

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Cyanamid Company., U.S. District Court, S.D. New York, 1964 Trade Cases ¶71,166, (Aug. 4, 1964)

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United States v. American Cyanamid Company.

1964 Trade Cases ¶71,166. U.S. District Court, S.D. New York. Civil Action No. 60 Civil 3857. Entered August 4, 1964. Case No. 1565 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Combination and Conspiracy—Allocating Customers—Consent Judgment.—A manufacturer of melamine and melamine products was prohibited under the terms of a consent judgment from allocating customers, territories or markets; restraining or limiting competition; restraining importation or exportation; boycotting any manufacturer or seller of melamine; and utilizing as a distributing or sales agent any domestic manufacturer of melamine.

Department of Justice Enforcement and Procedure—Divestiture—Consent Judgment—A manufacturer of melamine and melamine products was required under the terms of a consent judgment to lease or sell its manufacturing facility, or to sell its manufacturing tools and equipment, and to furnish technical know-how to the purchaser or lessee at cost

Department of Justice Enforcement and Procedure—Compulsory Licensing—Consent Judgment.—A manufacturer of melamine and melamine products was required under the terms of a consent judgment to grant a royalty-free license under present or future patents to make and sell melamine from dicy and a reasonable-royalty license to make and sell melamine from urea.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, John J. Galgay, John D. Swartz, Joseph T. Maioriello, James J. Farrell, Attorneys, Department of Justice.

For the defendant: Donovan, Leisure, Newton & Irvine, by Ralstone R. Irvine and James R. Withrow, Jr.; Walter R. Mansfield, Richard Y. Holcomb, Samuel W. Murphy, Jr., and Edward R. Kenney, of counsel.

Final Judgment

[LEVET, District Judge]: Plaintiff, United States of America, having filed its complaint herein on October 5, 1960, and an amendment thereto on October 13, 1960, and defendant, American Cyanamid Company, having appeared and filed its answer to such complaint, as amended, denying the substantive allegations thereof; and plaintiff and defendant, by their respective attorneys, having severally consented to the making and 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 either party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto-, it is hereby

Ordered, adjudged and decreed as follows :

I

[*Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims for relief against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 1914, entitled "An act to supplement

existing laws against unlawful restraints and monopolies, and for other purposes,” commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) “Cyanamid” shall mean the defendant, American Cyanamid Company, a corporation organized and existing under the laws of the State of Maine;
- (B) “Subsidiary” shall mean in respect to any corporation, including Cyanamid, a second corporation, a majority of whose outstanding voting stock is owned or directly or indirectly controlled by such first corporation;
- (C) “Person” shall mean any individual, partnership, firm, corporation, association or other legal or business entity;
- (D) “Co-conspirators” shall mean the following corporations, their successors and assigns, and each of them:
- (1) Monsanto Chemical Company, a corporation organized and existing under the laws of Delaware;
 - (2) Ciba Limited, a corporation organized and existing under the laws of Switzerland;
 - (3) Ciba Products Corp., a corporation organized and existing under the laws of Delaware;
 - (4) British Industrial Plastics Ltd., a corporation organized and existing under the British Companies Act;
 - (5) Societe des Produits Azotes, a corporation organized and existing under the laws of France; and
 - (6) The British Oxygen Company Limited, a corporation organized and existing under the British Companies Act;
- (E) “Acquirer” shall mean any person, who is a purchaser or lessee pursuant to Section IV of this Final Judgment, approved by plaintiff, or the Court after notice to the plaintiff and opportunity to be heard;
- (F) “United States” shall mean the United States, its territories and possessions;
- (G) “North America” shall mean that portion of the Western Hemisphere north of the country called Guatemala including the islands adjacent thereto, the Greater and Lesser Antilles and the United States;
- (H) “Dicy” shall mean dicyandiamide, the basic raw material from which melamine heretofore has been and is commercially produced, the basic ingredients of which are limestone, carbon and nitrogen which are chemically changed through the application of heat, electricity, pressure and the addition of other substances;
- (I) “Melamine” shall mean the compound, $C_3H_6N_6$, produced commercially from dicy, calcium cyanamid, urea or any other substance;
- (J) “Melamine resin” shall mean a reaction product of (1) melamine and an aldehyde or (2) melamine, an aldehyde and one or more other chemical components;
- (K) “Laminates” shall mean articles formed by the combined action of heat and pressure on composite assemblies composed of superimposed layers of material, with the use of a melamine resin, where an exterior surface takes a substantial degree of the characteristics of the melamine resin used for the formation of such composite assemblies;
- (L) “Molding compound” shall mean a composition, containing melamine resin and a filler, which is customarily formed, shaped, and set under the combined action of heat and pressure;
- (M) “Patents” shall mean any United States Letters Patent and Applications therefor, all reissues, divisions, continuations or extensions thereof, and patents issued upon said applications:
- (1) “Present Patents” shall mean such patents as are owned or controlled by Cyanamid or under which Cyanamid has the right to grant licenses, on the date of entry of this Final Judgment;

(2) "Future Patents" shall mean such Patents (other than those Present Patents as defined in subparagraph (1) of this subsection (M)) which are issued to, filed, acquired or controlled by Cyanamid or under which Cyanamid may acquire the right to grant sublicenses, at any time within five (5) years from the date of entry of this Final Judgment;

(N) "Willow Island" shall mean that portion of the chemical complex owned and operated by Cyanamid at Willow Island, West Virginia, which is housed in Building No. 95, in which portion Cyanamid produces melamine together with the adjacent melamine storage silo and those storage tanks forming an integral part of the melamine manufacturing process and the real estate adjacent thereto. The major items of equipment are set forth in Appendix A hereto and the real estate in Appendix B hereto.

III

[*Applicability*]

The provisions of the Final Judgment applicable to Cyanamid shall apply also to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between Cyanamid and its said officers, agents, servants, employees and subsidiaries, or solely between any of them.

IV

[*Divestiture*]

(A) Cyanamid is ordered and directed forthwith to initiate action to place it in a position to comply with the following terms of this Section IV.

(B) Cyanamid shall within two (2) years following the date of entry of this Final Judgment dispose of Willow Island. Such disposition shall be consistent with any one of the following:

(1) The sale of Willow Island. Such sale of Willow Island may be conditioned upon Cyanamid's having the right of first refusal should the owner desire to sell Willow Island for use other than the manufacture of melamine, subject however, to subsection (B) of Section V of this Final Judgment;

(2) The sale of the personal property, including machinery, tools and equipment of Willow Island and used or usable in the manufacture of melamine from dicy. Such sale shall be for the purpose of aiding or enabling the purchaser to manufacture melamine from dicy at a plant to be located at a site other than Willow Island; or

(3) The lease of Willow Island for a term of five (5) years. Such lease shall be expressly conditioned upon the lessee undertaking to sell to Cyanamid its requirements in the United States for melamine, up to a maximum of thirty (30) million pounds per year, for a term of ten (10) years and further conditioned upon the lessee undertaking to construct, during such lease term, a plant ready for production of melamine by the time of expiration of the lease. Cyanamid shall furnish, at the lessee's option operating services (including but not limited to maintenance, utilities, steam, water, sewage disposal and the use of railroad siding and loading platforms) at cost, including reasonable overhead expense.

(C) Any proposal for such disposition by Cyanamid of Willow Island shall be subject to the approval of this Court, after hearing both plaintiff and defendant in regard thereto.

(D) Cyanamid shall reasonably cooperate with the vendee or lessee in the employment of personnel associated with the operation and management of Willow Island whom the vendee or lessee may desire to employ and shall release from any employment contract any such persons, who, within a reasonable time, not to exceed sixty (60) days after the consummation of the disposal, notify Cyanamid of their desire to accept such employment.

(E) For a period of one (1) year from the date of disposition of Willow Island; after receipt of a written request, Cyanamid is ordered and directed to make available at Willow Island a person, or persons technically qualified in the manufacture of melamine from dicy by the process it used at Willow Island to supplement, explain or

demonstrate the technical information to be supplied under Section X of this Final Judgment for the purpose of assisting the acquirer. For each such person Cyanamid may charge an amount not to exceed his traveling and living expenses and the actual cost to Cyanamid for the time involved.

(F) Cyanamid shall, at acquirer's option, agree with the acquirer to do the following:

- (1) Purchase a minimum of fifty percent (50%) of Cyanamid's melamine requirements in excess of its own melamine production at the prevailing market price for melamine produced in the United States for a term not exceeding ten (10) years;
 - (2) Furnish at cost engineering and technical assistance in connection with the establishment and start-up operations of a new plant to produce melamine; and
 - (3) Furnish a list of purchasers of melamine from Cyanamid during the twelve (12) months next preceding the date of entry of this Final Judgment, and for a term of five (5) years after said entry refer some or all orders for or inquiries about melamine to said acquirer notwithstanding the provisions of subsection (A) of Section VII of this Final Judgment.
- (G) Cyanamid may, at acquirer's option, agree with the acquirer to operate Willow Island for the account of such acquirer for a term of five (5) years.

V

[*Production Limitation*]

(A) From the date of entry of this Final Judgment and for a period of ten (10) years from the date of disposition of Willow Island, or until melamine production capacity in the United States (other than melamine producing capacity of any co-conspirator and of Cyanamid) shall be increased by a total of more than twenty-five (25) million pounds per year over the total of such capacity at the date of disposition, but in no event for a period of less than five (5) years, Cyanamid is enjoined and restrained from:

- (1) Expanding its production capacity in the United States for melamine beyond thirty (30) million pounds a year; and
- (2) Producing in the United States in any calendar year from said date of disposition of Willow Island more than thirty (30) million pounds of melamine. In computing such production in any year, the amount of Cyanamid's melamine imports in the preceding calendar year of melamine made by Cyanamid outside the United States shall be deemed to be a part of Cyanamid's production.

(B) From the date of disposition of Willow Island, Cyanamid is enjoined and restrained from the manufacture of melamine in Willow Island, except as permitted by subsection (G) of Section IV of this Final Judgment.

(C) Cyanamid is ordered and directed to purchase an amount of melamine equivalent to the requirements of Cyanamid for melamine for use in its production of laminates in accordance with Section XI of this Final Judgment.

VI

[*Allocating Markets, Boycotting*]

(A) Cyanamid is enjoined and restrained from directly or indirectly, entering into, performing, adhering to, maintaining or furthering, or claiming any rights under any combination, conspiracy, contract, agreement, arrangement or understanding with any person to:

- (1) Allocate or divide customers, territories or markets for the manufacture, sale or distribution of dicy, melamine, any melamine resin or any product containing any of them;
- (2) Eliminate, limit, restrain or prevent competition, or leave any person free from competition, in the manufacture, use, sale or distribution of dicy, melamine, any melamine resin or any product containing any of them;

(3) Limit, restrain or prevent importation into or exportation from the United States of dicy, melamine, any melamine resin or any product containing any of them;

(4) Boycott or otherwise refuse to do business with any person engaged in the manufacture, use, distribution or sale of dicy, melamine, any melamine resin or any product containing any of them.; or attempting to do anything forbidden in this subsection (A).

(B) Nothing in this Section VI shall be deemed to prohibit Cyanamid from making any arrangements or agreements with respect to activities carried on elsewhere than in the United States which do not have the purpose or effect of restraining or monopolizing the domestic or foreign commerce of the United States; *provided however*, that in any civil proceedings instituted by either party hereto involving this Section VI because of arrangements or agreements with respect to* activities carried on in countries other than the United States, the burden of proof shall be upon Cyanamid to establish that such arrangements or agreements do not restrain or monopolize the domestic or foreign commerce of the United States.

VII

[*Selling Practices*]

Cyanamid is enjoined and restrained from:

(A) Referring or attempting to refer

(1) Any order or any potential order for dicy, melamine, any melamine resin or any product containing any of them to any coconspirator or to any person in the United States which is engaged in the manufacture thereof, or is an agent or sales representative any such co-conspirator or such manufacturer; or

(2) Any inquiry or request for literature or information relating to dicy, melamine, any melamine resin or any product containing any of them to any co-conspirator or any agent or sales representative of any such co-conspirator;

(B) Utilizing as a distributor or agent for the distribution or sale of dicy, melamine, any melamine resin or any product containing any of them:

(1) Any co-conspirator or any person known by Cyanamid to be a sales agent of a co-conspirator; or

(2) Any person, in any country outside the United States, engaged in the manufacture thereof or any person known by Cyanamid to be a sales agent of any such person where the purpose or effect is to restrain the trade or commerce of the United States;

(C) Utilizing as an agent for the distribution or sale of dicy, melamine or any melamine resin any person in the United States engaged in the manufacture thereof or any person known by Cyanamid to be a sales agent of any such person;

(D) Acting as a distributor or agent for the sale or distribution of dicy, melamine, any melamine resin or any product containing any of them for

(1) any co-conspirator;

(2) any person engaged in the United States in the manufacture or distribution thereof; or

(3) any person in any country outside the United States engaged in the manufacture or distribution thereof where the purpose or effect is to restrain the trade or commerce of the United States;

(E) Coercing or attempting to coerce any person not to engage in the manufacture, use or sale of dicy, melamine, any melamine resin or any product containing any of them; or

(F) Restricting or limiting or attempting to restrict or limit the uses to which dicy, melamine, any melamine resin or any product "containing any of them may be put after sale thereof.

VIII

[*Price Fixing*]

Cyanamid is enjoined and restrained from:

(A) Refusing to sell dicy or any melamine resin to any person in the United States willing and financially able to purchase the same, at prices and on terms and conditions of sale corresponding to those regularly offered by Cyanamid to purchasers thereof in the United States of the same classification, except as such refusal may be required by Section VII of this Final Judgment; or

(B) Fixing or determining the differential between the prices charged by Cyanamid for dicy and the prices charged by Cyanamid in the United States for melamine or melamine resins for the purpose, or with the natural and probable effect, of restraining trade or commerce in melamine or melamine resins in the United States.

IX

[*Compulsory Licensing*]

(A) Cyanamid is ordered and directed to grant to any applicant making written request therefor a non-exclusive and unrestricted license or sublicense for the life of the patent, under any, some or all applicable Present Patents, to

- (1) make and sell dicy;
- (2) make and sell melamine from dicy;
- (3) make and sell any melamine resin; and
- (4) use any melamine resin;

and under any, some or all applicable Future Patents, to

- (a) make and sell dicy; and
- (b) make and sell melamine from dicy.

Each such license or sublicense shall be royalty-free.

(B) Cyanamid is ordered and directed to grant to any applicant making written request therefor a non-exclusive and unrestricted license or sublicense for the life of: the patent, under

- (1) any, some or all Present Patents and Future Patents to make and sell melamine from urea; and
- (2) any, some or all Future Patents to
- (a) make and sell any melamine resin; and
- (b) use any melamine resin, without any limitation or condition what-so ever except that:

- (a) The license may be non-transferable;
- (b) A reasonable and non-discriminatory royalty may be charged;
- (c) Reasonable provisions may be made for periodic royalty reports by the licensee to Cyanamid and inspection of the books and records of the licensee by an independent auditor acceptable to both Cyanamid and the licensee, who shall report to Cyanamid only the amount of the royalty due and payable;
- (d) Reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties, or permit inspection of the books and records as herein provided; and
- (e) The license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving to Cyanamid thirty (30) days' notice in writing.

(C) Upon receipt of a written request for a license under subsection (B) above. Cyanamid shall advise the applicant of the royalty it deems reasonable for such patent or patents to which the application pertains. If Cyanamid and the applicant are unable to agree within ninety (90) days upon what constitutes a reasonable royalty the applicant shall have those rights under such patent or patents to which its application pertains,

without the payment of royalty or other compensation as though a license had issued. Cyanamid or the applicant may apply to this Court, upon notice to the plaintiff, for a determination of a reasonable royalty. In such proceeding the burden of proof shall be upon Cyanamid to establish the reasonableness of any royalty requested. Pending the completion of any such court proceeding, Cyanamid or the applicant may, upon notice to the plaintiff, apply to this Court to fix an interim royalty rate, pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, a license shall then issue providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant, and whether or not such interim rate is fixed, any final order may provide for such adjustments including retroactive royalties, as this Court may order after final determination of a reasonable royalty.

(D) The taking of a license pursuant to this Final Judgment shall not be construed as preventing any person from attacking, at any time, the validity or scope of any of said patents nor shall this Final Judgment be construed as imputing any validity or value to any of said patents.

(E) Cyanamid is enjoined and restrained from disposing of any of said patents, or rights thereunder, so as to deprive it of the power to grant licenses as required by this Section IX unless it be a condition of such disposition that the transferee shall observe the provisions of said Section IX with respect to the patents and rights so acquired and shall file with this Court, prior to such disposition, an undertaking to that effect.

(F) Cyanamid is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, title to, or any interest in, or license under any United States Letters Patent unless

(1) Cyanamid also obtains the right to issue licenses under such patents as required by this Section IX; or

(2) Cyanamid has acquired a non-exclusive right or license and shall have made a *bona fide* effort (not including additional monetary consideration) to persuade the licensor to make available to any third person requesting the same a right or license equivalent to that required of Cyanamid by this Section IX and on terms and conditions at least as favorable as those accorded to Cyanamid.

(G) At the time of the granting of a license or sublicense under this Section IX, Cyanamid shall also grant to the licensee, to the extent Cyanamid has the right to do so, an unrestricted, unconditional, nonexclusive and royalty-free grant of immunity under any, some, or all foreign patents with respect to products manufactured under such license or sublicense, and Cyanamid is enjoined and restrained from selling or otherwise disposing of the right to grant immunities under any patent as provided in this subsection (G).

X

[*Furnishing of Information*]

(A) Cyanamid is ordered and directed for a period of ten (10) years from the date of entry of this Final Judgment, upon payment to Cyanamid of its cost of compilation to furnish, upon written request:

(1) To any person engaged or desiring to engage in the United States in the manufacture of dicy, melamine or any melamine resin or melamine resins (a) all technical information, which Cyanamid has and which Cyanamid has the right to furnish on the date of entry of this Final Judgment, usable for the manufacture of, and which will enable such person to manufacture commercially dicy, melamine from dicy and any such melamine resin or resins; and (b) such additional technical information relating to the use of such melamine resin or resins as Cyanamid has furnished to its customers in the United States;

(2) To any licensee under Section IX of this Final Judgment engaged or desiring to engage in the United States in the manufacture or use of dicy, melamine or any melamine resin all technical information, which Cyanamid has and (a) which Cyanamid acquires within five (5) years from the date of entry of this Final Judgment and (b) which Cyanamid has the right to furnish at such time, reasonably necessary to enable the licensee to practice the invention or inventions under the licensed patent or patents.

(B) Cyanamid may, as a condition to furnishing such technical information pursuant to subsection (A) above, require the person to whom it is furnished to agree in writing to keep such technical information confidential and

to use such technical information received pursuant to subsection (A) above only for its own manufacture or use in the United States, and Cyanamid may, as a condition to furnishing such technical information hereafter acquired by Cyanamid require such person, to agree in writing not to advertise or use the fact that it has received such technical information from Cyanamid in the sale of its products.

(C) Cyanamid shall not be deemed, in connection with the furnishing of technical information pursuant to this Section X of this Final Judgment, to have given any warranty against infringement of patents, or any warranty of success in connection with the use of such information.

(D) In the event of disagreement as to either the amount of the cost of compilation charges payable to Cyanamid or reasonable royalty under this Section X of this Final Judgment, the matter shall be determined in the manner set forth in subsection (C) of Section IX of this Final Judgment.

(E) Cyanamid is enjoined and restrained from, making any disposition of any such technical information, used or usable, on any basis which would restrict Cyanamid from complying with any of the provisions of this Section X with respect to such information unless it be a condition of such disposition that the transferee shall observe the provision of said Section X with respect to such information and shall file with this Court, prior to such disposition, an undertaking to that effect.

XI

[*Purchasing Requirements*]

(A) Commencing with the date of the disposition of Willow Island, Cyanamid is ordered and directed to purchase annually from other producers of melamine (with the preference to United States producers) an amount of melamine equivalent to the requirements of Cyanamid for melamine for use by Cyanamid in the production of laminates in the United States provided that at any time after ten (10) years from such date, Cyanamid may petition to this Court to be relieved from this provision, such relief to be granted upon a showing by Cyanamid to the satisfaction of this Court that the effect of such relief will not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country. Cyanamid's requirements for the purposes of this Section XI shall be deemed to be an amount of melamine of all grades, but not superior to that customarily used by Cyanamid in the manufacture of laminates, at least equivalent to the amount of such melamine used by Cyanamid in its production of laminates during the preceding calendar year.

(B) Cyanamid is directed to file with the Court, and serve a copy on plaintiff, an affidavit setting forth all the facts justifying any failure to purchase its melamine requirements in accordance with subsection (A) above. Such affidavit shall be filed within thirty (30) days after said failure.

(C) In the event Cyanamid considers that the melamine price offered for its purchase pursuant to subsection (A) hereof is oppressively high, Cyanamid may apply to the Court, and upon a showing by Cyanamid to the satisfaction of this Court that the price is non-competitive, the Court may grant such protective order as the Court deems appropriate.

XII

[*Publication*]

Cyanamid is ordered to publish in the trade journal called Oil, Paint & Drug Reporter within ninety (90) days after the entry of this Final Judgment a notice and advertisement to the following effect:

(1) Cyanamid will grant licenses under its patents to make, use and sell dicy, melamine and melamine resins in accordance with subsections (A) and (B) of Section IX of this Final Judgment;'

(2) Cyanamid will sell dicy and melamine resins made by it in accordance with subsection (A) of Section VIII of this Final Judgment; and

(3) Cyanamid will furnish technical information in accordance with Section X of this Final Judgment.

XIII

[*Ban on Acquisitions*]

(A) For a period of ten (10) years from the date of entry of this Final Judgment, Cyanamid is enjoined and restrained from acquiring, directly or indirectly, any of the assets (except goods or products bought in, or incidental to, the ordinary course of business), business or goodwill of, or any of the shares of stock or other financial interest in, any person engaged in the manufacture or sale in the United States of dicy, melamine, any melamine resin, laminates, molding compounds or the end products made from such molding compounds; *provided, however*, that Cyanamid may acquire those assets, business and goodwill of such person which are not employed in the manufacture or sale in the United States of dicy, melamine, any melamine resin, laminates, molding compounds or the end products made from such molding compounds, with the consent of the plaintiff or upon a showing to the satisfaction of this Court that the effect of such acquisition will not be to eliminate or adversely affect such person in his manufacture, use or sale of melamine, or any melamine resin or any product containing either or both of them.

(B) For a ten (10) year period, after the ten (10) year period provided for in subsection (A) above, Cyanamid is enjoined and restrained from acquiring directly or indirectly, any of the assets (except goods or products bought in, or incidental to, the ordinary course of business), business or goodwill of, or any of the shares of stock or other financial interest in, any such person in the United States except with the consent of plaintiff or upon a showing to the satisfaction of this Court that the effect of any such acquisition will not be substantially to lessen competition or to tend to create a monopoly in the manufacture or sale of dicy, melamine, melamine resins, laminates, molding compounds or the end products made from such molding compounds in any line of commerce in any section of the country.

(C) For a period of twenty (20) years from the date of entry of this Final Judgment, Cyanamid is, subject to the terms of subsections (A) and (B) above, enjoined and restrained from acquiring, directly or indirectly, any of the assets (except goods or products bought in, or incidental to, the ordinary course of business), business or goodwill of, or any of the shares of stock or other financial interest in, any person engaged in the United States in the manufacture of products of which a functionally significant ingredient is melamine or melamine resins except with the consent of the plaintiff or upon a showing to the satisfaction of this Court that the effect of any such acquisition will not be substantially to lessen competition in, to tend to create a monopoly in or unreasonably restrain the trade or commerce of the United States in the manufacture, use or sale of any such products.

(D) For a period of twenty (20) years from the date of entry of this Final Judgment, Cyanamid is, subject to the terms of subsections (A), (B) and (C) above, enjoined and restrained from acquiring, directly or indirectly, any of the assets (except goods or products bought in, or incidental to, the ordinary course of business), business or goodwill of, or any of the shares of stock or other financial interest in, any person engaged in any country outside the United States in the manufacture or sale of dicy, melamine, any melamine resins, laminates, molding compounds or the end products made from such molding compounds where the effect of such acquisition will be substantially to lessen competition in, to tend to create a monopoly in or unreasonably to restrain the trade or commerce of the United States in the manufacture, use or sale of any of them, except

(1) As to companies engaged in such manufacture or sale in North America, exclusive of the United States after establishing to the satisfaction of this Court that the effect of any such acquisition will not be substantially to lessen competition in, to tend to create a monopoly in or unreasonably restrain the trade or commerce of the United States as aforesaid; and

(2) As to companies engaged in such manufacture or sale outside North America (inclusive of the United States), Cyanamid shall promptly notify the Attorney General of the United States of any acquisition of such assets, business or goodwill of, or any of the shares of stock or other financial interest in, any such person so engaged as aforesaid, together with a written statement setting forth the basis for its conclusion that any such acquisition will not substantially lessen competition in, tend to create a monopoly in, or restrain the trade or commerce of the United States as aforesaid; and in any proceeding for civil contempt based upon an alleged violation of this subparagraph (2) of subsection (C) of this Section XIII by reason of an acquisition, the burden of proof shall

be on Cyanamid to establish that the acquisition will not substantially lessen competition in, tend to create a monopoly in, or restrain the trade or commerce of the United States as aforesaid.

(E) Nothing contained in this Section XIII shall be construed to prohibit:

- (1) Acquisition by Cyanamid solely for investment and inclusion in its Pension Fund of not more than a total of one percent (1%) of the securities, shares of stock or other financial interest in any person; and
- (2) Maintaining Cyanamid's present proportionate interest in any person not a subsidiary.

XIV

[*Future Examination of Books*]

For the purpose of securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Cyanamid made to its principal office, be permitted:

(A) Access during the office hours of Cyanamid to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Cyanamid which Relate to any of the matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of Cyanamid and without restraint or interference from it, to interview officers or employees of Cyanamid, who may have counsel present.

Upon such written request Cyanamid shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XV

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix A

MAJOR EQUIPMENT ITEMS OF WILLOW ISLAND

- 10 2,000 Gallon Stainless Steel Autoclaves *
- 5 Stainless Steel Dissolvers
- 5 Stainless Steel Quenchers
- 5 Dorrs
- 6 Centrifuges
- 2 Louisville Steam Tube Dryers
- 3 Bubble Cap Fractionating Columns
- 1 Bulk Melamine Storage Silo

14 Underground 10,000 Gallon Storage Tanks *

Appendix B

DESCRIPTION OF REAL ESTATE OF WILLOW ISLAND

Parcel of land of approximately 2.5 acres situated within Willow Island Plant of America Cyanamid Company, Pleasants County, West Virginia., on the north side of Route 2 between Parkersburg and St. Mary's, together with the "Melamine Building" and other improvements thereon. This real estate, as shown in attached Drawings I and II, is bounded as follows:

Starting at a point which is formed by the intersection of the easterly line of Avenue "D" and the northerly line of 6th Street and running northeasterly along the northerly line of 6th Street about 75 feet to the place of Beginning of parcel to be described; and thence northwesterly and parallel with Avenue "D" about 175 feet to the southerly line of 7th Street, said course being 20 feet westerly from the west line of the building; thence running northeasterly along the southerly line of 7th Street a distance of about 625 feet; thence southeasterly and parallel with Avenue "D" a distance of about 175 feet to the prolongation of the aforementioned northerly line of 6th Street; and thence along the same line southwestly a distance of about 625 feet to the place of Beginning.

(Any lease or conveyance would be subject to conditions of record and survey, and to the exchange of necessary cross easements.)

Footnotes

- * Of the above listed items 1 Steel autoclave and 2 Underground Storage Tanks might not be included in the disposition under this Final Judgment as they are now used in the manufacture of products other than melamine.
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