

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Wallace & Tiernan Co., Inc.; Wallace & Tiernan Products, Inc.; Wallace & Tiernan Sales Corp.; Builders Iron Foundry; Novadel-Agene Corp.; Industrial Appliance Corp.; Martin F. Tiernan; William J. Orchard; Henry S. Chafee; Gerald D. Peet; Harold S. Hutton; Vincent Pisani; and Cornelius F. Schenck., U.S. District Court, D. Rhode Island, 1954 Trade Cases ¶67,828, \(Jul. 26, 1954\)](#)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶67,828

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United States v. Wallace & Tiernan Co., Inc.; Wallace & Tiernan Products, Inc.; Wallace & Tiernan Sales Corp.; Builders Iron Foundry; Novadel-Agene Corp.; Industrial Appliance Corp.; Martin F. Tiernan; William J. Orchard; Henry S. Chafee; Gerald D. Peet; Harold S. Hutton; Vincent Pisani; and Cornelius F. Schenck.

1954 Trade Cases ¶67,828. U.S. District Court, D. Rhode Island. Civil Action No. 705. July 26, 1954. Case No. 876 in the Antitrust Division of the Department of Justice. Final judgment as to all defendants except Builders Iron Foundry and Henry S. Chafee.

Headnote

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Agreements Terminated—Types of Practices Enjoined—Allocation of Markets—Exclusive Dealing—Price-Fixing—Discrimination.—Manufacturers and distributors of chlorinating equipment and supplies consented to the entry of a decree terminating agreements to allocate markets, and restraining the defendants from entering into, performing, or adhering to any agreement with any person (1) to allocate markets, (2) to deal exclusively with any person in the sale or distribution of equipment in the sanitary field, or to have any person deal exclusively with any defendant, (3) to limit the manufacture, sale or distribution of any equipment, or to apportion or allocate customers, (4) to exclude from, or to restrict any manufacturer or distributor in, any territory, and (5) to fix or maintain prices or other sales terms to or by third persons, and (6) for such person not to engage in the manufacture, sale, installation, servicing or distribution of equipment. Additional provisions prohibited discriminatory practices against persons who refuse to deal exclusively with any defendant.

Combinations and Conspiracies—Consent Decree—Types of Practices Enjoined—Exclusive Dealing and Related Practices—Sale or Lease of Sanitation Equipment.—A consent decree enjoined manufacturers and distributors of chlorinating equipment and supplies from leasing or selling equipment or products in the sanitary field, patented or unpatented, or fixing prices, or allowing discounts, or rebates, on condition that (1) the lessee or purchaser lease or purchase any other equipment, (2) the lessee or purchaser not lease or purchase any other equipment or product, and (3) the lessee or purchaser purchase from the defendants any volume, quota or value of any other equipment or product. The decree prohibited further the refusing to sell or lease, or the discriminating in the sale, lease, supplying of services, or furnishing of information because the purchaser or prospective purchaser procured or used equipment or products supplied by any other person. The removal of equipment from the premises of any lessee or purchaser because such person bought, leased or used the equipment or products manufactured or supplied by any person other than the defendants was also prohibited.

In addition, the decree restrained the making of any contract or agreement, or adhering to the same, the purpose of which is contrary to the terms of the consent decree.

Combinations and Conspiracies—Consent Decree—Types of Practices Enjoined—Price Cutting—

Furnishing of Engineering Services.—Manufacturers and distributors of chlorinating equipment consented to the entry of a decree restraining them from (1) cutting prices or discriminating in prices to destroy competition, (2) furnishing equipment or engineering services in the sanitary field without cost or below the cost to the defendants, (3) furnishing engineering services for a period of five years from the date of the final judgment in the sanitary field in connection with the prospective sale of equipment where the prospective sale exceeds \$3500. However, such services may be furnished if notice is given to specified persons, together with the full cost of all engineering services to be furnished. Engineering services may be furnished solely in the performance of binding bona fide contracts when the contracts are consistent with the terms of the consent decree. Any defendant may furnish engineering services on a charge or donation basis, if lawful, where the recipient of such services is a prospective purchaser who does not purchase or lease from such defendant any equipment related to the furnishing of the engineering services.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Dedication

of Chlorinating Equipment Trade-Marks.—A consent decree, required manufacturers and distributors of chlorinating equipment and products to make public dedication of three United States trade-marks. No suit may be instituted, threatened, or maintained based on any alleged right, title or interest in the three trade-marks.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Brokerage Commissions—

Exclusive Distribution Contracts.—Under the terms of a consent decree, manufacturers and distributors of chlorinating equipment and products were restrained from paying brokerage commissions or allowances to any agent or representative known to be under the control of the vendee or to be acting in behalf of the vendee. The decree enjoined also the performance or enforcement of any contract entered into in or about 1925, or later, by any of the defendants with filter companies, construction companies or general contractors under the terms of which such persons or companies agreed to distribute only chlorinating equipment manufactured by the defendants or under which sales terms or prices were fixed.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Collusive Bidding in

Manufacture and Sale of Chlorinating Equipment.—Manufacturers and distributors of chlorinating equipment consented to the entry of a decree enjoining them from (1) requiring or inducing complimentary, split, collusive or dummy bids, (2) where the competitive bidding is required by law requiring or inducing any person to issue invitations only to defendants, to reject any bid because defendants' equipment is not offered in a bid, or to reject bids and issue new invitations to enable a defendant to underbid the lowest bid submitted, (3) advising in the selection of any general terms governing the eligibility of bids or bidders to qualify them for reception or for consideration by the awarding party, and (4) requiring or inducing any person engaged in the preparation of specifications for use in connection with purchases or bid invitations to incorporate in such specifications any term or condition excluding or disqualifying any person from submitting a responsive bid, or to cause any bid to be rejected as nonresponsive, or to require that accessory equipment be used which can be supplied only by the defendants.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Activities.—

Manufacturers and distributors of chlorinating equipment and products consented to the entry of a decree restraining, them from (1) contributing to any trade association concerned with the manufacture, sale, lease, installation or use of equipment in the sanitary field, provided that the defendants may pay their membership dues or assessments. The defendants may rent space for exhibitions, may advertise in trade journals, but may not defray the expenses of any person, other than an employee, in connection with meetings or conventions.

Combinations and Conspiracies—Consent Decree—Types of Practices Enjoined—Acquisitions—Patent

Suits—Specific Relief—Licensing—Record-Keeping.—Under the terms of a consent decree, manufacturers and distributors of chlorinating equipment and supplies were enjoined from acquiring any ownership interest in or control over any person engaged in the manufacture, sale, lease or distribution of such equipment within the United States. Acquisitions between or among the members of the defendant group were not prohibited. The decree required further that the defendants grant royalty-free, nonexclusive and nontransferable licenses

or sublicenses to manufacture, use and vend under certain specified patents. In addition, the defendants were enjoined from instituting or threatening to institute suits or proceedings based on patent infringements occurring prior to July 26, 1954, from acquiring, from outside sources, for a period of 10 years from July 26, 1954, patents or patent rights involving the use, measuring or application of chlorine in the sanitary field, provided that nonexclusive licenses or rights could be acquired, and from disposing of certain patents which would deprive the defendants of licensing power unless the transferee agreed to be bound by the terms of the consent decree. The defendants were ordered to maintain for 10 years complete and intact pertinent books, records, correspondence, memoranda, reports, and other writings.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Edward R. Kenney, and Worth Rowley, Special Assistants to the Attorney General; William D. Kilgore, Jr., Vincent A. Gorman, Harry N. Burgess, William H. McManus, and Jacob S. Temkin.

For the defendants: William H. Edwards, Edwards & Angell, Providence, R. I. (for all defendants except Novadel-Agene Corp., Builders Iron Foundry, Henry S. Chafee, and Industrial Appliance Corp.); Laurence J. Hogan, Hogan & Hogan, Providence, R. I. (for Novadel-Agene Corp., and Industrial Appliance Corp.); Matthew W. Goring, Providence, R. I. (for Builders Iron Foundry and Henry S. Chafee); Charles H. Tuttle, and Loren N. Wood, both of New York, N. Y., of counsel.

For prior opinions of the U. S. District Court, District of Rhode Island, see [1954 Trade Cases ¶ 67,657](#), [1950-1951 Trade Cases ¶ 62,580](#), [62,581](#); [1948-1949 Trade Cases ¶ 62,305](#). For a prior opinion of the U. S. Supreme Court, see [1948-1949 Trade Cases ¶ 62,414](#).

Final Judgment

EDWARD W. DAY, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on November 18, 1946, and defendants, Wallace & Tiernan Company, Inc., Wallace & Tiernan Products, Inc., Wallace & Tiernan Sales Corporation, Novadel-Agene Corporation, and Industrial Appliance Corporation, Martin F. Tiernan, William J. Orchard, Gerald D. Peet, Harold S. Hutton, Vincent Pisani and Cornelius F. Schenck, having appeared and filed their answers to such complaint denying the substantive allegations thereof, the defendants Wallace & Tiernan Company, Inc., Wallace & Tiernan Products, Inc., Wallace & Tiernan Sales Corporation and Novadel-Agene Corporation having each, since making appearances and filing answers herein, surrendered, through corporate mergers and changes of corporate names, separate corporate identity and, for all intents and purposes of this suit, said defendants now being known as the undersigned Wallace & Tiernan Incorporated; and the plaintiff and the undersigned defendants, said Wallace & Tiernan Incorporated, Industrial Appliance Corporation, Martin F. Tiernan, William J. Orchard, Gerald D. Peet, Harold S. Hutton, Vincent Pisani and Cornelius F. Schenck, by their attorneys, having severally consented to the entry of this Final Judgment, without trial of any issue of fact or law herein and without admission by the parties signatory hereto in respect of 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 of any issue of fact or law herein, and upon consent of the parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows :

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the undersigned defendants 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", as amended.

II

[*Definitions*]

As used hereinafter in this Final Judgment:

(A) "Equipment" means any machine, device or apparatus of a kind or type offered for sale, lease or use for dispensing or feeding, in determinate ratios or measured quantities, chlorine, in any form or in any physical or chemical combination, to or in the treatment of sewage, swimming pool water or water for human consumption or personal use;

(B) "Sanitary field" means the field of the treatment of sewage, swimming pool water or water for human consumption or personal use, but does not include the fields of the feeding or dispensing into, or treating of, water for the prevention of the spoilage of food or in industrial usage;

(C) "Engineering services" means:

(1) Any chemical or bacteriological analysis in the sanitary field of specific water supplies or sewages, or

(2) Any plans, drawings or specifications (relating directly or indirectly to equipment in the sanitary field) or assistance, direct or indirect, in the preparation thereof, specifically designed, assembled or developed by any defendant for any particular program, enterprise or project under contemplation or consideration by any specific prospective purchaser, but

In no event shall the following be deemed to be included in the above definition of "engineering services":

(a) Catalogue and similar material which is generally distributed and which contains descriptions of defendants' products or claims therefor,

(b) The necessary itemization and identification of equipment contained in a bid or price quotation,

(c) The description of equipment and the function of such equipment, or

(d) Opinions or advice as to whether particular projects are feasible and could be so carried out as to accomplish the result desired.

(D) "Purchaser" means any vendee or lessee of, or any person with an option or other right to buy or lease, any equipment or anyone acting on behalf of such vendee, lessee or person;

(E) "W & T group" means the defendants Wallace & Tiernan Incorporated and Industrial Appliance Corporation, and their wholly-owned domestic subsidiaries, for so long as, and only so long as, said defendants remain under common ownership or control;

(F) "Defendants" means Wallace & Tiernan Incorporated, Industrial Appliance Corporation, William J. Orchard and Gerald D. Peet;

(G) "Person" means an individual, partnership, firm, association, corporation or any other legal entity;

(H) "Competitive bidding" means any bid made in the sanitary field in response to publicly announced or advertised solicitations by public or private bodies for bids to be considered at indicated times and places.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents, representatives, employees, successors, assigns and domestic subsidiaries, and to any person acting under, through or for such defendant, its subsidiaries or successors.

IV

[*Agreements Terminated*]

(A) Each of the following contracts, agreements and arrangements, and any agreements and arrangements amendatory thereof or supplemental thereto, is ordered to be terminated; and defendants are jointly and severally enjoined and restrained from the further performance or enforcement of any of the provisions of such contracts, agreements or arrangements:

(1) Agreement of 1935 among Wallace & Tiernan Company, Inc., Wallace & Tiernan Products, Inc., Builders Iron Foundry and Henry S. Chafee, to allocate, apportion or divide in any way the market for distribution of chlorinating or feeding equipment;

(2) Agreement of April 21, 1938 between Builders Iron Foundry and Wallace & Tiernan Products, Inc.;

(3) Agreement of 1931 between Wallace & Tiernan Company, Inc., and Schutte & Koerting Company;

(4) Agreement of 1931 between Wallace & Tiernan Company, Inc., and Fairbanks, Morse & Company;

(5) Agreement of November 4, 1935 between Wallace & Tiernan Company, Inc., and R. W. Sparling.

(B) The defendants are jointly and severally enjoined and restrained from entering into, performing, enforcing, furthering or adhering to, directly or indirectly, or claiming any rights under any contract, agreement, arrangement, understanding, plan or program having the purpose or effect of continuing, reviving or renewing any of the contracts, agreements or arrangements referred to in subsection (A) of this Section IV.

V

[*Allocation of Territories, Exclusive Dealing, Price-Fixing, Discrimination*]

The defendants are jointly and severally enjoined and restrained from:

(A) Entering into, performing, enforcing, furthering or adhering to any contract, agreement or understanding with any person (other than contracts, agreements or understandings solely between, or among, the members of the W & T group, bona fide agents, except during the period prescribed by paragraph (2) of subsection (B) of Section IX, or employees):

(1) To allocate, apportion or divide in any way markets or sales territories for the manufacture, sale or distribution of any equipment;

(2) To deal exclusively with any person in the sale, purchase or distribution of any equipment in the sanitary field; or to have any person deal exclusively with any defendant in the manufacture, sale or distribution of any equipment;

(3) To refrain from, restrain or limit manufacture, sale or distribution of any equipment, either according to volume, types of product, or any other basis; or to apportion or allocate customers for any equipment in any territory or market;

(4) To exclude any manufacturer, seller or distributor of any equipment from any territory or market; or to interfere with or to restrict any such manufacturer, seller or distributor in competing in any territory or market;

(5) To fix, determine, maintain or adhere to prices or price ranges or other terms or conditions of sale or resale to or by third persons of any equipment in the sanitary field;

(6) For such person not to engage in the manufacture, sale, installation, servicing or distribution of equipment;

(B) Offering to furnish or furnishing (except between members of the W & T group) any equipment or any services or technical information in the sanitary field on terms more favorable to any person dealing exclusively with any defendant than to any person not so dealing;

(C) Discriminating against any person as to the availability of, delivery date of, or prices charged for any equipment in the sanitary field because such person refuses to deal exclusively with any defendant;

(D) Requiring, requesting or inducing any person to enter into or adhere to any contract, agreement or understanding contrary to any of the provisions of subsection (A) of this Section V;

(E) Because of the refusal of any person to enter into or adhere to any contract, agreement or understanding contrary to the provisions of subsection (A) of this Section V:

(1) Refusing to sell to or to purchase from such person any equipment;

(2) Imposing discriminatory conditions in the sale or purchase of any equipment;

(3) Refusing to make available services or technical information;

(4) Discriminating in the grant, disclosure or rendering available of licenses, rights, information, advice or assistance with respect to any patent, invention, discovery, improvement, practice, formula, device, process, method or other technical information relating to equipment.

VI

[*Exclusive Dealing*]

The defendants are jointly and severally enjoined and restrained from:

(A) Leasing or selling, or making or adhering to any contract for the lease or sale of, any equipment or product in the sanitary field, whether patented or unpatented, or fixing a price charged therefor or discount from or rebate upon such price, on or accompanied by any condition, agreement or understanding:

(1) That the lessee or purchaser thereof shall purchase or lease any other equipment or product manufactured or supplied by any defendant or by any other designated source;

(2) That the lessee or purchaser thereof shall not purchase or lease any other equipment or product manufactured or supplied by any other person;

(3) That the lessee or purchaser thereof shall purchase from the defendants or any of them, any volume, quota, percentage or value of any other equipment or product;

(B) Refusing to sell or lease, or discriminating in the sale, lease or making available of, any equipment in the sanitary field or discriminating in the making of repairs upon equipment manufactured or sold by defendants or in making available or rendering any services or information in the sanitary field, because the purchaser or prospective purchaser thereof procures or uses or has procured or used any equipment or other product supplied by any other person;

(C) Removing any equipment in the sanitary field from the premises of any lessee or purchaser thereof because such lessee or purchaser purchases, leases, uses or deals in, or has purchased, leased, used or dealt in, any equipment Or other product manufactured or supplied by any other person;

(D) Entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose of or which in effect constitutes the making of or adhering to a contract or arrangement containing a condition contrary to the provisions of subsection (A) of this Section VI; or adopting or adhering to any course of conduct contrary to subsection (B) or (C) of this Section VI.

VII

[*Price Cutting, Price Discrimination, Furnishing of Engineering Services*]

The defendants are jointly and severally enjoined and restrained from:

(A) Cutting prices or discriminating in prices for the purpose of destroying a competitor in the manufacture, sale, distribution, installation or servicing of equipment;

(B) Offering to furnish or furnishing any equipment or engineering services in the sanitary field to any person without cost or below the cost thereof to defendants; provided, however, that this subsection (B) of this Section VII shall not be construed to apply to the furnishing of equipment in small quantities solely for the purpose of experimentation or for use in occasions of public catastrophe;

(C) For a period of five years from the date of entry of this Final Judgment, furnishing engineering services in the sanitary field in the United States in connection with the prospective sale of equipment to any person where, at any time, such prospective sale of equipment to such person exceeds, or may reasonably be expected to exceed, a purchase price of \$3500; however, such services may be rendered if defendant shall:

(1) Furnish, to those persons whose names and addresses appear in Appendix A to this Final Judgment, notice of such engineering services to be furnished in connection with such prospective sale, promptly but not more

than seven days after the initiation of the furnishing of such services or after the offer or undertaking to furnish such services (such notice to include the name and address of the prospective purchaser or person acting in behalf of such prospective purchaser, who is to receive such services, and a general description of the intended function of the equipment involved or services to be furnished to such person); and

(2) Include, separately, in any bid or proposal submitted to the prospective purchaser, as part of the total amount of the bid or proposal, the full cost of all engineering services furnished or to be furnished, together with a general description of such engineering services.

(D) The provisions of subsections (B) and (C) of this Section VII shall not be construed to apply to engineering services furnished solely in the performance of binding bona fide contracts, where such contracts are otherwise consistent with the provisions of this Final Judgment, and the provisions of subsection (B) of this Section VII shall not prohibit any defendant from furnishing engineering services on any charge or donation basis, if lawful, where the recipient of such services is a prospective purchaser who does not purchase or lease from such defendant any equipment related to the furnishing of such engineering services.

VIII

[*Dedication of Trade-Marks*]

The defendants are jointly and severally:

(A) Ordered and directed to take such steps as may be necessary to dedicate, transfer and assign to the public, without payment of any compensation whatever therefor, the United States trademarks "Chlorinator", "Visible Vacuum Chlorinator", and "Visible Vacuum Control";

(B) Enjoined and restrained from instituting or threatening to institute, continuing or maintaining any suit, counterclaim or proceeding based on any alleged right, title or interest in the United States trademarks "Chlorinator", "Visible Vacuum Chlorinator", or "Visible Vacuum Control".

IX

[*Brokerage Commissions*]

(A) The defendants are jointly and severally enjoined and restrained from offering, paying or granting, or causing to be offered, paid or granted, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof to any agent, representative or other intermediary known by defendant to be subject to the direct or indirect control of its vendee or to be acting in fact for or in behalf of its vendee in connection with any sale or lease of equipment or installation or engineering services in connection therewith.

[*Performance of Contracts; Agency Agreements*]

(B) Defendants are jointly and severally enjoined and restrained from:

(1) The further performance or enforcement of any agreement entered into in or about 1925 or subsequently, by any of such defendants with filter companies, construction companies or general contractors under the terms of which the latter agreed to distribute only chlorinating equipment manufactured by such defendants or under which the prices, terms or conditions of resale of such equipment were fixed;

(2) For a period of five years from the date of entry of this Final Judgment, entering into (and, in the case of any now existing contract, agreement, understanding or arrangement, for a like period after the date of expiration thereof, renewing, reviving, adhering to, performing, enforcing or claiming any rights under) any contract, agreement, understanding or arrangement with any person acting within the continental United States whereby such person acts for or as an agent of any such defendant in the solicitation or making of sales or leases of equipment in the sanitary field in the United States. But the provisions of this subsection (B)(2) shall not apply to solicitation or the making of sales or leases by or through employees or officers of any of the defendants or their wholly-owned domestic subsidiaries or to dealers purchasing for resale through regular channels of business.

X

[*Restraints as to Bidding Practices*]

Defendants are jointly and severally enjoined and restrained from:

(A) Requiring, requesting or inducing any person to submit complimentary, split, collusive or dummy bids;

(B) Where competitive bidding is required by law, or where any person is about to issue invitations for competitive bids, requiring, requesting or inducing any person:

(1) To issue invitations to bid on contracts for equipment in the sanitary field only to a defendant,

(2) To reject any bid because equipment not manufactured, sold or distributed by a defendant is offered in such bid, or

(3) To reject bids and issue new invitations to bid for the purpose of enabling any defendant to underbid the lowest bid submitted;

(C) Where competitive bidding is used, advising in the formulation or selection of any general terms or conditions governing the eligibility of bids or bidders to qualify them for reception or consideration by the awarding body;

(D) Requiring, requesting or inducing any person who is, or is about to be, engaged in preparing plans, drawings, specifications or requirements for use in connection with a purchase of equipment in the sanitary field, or invitations to bid on contracts for said equipment, to incorporate in said plans, drawings, specifications, requirements or invitations to bid, any term, condition or requirement excluding, preventing or disqualifying any person from submitting a responsive bid, or to cause any person's bid to be rejected as non-responsive, including, but not limited to, a condition or requirement that bidders on equipment supply or provide any accessory or ancillary equipment or device, which can be supplied only by defendants because of patent claims or otherwise, for use or operation in connection with said equipment in the sanitary field. The mere submission of information about, and claims for, a defendant's product shall not be construed as an act of inducement for the purposes of this paragraph and paragraph (1) in subsection (B) of this Section X.

XI

[*Restrictions as to Trade Associations*]

The defendants are jointly and severally enjoined and restrained from:

(A) Making any contribution to or underwriting, in whole or in part, directly or indirectly, the expenses of any organization or association, or the officers, directors, or employees thereof, whose principal membership consists of persons whose principal activities are related to or concern the manufacture, sale, lease, distribution, installation or use of equipment in the sanitary field; provided, however, that the defendants may pay their respective regular or sustaining membership dues or pro rata assessments in such organizations or associations, and the corporate defendants may hire space for use in exhibiting such equipment at conventions of such organizations and use and pay for advertising in journals of such organizations or associations at their regular rates; and provided further this subsection (A) shall not prohibit contributions by the corporate defendants to projects to which contributions are also being made by defendants' competitors at the request of any such organization or association where such project is for the benefit of the entire industry;

(B) Defraying, directly or indirectly, in whole or in part, the expense of any person (other than persons employed by any of the corporate defendants and acting solely in the interests of any of the corporate defendants) in connection with meetings and conventions of any organization or association whose principal membership consists of persons whose principal activities are related to or concern the manufacture, sale, lease, distribution, installation or use of equipment in the sanitary field, including but not limited to, the American Water Works Association and the Federation of Sewage Works Operators.

XII

[*Acquisitions*]

The defendants are jointly and severally enjoined and restrained: from acquiring, directly or indirectly, any ownership interest in or any control over (by purchase or acquisition of physical assets or securities, or, otherwise) any person engaged in the manufacture, sale, lease or distribution of equipment within the United States. Nothing in this Section XII shall be construed to prohibit acquisitions between or among the W & T group.

XIII

[*Licensing Requirements*]

The defendants are ordered and directed to grant to any applicant making written request therefor a royalty-free, nonexclusive and non-transferable license or sublicense to make, use and vend in the sanitary field under any, some or all patents listed in Appendix B hereof [*not reproduced*], and including patents issued upon any renewals, reissues, divisions and extensions of any such patents, without any limitation or condition whatsoever except that the licensee shall place upon any equipment manufactured under these licensed patents notice of the patent number under which said equipment is manufactured.

XIV

[*Patent Suits, Acquisitions, and Dispositions*]

Defendants are jointly and severally enjoined and restrained from:

(A) Instituting or threatening to institute any suit, counterclaim or proceeding based on any infringement occurring prior to the date of this Final Judgment of any patent, patent application or patent right in the sanitary field;

(B) For a period of ten years from the date of this Final Judgment, acquiring, by purchase or otherwise, directly or indirectly, from any person other than their own employees or members of the W & T group, any patent, patent application or patent right involving the use, measuring or application of chlorine in the sanitary field; provided, however, that this subsection (B) of this Section XIV shall not be construed to apply to the acquisition by defendants of any license, sublicense, grant of immunity or similar right from any person where such license, sublicense, grant of immunity or similar right is non-exclusive and contains a provision that throughout its life the licensor will make available an equivalent license, sublicense, grant of immunity or similar right to any third person requesting the same, on terms or conditions at least as favorable as those accorded to said defendant;

(C) Making any disposition of any of the patents listed in Appendix B hereof [*not reproduced*] which deprives such defendant of the power or authority to grant licenses or sublicenses thereunder in conformity with the terms of this Final Judgment unless it requires, as a condition of such disposition, that the purchaser, transferee, assignee or licensee, as the case may be, observe the requirements of Section XIII hereof and that such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of the transaction, an undertaking to be bound by said Section XIII of this Final Judgment.

XV

[*Record-Keeping*]

Defendants are jointly and severally ordered and directed to maintain for a period of ten years complete and intact, in an orderly classification and available promptly on notice, permitting prompt and selective examination of particular documents or categories of documents, all its books and records, correspondence, memoranda, reports and other writings relating to its business in the sanitary field subsequent to the date of entry of this Final Judgment.

XVI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment 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 any defendant made to its principal office, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers and employees of said defendant, who may have counsel present, regarding any such matters, and upon such request the defendant shall submit such written reports to the Department of Justice with respect to the 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 XVI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party or as otherwise required by law.

XVII

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling any 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, for the modification of any of the provisions thereof, for the purpose of enforcement of compliance therewith and for the punishment of violations thereof.

XVIII

[Future Action Not Barred]

Neither the terms nor the entry of this Final Judgment shall in any event be deemed to constitute any estoppel or bar to any future action brought by plaintiff herein under the antitrust laws relating to the business of defendants pertaining to (1) the aging or bleaching of wheat, flour or other cereal products, (2) the treatment of raw foods to prevent, retard or overcome bacterial spoilage, or (3) industrial applications for slime control, bleaching of paper or textiles or the purification or sterilization of waters in connection with industrial operations.

XIX

[Effective Date]

The provisions of Sections VII, X and XI of this Final Judgment shall not become effective until ninety days after the date of entry of this Final Judgment.

Appendix A

Fischer & Porter Company
Hatboro, Pennsylvania
Chemco
1700 Main Street
Los Angeles 54, California
Everson Manufacturing Corporation
214 West Huron Street
Chicago 10, Illinois

There shall be added to this list, from time to time, the names and addresses of such other bona fide manufacturers and sellers (other than Builders Iron Foundry Industries, Proportioneers or their affiliates,

subsidiaries or successors) of machines, devices or apparatus for dispensing or feeding chlorine gas in determinate ratios or measured quantities to or in the treatment of sewage, swimming pool water or water for human consumption or personal use, as may be agreed upon by the parties or approved by the Court. The Attorney General or Assistant Attorney General in charge of the Antitrust Division shall give thirty (30) days written notice to the defendant Wallace & Tiernan Incorporated, copy of such notice to be filed concurrently with the Clerk of this Court, of any further names and addresses which the plaintiff desires to be added to this Appendix A. Failure of said defendant to file with this Court, within thirty (30) days after receipt of the aforesaid notice, objections to names and addresses proposed by plaintiff, shall constitute approval by said defendant of plaintiff's proposed addition to this Appendix A, and Appendix A shall be forthwith amended in accordance therewith. In the event said defendant files objections with this Court within the aforesaid thirty (30) day period, the Court shall determine, after a hearing thereon, whether and to what extent Appendix A shall be amended.