall not solely by virtue of its purchase of
31 Scotia Marine be considered a successor or assign of defendant.

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IV

Any Sale of Scotia Marine shall be to a Purchaser who has the ability to operate Scotia Marine as a single ongoing business; provided, however, that a producer of Alginate may not purchase Scotia Marine pursuant to this Final Judgment unless plaintiff furnishes prior written approval of the sale.

V

Merck is ordered and directed to complete the Sale of Scotia Marine. Upon request of any bona fide prospective Purchaser, but subject to Sections XI and XII, Merck shall furnish on an equal and nondiscriminatory basis information regarding Scotia Marine and the assistance Merck shall provide pursuant to Sections XIX through XXIV to enable the prospective Purchaser to decide whether to purchase Scotia Marine and shall permit the prospective Purchaser to inspect Scotia Marine solely for that purpose. If within sixty (60) days from the date of entry of this Final Judgment Merck has not entered into a contract for Sale of Scotia Marine, upon written request of plaintiff thereafter, Merck shall:

(A) Prepare a brochure describing Scotia Marine and the assistance Merck shall provide the Purchaser pursuant to Sections XIX through XXIV.

(B) Forward the brochure along with a copy of this Final Judgment to each Person requesting the brochure, to each prospective Purchaser known to Merck, and to each Person to whom plaintiff requests Merck to send the brochure.

(C) Direct a Person holding a middle management position with Merck to devote his or her best efforts and a substantial portion of his or her time to promote and complete the Sale of Scotia Marine.

VI

Sixty (60) days before the date when plaintiff may be able to petition this Court to appoint a trustee, Merck shall promptly notify this Court and plaintiff. Within thirty (30) days of the

1 giving of the notice, each party shall exchange with the other party
2 a written list of the names and qualifications of not more than
3 three (3) Persons that the party nominates for the position of
4 trustee for the Sale of Scotia Marine. The parties shall attempt to
5 agree upon one of the nominees to serve as the trustee. Within
6 thirty (30) days of the exchange of lists, Merck shall furnish this
7 Court copies of the written lists and shall notify this Court
8 whether the parties were able to agree and, if so, upon whom the
9 parties agreed. This Court may hear the parties as to the
10 qualifications of the nominees and shall select a trustee.

11 VII

12 (A) If within one (1) year following the date of entry of this
13 Final Judgment Merck has not entered into a contract for Sale of
14 Scotia Marine approved pursuant to Subsection XIV(B) and Subsection
15 XV(A), Merck shall notify this Court and plaintiff. Upon petition
16 by plaintiff thereafter, with prior written notice to Merck, this
17 Court shall appoint for a period of two (2) years the trustee
18 selected pursuant to Section VI to secure a Purchaser.

19 (B) The term of the trusteeship shall be tolled from the date
20 the trustee first submits to plaintiff or to Merck a copy of the
21 proposed contract for Sale of Scotia Marine to and including the
22 date on which it is finally determined, either by plaintiff pursuant
23 to Subsection XIV(B), by this Court pursuant to Section IX or
24 Subsection XIV(B), or by the Canadian government pursuant to
25 Subsection XV(A), that the proposed sale may not be consummated.

26 (C) Upon appointment of the trustee, Merck shall no longer
27 attempt to sell Scotia Marine, but shall utilize its best efforts to
28 assist the trustee to accomplish the purpose of the trust.

29 (D) If at the conclusion of the two (2) years for which the
30 trustee is appointed pursuant to Subsection VII(A) as tolled
31 pursuant to Subsection VII(B) there has not been a Sale of Scotia
32 Marine, Merck shall have the right to petition the Court which may,

1 upon a proper showing, relieve Merck of its obligation to complete
2 the Sale of Scotia Marine.

3 VIII

4 The purpose of the trust shall be prompt Sale of Scotia Marine.
5 The trustee shall have all powers necessary and proper to accomplish
6 the purpose of the trust. In exercising these powers, the trustee
7 may, without limitation:

8 (A) Subject to Sections XI and XII, inspect and copy any
9 records, including financial, accounting, production, and customer
10 records, relating to Alginate production, distribution, or sale in
11 the possession or under the control of Scotia Marine that the
12 trustee may deem necessary to accomplishing the purpose of the trust.

13 (B) Permit inspection of Scotia Marine by a prospective
14 Purchaser and accompany the prospective Purchaser during the
15 inspection.

16 (C) Engage investment bankers, business opportunity brokers,
17 accountants, appraisers, consultants, attorneys, and any other
18 Persons as may be reasonably necessary to help the trustee
19 accomplish the purpose of the trust.

20 IX

21 (A) When the trustee has reached agreement with a prospective
22 Purchaser on a proposed contract for Sale of Scotia Marine, the
23 trustee shall promptly submit to plaintiff and to Merck a copy of
24 the proposed contract and all other pertinent information respecting
25 the proposed sale. Within twenty (20) days after receipt of the
26 submission, both Merck and plaintiff may request information from
27 the trustee and plaintiff may request information from Merck. The
28 trustee shall promptly furnish to Merck and to plaintiff, and Merck
29 shall promptly furnish to plaintiff, all requested information that
30 it can along with a statement identifying the requested information
31 not furnished and the reasons the information was not furnished.

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1 (B) Within thirty (30) days after the trustee submits to Merck
2 a copy of a proposed contract for Sale of Scotia Marine or, if Merck
3 has requested additional information, within thirty (30) days after
4 it has received all requested information and statements to be
5 submitted, Merck shall either enter into the proposed contract or
6 object to the proposed sale and petition the Court for review of the
7 price, terms, or conditions. If Merck withdraws the petition, Merck
8 shall promptly enter into the contract for Sale of Scotia Marine.

9 X

10 The trustee shall perform at the expense of Merck under a
11 court-approved schedule of costs, fees, and incentive compensation
12 for prompt accomplishment of the purpose of the trust. The schedule
13 shall be fixed at the time of the trustee's appointment; however,
14 the trustee shall have the right at any time to petition this Court,
15 with prior written notice thereof to the parties, for further costs,
16 fees, or incentive compensation.

17 XI

18 (A) Prior to providing information to a prospective Purchaser
19 and to the trustee, Merck shall designate "confidential" any
20 information that it in good faith believes constitutes trade secrets
21 or other confidential research, development, or commercial
22 information, as such terms are used in Fed. R. Civ. P. 26(c)(7), of
23 Scotia Marine. Prior to providing to a prospective Purchaser
24 information designated "confidential" by Merck, the trustee shall
25 assure that the information is designated "confidential."

26 (B) Merck and the trustee shall not permit any inspection of
27 Scotia Marine or submit to a prospective Purchaser any information
28 designated "confidential" unless and until the prospective Purchaser
29 enters into a reasonable confidentiality agreement with Scotia
30 Marine and, if requested by Merck, a reasonable confidentiality
31 agreement with Merck that at least shall require the prospective
32 Purchaser unless and until obtaining the information by other means

1 (including purchase of Scotia Marine pursuant to this Final
2 Judgment) not to disclose to any other Person any information
3 obtained through inspection of Scotia Marine or any "confidential"
4 information submitted, not to use any of the information for any
5 purpose other than deciding whether to purchase Scotia Marine and,
6 in the event the prospective Purchaser does not purchase Scotia
7 Marine, to destroy all material containing any of the information.

8 (C) At the time of Sale of Scotia Marine, at the Purchaser's
9 option, Merck shall enter into a reasonable confidentiality
10 agreement with the Purchaser prohibiting disclosure to Persons other
11 than Merck of information of Scotia Marine that Merck possesses and
12 information about Scotia Marine or the Purchaser that Merck may
13 obtain in connection with furnishing assistance pursuant to
14 Sections XIX through XXIII.

15 XII

16 (A) Prior to providing information to a prospective Purchaser
17 and to the trustee, Merck shall have the right to designate "secret"
18 any information that it in good faith believes constitutes trade
19 secrets or other confidential research, development, or commercial
20 information, as such terms are used in Fed. R. Civ. P. 26(c)(7), of
21 Merck, so long as the trade secrets or other confidential
22 information are not solely those of Scotia Marine. Prior to
23 providing to a prospective Purchaser information designated "secret"
24 by Merck, the trustee shall assure that the information is
25 designated "secret."

26 (B) Prior to providing to a prospective Purchaser information
27 designated "secret" by Merck, the trustee shall give written notice
28 to the parties identifying the information and to whom it is to be
29 disclosed. Merck shall have ten (10) days from receipt of the
30 notice within which to object to disclosure and to petition this
31 Court to review the intended disclosure. The trustee shall not
32 disclose the information during that ten (10) day period and, if

1 Merck objects during that period, until this Court rules on the
2 intended disclosure or Merck withdraws its objection.

3 (C) Merck need not and the trustee shall not submit to a
4 prospective Purchaser any information designated "secret" unless
5 and until the prospective Purchaser enters into a reasonable
6 confidentiality agreement with Merck that at least shall require the
7 prospective Purchaser unless and until obtaining the information by
8 other means (including being furnished assistance pursuant to this
9 Final Judgment) not to disclose to any other Person any "secret"
10 information submitted, not to use any of the information for any
11 purpose other than deciding whether to purchase Scotia Marine and,
12 in the event the prospective Purchaser does not purchase Scotia
13 Marine, to destroy all material containing any of the information.

14 XIII

15 Ninety (90) days after the date of entry of this Final Judgment
16 and every ninety (90) days thereafter during the term of the
17 trusteeship until the Sale of Scotia Marine, Merck and the trustee
18 shall serve upon plaintiff an affidavit describing in detail for the
19 preceding ninety (90) day period each offer for Scotia Marine
20 received and the efforts made to promote and complete the Sale of
21 Scotia Marine. The trustee shall serve its affidavit upon Merck,
22 and Merck shall serve its affidavit upon the trustee. Merck and the
23 trustee shall promptly supplement the affidavit with any additional
24 information requested.

25 XIV

26 (A) When a contract for Sale of Scotia Marine has been entered
27 into, Merck shall promptly submit to plaintiff a copy of the
28 contract for Sale of Scotia Marine and all other pertinent
29 information respecting the proposed sale. Within twenty (20) days
30 after receipt of the submission, plaintiff may request additional
31 information from Merck and from the trustee. Merck shall promptly
32 furnish to plaintiff, and the trustee shall promptly furnish to

1 plaintiff and to Merck, all requested information that it can along
2 with a statement identifying the requested information not furnished
3 and the reasons the information was not furnished.

4 (B) Subject to Subsection XV(B), within thirty (30) days after
5 plaintiff has received the submission, or if plaintiff has requested
6 additional information, within thirty (30) days after plaintiff has
7 received all requested information and statements to be furnished,
8 plaintiff shall advise Merck and the trustee in writing of
9 plaintiff's approval or plaintiff's objection to the proposed sale.
10 No contract for Sale of Scotia Marine shall be consummated unless
11 and until plaintiff furnishes Merck written approval of the proposed
12 sale or this Court approves the proposed sale after a hearing at
13 which Merck shall have the burden of proving that the sale is
14 consistent with this Final Judgment. In deciding whether to approve
15 a proposed Sale of Scotia Marine to which plaintiff has objected,
16 this Court shall consider, among other relevant factors, the ability
17 of the prospective Purchaser to use Scotia Marine and Merck's
18 assistance to be provided pursuant to Sections XIX through XXIV to
19 compete effectively in the sale of Alginate in the United States for
20 Specified Functions.

21 (C) The one (1) year time period set forth in Subsection VII(A)
22 shall be tolled from the date Merck first submits to plaintiff a
23 copy of the contract for Sale of Scotia Marine to and including the
24 date on which it is finally determined, either by plaintiff or this
25 Court pursuant to Subsection XIV(B), or by the Canadian government
26 pursuant to Subsection XV(A), that the proposed sale may not be
27 consummated. If that time period is tolled pursuant to this
28 Subsection XIV(D), plaintiff shall not petition to have a trustee
29 appointed until the tolled time period expires or sixty (60) days
30 after it has finally been determined that the proposed sale may not
31 be consummated, whichever occurs later. The tolling provided for in
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1 this Subsection XIV(D) shall apply only to the first contract for
2 Sale of Scotia Marine that Merck submits to plaintiff.

3 XV

4 (A) Merck shall use its best efforts to obtain promptly any
5 necessary approval by the Canadian government, including any
6 necessary approval under the Foreign Investment Review Act, for the
7 Sale of Scotia Marine. Copies of all submissions made by Merck to
8 the Canadian government with regard to the proposed sale shall be
9 furnished to plaintiff. Merck shall promptly notify plaintiff and
10 the trustee in writing of each decision reached by the Canadian
11 government with regard to the proposed sale and shall submit with
12 the notice a copy of the decision. The notice shall describe any
13 conditions to the proposed sale imposed by the Canadian government.
14 If additional information is requested by plaintiff within ten (10)
15 days after receipt of the notice, Merck shall promptly supplement
16 the notice with all requested information that it can along with a
17 statement identifying the requested information not furnished and
18 the reasons the information was not furnished.

19 (B) In the event that approval by the Canadian government is
20 conditional, if plaintiff has not approved or objected to the
21 proposed sale pursuant to Subsection XIV(B), plaintiff shall have
22 the greater of the time provided in Subsection XIV(B) for plaintiff
23 to approve or object or thirty (30) days after receipt of the notice
24 and all requested information and statements to be submitted
25 pursuant to Subsection XV(A), in which to approve or object, and if
26 plaintiff has approved the proposed sale pursuant to Subsection
27 XIV(B), plaintiff shall have twenty (20) days after receipt of the
28 notice and all requested information and statements to be submitted
29 pursuant to Subsection XV(A) in which to reconsider its prior
30 approval.

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XVI

Any contract for Sale of Scotia Marine shall require the Purchaser to file with this Court and serve upon plaintiff and Merck, prior to the anticipated date of Sale of Scotia Marine, an affidavit in which the Purchaser represents that it intends to use Scotia Marine, or its assets, and the assistance Merck shall provide the Purchaser pursuant to Sections XIX through XXIV to compete effectively in the sale of Alginate in the United States for Specified Functions.

XVII

(A) The Sale of Scotia Marine ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified; however, nothing in this Final Judgment shall prohibit Merck from securing full payment for the stock or assets of Scotia Marine by retaining, accepting, enforcing, and settling a bona fide lien, mortgage, deed of trust, or other form of security on the stock or assets. If, after Sale of Scotia Marine, Merck by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security regains ownership or control of any stock or assets of Scotia Marine, Merck shall sell or, if a trustee shall be appointed, the trustee shall secure a Purchaser for the regained stock or assets pursuant to the provisions of this Final Judgment (including Sections IV, VII, and XIX through XXIV) and within the times specified therein measured from the date Merck regained the stock or assets. Merck shall take no action that will impair or impede the Sale of Scotia Marine or the furnishing of assistance pursuant to Sections XIX through XXIV.

(B) The choice whether to purchase all the stock of Scotia Marine or all the business and assets of Scotia Marine shall lie solely with the Purchaser.

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XVIII

The Hold Separate Order entered in this action on September 13, 1979, is hereby dissolved.

XIX

(A) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within three (3) months and at no charge all information and know-how in the possession or under the control of Merck on the date of the request concerning analyzing and harvesting Seaweed; drying, milling, baling, storing, or otherwise preparing Seaweed for use in producing Alginate; and locating supplies and suppliers of Seaweed.

(B) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within six (6) months and at no charge such information and know-how in the possession or under the control of Merck on the date of the request that is related to the production methods used by Alginate Industries and that may be reasonably necessary for Scotia Marine to produce economically and efficiently all Specified Products that do not contain PGA and/or their functional equivalents.

(C) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within three (3) months and at no charge such information and know-how in the possession or under the control of Merck on the date of the request as may be reasonably necessary for the Purchaser to decide whether to produce PGA. If, within six (6) months following receipt of the information, or one (1) year following the date of Sale of Scotia Marine, whichever occurs later, the Purchaser states that it intends to build a production line capable of producing PGA, Merck shall use its best efforts expeditiously to furnish the Purchaser within

1 six (6) months following the statement and at no charge such
2 information and know-how, including design and engineering data, in
3 the possession or under the control of Merck on the date of the
4 statement or three (3) months following the date of Sale of Scotia
5 Marine, whichever occurs earlier, as may be reasonably necessary for
6 Scotia Marine to produce economically and efficiently all Specified
7 Products that contain PGA and/or their functional equivalents.

8 (D) Upon request of the Purchaser within three (3) months
9 following the date of Sale of Scotia Marine, Merck shall use its
10 best efforts to furnish the Purchaser within three (3) months and at
11 no charge all information in the possession or under the control of
12 Merck on the date of the request with respect to research and
13 development of Alginate Industries concerning new Alginate products
14 for and use of Alginate in the Specified Functions.

15 XX

16 (A) Upon request of the Purchaser, Merck shall use its best
17 efforts to make available, at a reasonable time and place and for a
18 period not to exceed one (1) year from the date of Sale of Scotia
19 Marine, qualified technical personnel to assist the Purchaser to
20 design a laboratory for research and development with respect to
21 Alginate, and to hire and train a sales and technical support staff
22 for marketing Alginate for Specified Functions.

23 (B) If the Purchaser requests information from Merck pursuant
24 to Subsection XIX(A), upon further request of the Purchaser, Merck
25 shall use its best efforts to make available, at a reasonable time
26 and place and for a period not to exceed eighteen (18) months from
27 the date the information is provided, qualified technical personnel
28 to advise the Purchaser on harvesting in Nova Scotia Seaweed of the
29 genus Laminaria and on producing Specified Products from that
30 Seaweed.

31 (C) If the Purchaser requests information from Merck pursuant
32 to Subsection XIX(B), upon further request of the Purchaser, Merck

1 shall use its best efforts to make available, at a reasonable time
2 and place and for a period not to exceed one (1) year from the date
3 the information is provided, qualified technical personnel to advise
4 the Purchaser on producing Specified Products that do not contain
5 PGA.

6 (D) If the Purchaser pursuant to Subsection XIX(C) states that
7 it intends to build a production line capable of producing PGA, upon
8 request of the Purchaser, Merck shall use its best efforts to make
9 available, at a reasonable time and place and until six (6) months
10 following the completion of the production line, qualified technical
11 personnel to advise the Purchaser on constructing the production
12 line and producing on that line Specified Products that contain PGA
13 and other Alginate products for the Specified Functions that may be
14 produced using that line.

15 (E) All assistance and advice made available pursuant to this
16 Section XX shall be made available at cost (salary, benefits, and
17 out-of-pocket expenses), determined in accordance with generally
18 accepted accounting principles. Any controversy concerning the cost
19 of the assistance and advice shall be settled by arbitration.

20 XXI

21 (A) At the time of the Sale of Scotia Marine, Merck shall cause
22 Alginate Industries to grant to the Purchaser an option for a period
23 of one (1) year to purchase from Alginate Industries its facility
24 for drying and milling Seaweed at Keose, on the Isle of Lewis, Outer
25 Hebrides, Scotland. In the event the option is exercised, Merck
26 shall not within two (2) years following the date of the purchase
27 construct on the Isle of Lewis a new facility for the drying and
28 milling of Seaweed.

29 (B) The purchase price of the facility under the option shall
30 be the book value (cost less depreciation) of the facility at the
31 time of purchase, determined in accordance with generally accepted
32 accounting principles. The option shall be nonassignable and shall

1 provide that in the event the option is exercised, the Purchaser
2 shall not within one (1) year following the date of the purchase
3 sell the facility. Any controversy concerning the book value of the
4 facility shall be settled by arbitration.

5 XXII

6 (A) Upon request of the Purchaser at the time of Sale of Scotia
7 Marine, Merck shall enter into a supply contract pursuant to which
8 it will supply to the Purchaser for a period of one (1) year from
9 the date of Sale of Scotia Marine, at the option of the Purchaser,
10 Specified Products and/or Kelco products that are the closest
11 functional equivalents of Specified Products. Merck shall not be
12 required to supply more than 100,000 pounds of such products
13 pursuant to the supply contract in any period of six (6) months. In
14 the case of Kelco products, the supply contract shall provide for
15 sales prices equal to Kelco's retail price, less a reasonable
16 distributorship discount, and such other terms and conditions of
17 sale as are reasonable. In the case of Specified Products, the
18 supply contract shall provide for sales prices (FOB British port)
19 and other terms and conditions that are no less favorable to the
20 Purchaser than the lowest prices and the best terms and conditions
21 at or upon which such products are then being sold by Alginate
22 Industries to independent third party distributors, plus any
23 commission which Alginate Industries may be obligated to pay an
24 existing distributor. Any controversy concerning sales prices or
25 other terms and conditions of sale shall be settled by arbitration.

26 (B) If the Purchaser, within the time period specified in
27 Subsection XIX(C), states that it intends to build a production line
28 capable of producing PGA, the term of any supply contract shall be
29 extended at the request of the Purchaser to a date two (2) years
30 following the statement or to the date the production line is
31 commercially operational, whichever occurs first. During the term
32 of the extension, Merck shall be required to supply only products

1 containing PGA and other Alginate products for the Specified
2 Functions that may be produced using the production line.

3 XXIII

4 At the time of Sale of Scotia Marine, Merck shall furnish to the
5 Purchaser at no charge a list, based on information in the
6 possession of Kelco and not acquired from Alginate Industries, of:
7 the names and addresses of Persons in the United States or Canada
8 who, at any time during the two (2) years preceding the date of Sale
9 of Scotia Marine, purchased any Alginate product sold by Kelco for
10 use in one or more Specified Functions; the names and addresses of
11 Persons in the United States or Canada who, at any time during the
12 two (2) years preceding the date of Sale of Scotia Marine, purchased
13 any Alginate product produced by Alginate Industries; the names and
14 addresses of Persons who, at any time during the two (2) years
15 preceding the date of Sale of Scotia Marine, purchased any Alginate
16 product produced by Scotia Marine; and for each Person listed, the
17 Alginate product purchased by the Person and the products in which
18 the Person used the Alginate product.

19 XXIV

20 At the time of Sale of Scotia Marine, Merck shall grant and
21 cause Alginate Industries to grant to Scotia Marine nonexclusive,
22 royalty-free licenses to all patents owned by Merck that are issued
23 on applications filed prior to the date of Sale of Scotia Marine and
24 that are necessary for Scotia Marine to harvest and process Seaweed
25 and to produce and sell in the United States and Canada Specified
26 Products or their functional equivalents and any other Alginate
27 products that Scotia Marine produced during the two (2) years
28 preceding the date of Sale of Scotia Marine. The licenses shall be
29 for the life of the patents and may provide that the rights granted
30 thereby may not be transferred by assignment, sublicense, or
31 otherwise, except in connection with a sale of all or substantially
32 all of the assets of Scotia Marine.

XXV

Merck shall not be required to furnish any information to the Purchaser pursuant to Sections XIX or XX, unless the Purchaser enters into a reasonable confidentiality agreement with Merck concerning the information that at least shall require the Purchaser unless and until obtaining the information by other means not to disclose the information to any other Person except in connection with a sale of Scotia Marine or of all or substantially all of the assets of Scotia Marine and an agreement to return to Merck all such information received pursuant to Subsection XIX(C) and Subsection XX(D) in the event that the Purchaser does not build a production line capable of producing PGA.

XXVI

At the time of Sale of Scotia Marine, Merck shall enter into a reasonable arbitration agreement with the Purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. When any controversy is submitted to arbitration, Merck shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XXVII

No license or right to use any trademark or company name or trade name of defendant, Kelco, or Alginate Industries shall be granted or implied in connection with any transaction pursuant to this Final Judgment, and the Purchaser of Scotia Marine shall have no right to use any such trademark, company name, or trade name.

XXVIII

(A) Merck is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, without the prior written consent of the plaintiff, all or any part of the assets used in production, distribution, or sale of Alginate (other than in the normal course of business) or voting securities

1 of any producer, distributor, or seller of Alginate. Merck is not,
2 however, enjoined from the acquisition of all or part of the
3 securities or assets of any of its subsidiaries and the formation of
4 subsidiaries by the transfer thereto of assets of Merck or of other
5 subsidiaries.

6 (B) Merck is further enjoined and restrained for a period of
7 five (5) years from the date of entry of this Final Judgment from
8 entering into any contract for a term longer than one (1) year for
9 the sale of Alginate to a purchaser other than a distributor.

10 XXIX

11 Merck shall require, as a condition of the sale or other
12 disposition of all, or substantially all, of the assets used by it
13 in the production, distribution, and sale of Alginate, other than
14 those of Scotia Marine, that the acquiring party agree to be bound
15 by the provisions of this Final Judgment, and that such agreement be
16 filed with this Court.

17 XXX

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

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

26 (1) Access during office hours of defendant to inspect and
27 copy all books, ledgers, accounts, correspondence, memoranda
28 and other records and documents in the possession or under the
29 control of defendant, who may have counsel present, relating
30 to any matters contained in this Final Judgment; and

31 (2) Subject to the reasonable convenience of defendant and
32 without restraint or interference from it, to interview

1 officers, employees and agents of defendant, who may have
2 counsel present, regarding any such matters.

3 (B) Upon the written request of the Attorney General or of the
4 Assistant Attorney General in charge of the Antitrust Division made
5 to defendant's principal office, defendant shall submit such written
6 reports, under oath if requested, with respect to any of the matters
7 contained in this Final Judgment as may be requested.

8 No information or documents obtained by the means provided in
9 this Section XXX shall be divulged by any representative of the
10 Department of Justice to any person other than a duly authorized
11 representative of the Executive Branch of the United States, except
12 in the course of legal proceedings to which the United States is a
13 party, or for the purpose of securing compliance with this Final
14 Judgment, or as otherwise required by law.

15 (C) If at the time information or documents are furnished by
16 Merck to plaintiff, Merck represents and identifies in writing the
17 material in any such information or documents to which a claim of
18 protection may be asserted under Rule 26(c)(7) of the Federal Rules
19 of Civil Procedure, and Merck marks each pertinent page of such
20 material, "Subject to claim of protection under Rule 26(c)(7) of the
21 Federal Rules of Civil Procedure," then ten (10) days notice shall
22 be given by plaintiff to Merck prior to divulging such material in
23 any legal proceeding (other than a grand jury proceeding) to which
24 Merck is not a party.

25 XXXI

26 This Final Judgment will expire on the tenth anniversary of its
27 date of entry.

28 XXXII

29 Jurisdiction is retained by this Court for the purpose of
30 enabling any of the parties to this Final Judgment to apply to this
31 Court at any time for such further orders or directions as may be
32 necessary or appropriate for the construction or carrying out of

1 this Final Judgment, for the modification of any of the provisions
2 hereof, for the enforcement of compliance herewith, and for the
3 punishment of any violation hereof.

4 XXXIII

5 Entry of this Final Judgment is in the public interest.

6 Dated: December 1, 1980
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8

9 /s/ Howard B. Turrentine

10 HOWARD B. TURRENTINE
11 JUDGE OF THE DISTRICT COURT
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