

No. 109-189 (Criminal)

In the District Court of the United States for
the Southern District of New York

UNITED STATES OF AMERICA

v.

ATTORNEY COMPANY OF AMERICA, ET AL.

INDICTMENT

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**In the District Court of the United States for
the Southern District of New York**

No. 109-189 (CRIMINAL)

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA, ET AL.

INDICTMENT

UNITED STATES OF AMERICA,

Southern District of New York, ss:

The Grand Jurors of the United States of America, being duly impaneled, sworn, and charged in the District Court of the United States for the Southern District of New York, at the July Term of the said Court in the year 1940, having begun but not finished during said July 1940 Term of said Court an investigation of the matters charged in this indictment; and having continued to sit, by the orders of said Court, in and for the said District during the August, September, October, November and December Terms of said Court in the year 1940, and the January Term in the year 1941 of said Court, for the purpose of finishing said investigation and certain other investigations begun but not finished during the July 1940 Term of said Court; and inquiring within and for said District

(1)

at the January 1941 Term of said Court, do upon their oaths present and find as follows:

COUNT I

PERIOD OF TIME COVERED BY THE INDICTMENT

1. The conspiracy and combination hereinafter alleged was entered into on or about March 4, 1927, and continued thereafter up to and including the date of the presentation of this indictment.

DEFINITIONS

2. The term "magnesium alloys" as used in this indictment means all alloys in which magnesium is the principal constituent. Unalloyed magnesium as distinguished from alloyed magnesium will be referred to as "pure magnesium." Magnesium alloys and pure magnesium are hereinafter referred to collectively as "magnesium."

3. The term "magnesium products" as used in this indictment refers to products fabricated from pure magnesium or magnesium alloys, and includes castings, forgings, sheet, extrusions, rods, tubing, wire, powder, and ribbon.

THE DEFENDANTS

4. Aluminum Company of America (hereinafter sometimes referred to as Alcoa), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with offices and principal place of business at Pittsburgh, Pennsylvania, is hereby indicted and made a defendant herein. For many years, the exact number to the Grand Jurors unknown, Alcoa

has maintained, and now maintains, an office in the Borough of Manhattan, City of New York, within the Southern District of New York, and has transacted, and now transacts, business within said District. Alcoa is one of the world's largest producers of aluminum and aluminum alloys, and the only producer of aluminum in the United States. It has been for many years, and is now, engaged in the business of fabricating aluminum products and aluminum products containing magnesium at several of its plants, including plants at New Kensington, Pennsylvania, and Buffalo, New York, and distributing and selling the same in interstate and foreign commerce. From some time prior to March 4, 1927 until some time in 1933, Alcoa owned and operated American Magnesium Corporation as a wholly owned subsidiary.

5. The Dow Chemical Company (hereinafter sometimes referred to as Dow Chemical), a corporation organized and existing under the laws of the State of Michigan, with offices and principal place of business at Midland, Michigan, is hereby indicted and made a defendant herein. For many years, the exact number to the Grand Jurors unknown, Dow Chemical has maintained, and now maintains, an office in the Borough of Manhattan, City of New York, within the Southern District of New York, and has transacted, and now transacts, business within said District. Dow Chemical is the only producer of magnesium, and the second largest fabricator of magnesium products in the United States. It has been for many years, and is now, engaged in the business of producing magnesium

and fabricating magnesium products at its plant in Michigan, and using, distributing, and selling magnesium and magnesium products in interstate and foreign commerce.

6. American Magnesium Corporation (hereinafter sometimes referred to as AMC), a corporation organized and existing under the laws of the State of New York, with offices and principal place of business at Cleveland, Ohio, is hereby indicted and made a defendant herein. AMC is the largest fabricator of magnesium products in the United States. It has been for many years, and is now, engaged in the business of buying magnesium and fabricating magnesium products at its plants throughout the United States, including plants in Cleveland, Ohio, and Los Angeles, California, and using, distributing, and selling magnesium and magnesium products in interstate and foreign commerce. AMC, since 1933, has been jointly owned by Alcoa and General Aniline & Film Corporation (formerly American I. G. Chemical Corporation).

7. Interessengemeinschaft Farbenindustrie, Aktiengesellschaft (hereinafter sometimes referred to as I. G. Farben), a corporation or association organized and existing under the laws of Germany, with offices and principal place of business at Frankfurt am Main, Germany, is hereby indicted and made a defendant herein. For many years, the exact number to the Grand Jurors unknown, I. G. Farben has been represented, and is now represented, in the Borough of Manhattan, City of New York, within the Southern District of New York, and has transacted, and now transacts,

business within said District. I. G. Farben is one of the largest manufacturers of dyes, drugs, chemicals, and fertilizers in the world, and has been for many years, and is now, engaged in the business of manufacturing magnesium and magnesium products, and aluminum alloys containing magnesium, at its plants in Germany, and using, distributing, and selling the same. In 1932, I. G. Farben and Alcoa organized defendant Magnesium Development Corporation and, since that time, both I. G. Farben and Alcoa have jointly owned and controlled Magnesium Development Corporation. In 1929, I. G. Farben organized the American I. G. Chemical Corporation (now known as General Aniline & Film Corporation). From the organization of American I. G. Chemical Corporation in 1929 until 1939, various members of the Management Board of I. G. Farben were also and at the same time officers or directors of the Board of Directors of American I. G. Chemical Corporation. At all times, to and including the date of the presentation of this indictment, I. G. Farben has controlled, directly or indirectly, the stock of American I. G. Chemical Corporation.

8. Magnesium Development Corporation (hereinafter sometimes referred to as MDC), a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business at Newark, New Jersey, is hereby indicted and made a defendant herein. MDC is a patent holding company, holding many patents relating to the production and fabrication of magnesium. It has been for many years, and is now, engaged in the business of acquiring

and holding United States patents, and, as more fully hereinafter set forth, has granted Dow Chemical and AMC licenses under certain of such patents. MDC has, since its creation in 1932, been jointly owned and controlled by I. G. Farben and Alcoa.

9. General Aniline & Film Corporation (formerly known as American I. G. Chemical Corporation) (hereinafter sometimes referred to as General Aniline), a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business at New York, New York, is hereby indicted and made a defendant herein. For many years, the exact number to the Grand Jurors unknown, General Aniline has maintained, and now maintains, its principal office in the Borough of Manhattan, City of New York, within the Southern District of New York, and has transacted business within the said District. General Aniline is a manufacturer of dye-stuffs, chemicals, and films. It has held for many years, and now holds, a 50% stock interest in the American Magnesium Corporation, electing thereby three of the six directors of the American Magnesium Corporation each year. As hereinbefore set forth, General Aniline was organized by I. G. Farben in 1929 and its stock has, since then to the present time, been directly or indirectly controlled by I. G. Farben.

10. The following individuals are hereby indicted and made defendants herein. The defendant corporation or association with which each such defendant was or is connected, his position with such company,

and his present address, so far as is ascertainable to the Grand Jurors, are set forth below:

Defendants	Position and company	Address
Arthur V. Davis.....	Chairman of the Board and Director of Aluminum Company of America.	Pittsburgh, Pennsylvania.
Roy A. Hunt.....	President and Director of Aluminum Company of America; Formerly a Director of MDC.	Pittsburgh, Pennsylvania.
Irving W. Wilson.....	Vice President of Aluminum Company of America; President of American Magnesium Corporation.	Pittsburgh, Pennsylvania.
Wilfred D. Keith.....	Director of Magnesium Development Corporation; Member of Patent Department of Aluminum Company of America.	New Kensington, Pennsylvania.
Karl Kochswender.....	President and Director of Magnesium Development Corporation.	New York City.
Willard R. Dow.....	President and Director of The Dow Chemical Company.	Midland, Michigan.
Earl W. Bennett.....	Vice President, Secretary and Treasurer, and Director of The Dow Chemical Company.	Midland, Michigan.
Hermann Schmitz.....	Member of Managing Board of I. G. Farben; Formerly Chairman of the Board of General Aniline.	Ludwigshafen a. Rh. Heidelberg, Germany.

11. The following individuals are not indicted, but are named as co-conspirators herein. The defendant corporation with which each is connected and the address of each such individual co-conspirator, so far as is known to the Grand Jurors, are set forth below:

Person	Corporation	Address
Walter H. Duisberg.....	American Magnesium Corporation (formerly also with Magnesium Development Corporation and General Aniline).	Englewood, New Jersey.
Herman E. Bakken.....	Aluminum Company of America; American Magnesium Corporation.	Pittsburgh, Pennsylvania.
Leo B. Grant.....	The Dow Chemical Company.....	Midland, Michigan.
William G. Harvey.....	American Magnesium Corporation (also with Aluminum Company of America).	Cleveland, Ohio.
Safford K. Colby.....	Aluminum Company of America (formerly President of American Magnesium Corporation).	Pittsburgh, Pennsylvania.
Gilbert A. Currie.....	The Dow Chemical Company.....	Midland, Michigan.
Leland I. Doan.....	Vice President, The Dow Chemical Company.	Midland, Michigan.
C. E. Collings.....	Vice President and Director, The Dow Chemical Company.	Midland, Michigan.

12. During the period covered by this indictment, including the three years next preceding the date of the presentation of this indictment, each of the above-named defendants and co-conspirators has actively engaged in the management of the business of the corporation or association which he represents and on his own behalf and on behalf of such corporation or association, has conferred in his official capacity with certain of the other defendants and co-conspirators named herein, and each has participated in, approved, authorized, ordered, or done, in whole or in part, the activities constituting the offenses hereafter charged in this indictment.

13. Whenever it is hereinafter alleged in this indictment that a defendant corporation or association did or performed any act or thing, the allegation shall be deemed to charge that its duly authorized directors, officers, and agents including the individual defendants and co-conspirators named herein, together with other persons to the Grand Jurors unknown, approved, authorized, ordered, directed, or did such act or thing.

NATURE OF TRADE AND COMMERCE

14. Magnesium can be produced from a variety of raw materials by a number of means. It is an element found extensively in the earth and in sea water in combination with other elements. In its metallic form it is the lightest commercially used metal, being approximately one-third lighter than an equal volume of aluminum. Pursuant to the Act of June 7, 1939 (c. 190; 53 Stat. 811) magnesium has been designated as a strategic material which is essential to national defense.

All of the magnesium produced in the United States is produced by Dow Chemical. Most of this is produced from anhydrous magnesium chloride which Dow Chemical obtains from brine wells in Michigan. In recent months this company has extracted magnesium salts from sea water at its plant in Freeport, Texas. Large quantities of pure magnesium thus produced are converted by Dow Chemical into alloys. Magnesium produced by Dow Chemical is shipped by it from Michigan and Texas in interstate and foreign trade and commerce throughout the United States and to foreign countries in the following manner:

(a) Large quantities of pure magnesium are shipped by Dow Chemical to manufacturers and metallurgists throughout the United States and foreign countries who use it as an alloying agent, as a reducing agent in the manufacture of nickel, lead and zinc, and as an incendiary agent in the manufacture of flares, tracer ammunition, incendiary bombs, flash-light powder and flash-bulbs;

(b) Large quantities of pure magnesium are shipped by Dow Chemical in interstate trade and commerce to AMC and Alcoa for use by Alcoa and others as an alloying agent in high-strength aluminum alloys from which are made, among other things, parts of aircraft, including both military and non-military planes;

(c) Large quantities of magnesium thus produced by Dow Chemical are converted by it into high-strength magnesium alloys and shipped in interstate trade and commerce to fabricators located throughout the United States, including AMC;

(d) Large quantities of magnesium thus produced by Dow Chemical are used by Dow Chemical and AMC and Dow Chemical's fabricating licensees (hereinafter more fully described) to make magnesium products.

The magnesium products made by Dow Chemical, at its plants in the States of Michigan and Texas, by AMC, at its plants in the States of Pennsylvania, Ohio and New York and by the fabricating licensees of Dow Chemical at their plants in the various States of the United States, are shipped in interstate and foreign trade and commerce throughout the United States and to foreign countries. These magnesium products include parts of busses and trucks, bomb casings, fast-moving parts of machines, portable tools, parts of aircraft and aircraft engines, such as wheels, crank cases, super-charger diffusers, blowers, intake manifolds, oil pumps and instrument panels.

BACKGROUND OF THE CONSPIRACY

15. Prior to the first World War, no magnesium was produced commercially in the United States; all domestic requirements were imported, principally from Germany. Between 1914 and 1918 Dow Chemical and AMC both started producing magnesium. Three other companies in the United States also started producing magnesium, but one of them had discontinued business and the other two had been absorbed by AMC by 1920. In 1919 Alcoa obtained a majority of the stock of AMC, and by 1924 Alcoa had obtained complete control of AMC.

16. From 1920 to on or about March 4, 1927, Dow Chemical and AMC were the only domestic producers of magnesium. During most of this period both Dow Chemical and AMC were also engaged in the fabrication of magnesium products, and were in active competition with each other, both in the production and fabrication of magnesium products and in the sale of magnesium and magnesium products. At some time during 1926 Alcoa began to formulate certain plans for the elimination of competition in the production and fabrication of magnesium, and shortly thereafter broached these plans to Dow Chemical.

17. I. G. Farben is the leading producer of magnesium in Europe, and through various patent licensing arrangements controls the fabrication of magnesium throughout Europe. In 1939, the last year for which figures are available, Germany produced 400% more magnesium than was produced in the United States. Most of the German production has been devoted to military uses, such as bombs and aircraft. From 1919 to 1922 substantial quantities of magnesium were exported from Germany to the United States. In 1922 the tariff on magnesium was increased, and thereafter I. G. Farben's exports into this country dropped to a small percentage of domestic consumption. Thereafter representatives of various German companies approached various American companies with regard to creating by a joint endeavor a plant for the production of magnesium. The German companies offered their patents and technical knowledge of production and insisted that with this knowledge a plant could be built

and operated profitably in competition with the then-existing producers of magnesium in the United States. In the course of these negotiations representatives of the German companies approached representatives of both Dow Chemical and AMC.

COMBINATION AND CONSPIRACY IN RESTRAINT OF TRADE

18. Beginning on or about March 4, 1927, the defendants Alcoa, Dow Chemical, AMC, Davis, Hunt, Bennett, and the remaining defendants and the co-conspirators, on various dates thereafter and continuing at all times thereafter up to and including the date of the presentation of this indictment, together with other persons to the Grand Jurors unknown, well knowing all the facts herein, have been engaged in a wrongful and unlawful combination and conspiracy, formed in part and carried out in part within the Southern District of New York, in restraint of the aforesaid interstate and foreign trade and commerce in magnesium and magnesium products in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as The Sherman Act, that is to say:

19. Beginning on or about March 4, 1927, defendants Alcoa, Dow Chemical, AMC, Davis, Hunt, Bennett, and the remaining defendants together with the co-conspirators, on various dates thereafter and other persons to the Grand Jurors unknown, and continuing at all times thereafter up to the date of the presentation of this indictment, have been continuously engaged during, and throughout the periods of time aforesaid, in an unlaw-

ful combination and conspiracy formed in part and carried out in part within the Southern District of New York to restrain, limit and control competition in the production and sale of magnesium in the United States, and to restrain, limit and control competition in interstate and foreign trade and commerce in the sale and distribution of magnesium products.

20. The said combination and conspiracy was entered into and carried out for the purposes, among others:

(a) To prevent any person other than Dow Chemical from producing magnesium.

(b) To limit the production and sale of magnesium products to the defendants and the defendants' sublicensees, and to eliminate competition among fabricators in the solicitation, obtaining and retention of customers.

(c) To control the price of magnesium and magnesium products and to prevent price competition.

(d) To pool patents relating to the production of magnesium and fabrication of magnesium products in order to prevent competition and control prices.

21. Said unlawful combination and conspiracy has been effectuated by divers means and methods, including, among others, the following:

22. An agreement was entered into on or about March 4, 1927, between the defendants Dow Chemical, AMC, and Alcoa, to cross-license certain patents relating to the fabrication of magnesium. Dow Chemical and AMC were each given the right to issue sublicensees under those patents on condition that such sublicensee

use the magnesium produced by either party and this agreement is still in force and effect.

23. During the period from on or about March 4, 1927 to on or about August 31, 1927, defendants Dow Chemical, AMC, and Alcoa negotiated an agreement, the exact terms of which are unknown to the Grand Jurors. As a result of these negotiations AMC agreed to purchase, and did purchase all of its requirements of magnesium from Dow Chemical, and AMC agreed to stop and did stop producing magnesium. At all times thereafter, up to and including the date of the presentation of this indictment, defendant AMC obtained its requirements of magnesium from defendant Dow Chemical at prices more favorable than those prices quoted other purchasers from Dow Chemical. At all times thereafter, up to and including the date of the presentation of this indictment, defendant Alcoa obtained its requirements of magnesium from defendant AMC.

24. At some time during the latter part of 1928 or the early part of 1929, the exact date being to the Grand Jurors unknown, defendant I. G. Farben entered into negotiations with defendants Dow Chemical and Alcoa with the object of entering into a joint enterprise to produce magnesium in the United States.

25. As a result of these negotiations, defendants I. G. Farben, Alcoa, and Dow Chemical agreed that a study be made of the comparative costs of producing magnesium metal of Dow Chemical and I. G. Farben to ascertain whether the I. G. Farben process of producing magnesium was commercially practical in the

United States. Experts were retained by defendants Dow Chemical, Alcoa, and I. G. Farben and the reports of such experts, including a report by the co-conspirator Bakken, showed that magnesium made under the I. G. Farben processes could be produced in the United States competitively with that produced under the Dow processes.

26. During the period from the latter part of 1929 to on or about March 10, 1931, negotiations were carried on between defendants Alcoa and I. G. Farben in the United States and in Europe which culminated in a memorandum agreement between these two companies which was finally embodied in a formal contract (hereinafter termed the Alig agreement) dated October 23, 1931. This contract, among other things, provided:

(a) The two companies would form a third company (subsequently organized as the defendant MDC) to be jointly controlled by them and each company would be represented on the board of directors of MDC by three of its six directors.

(b) Each company would assign its then owned and subsequently acquired patents relating to the production and fabrication of magnesium to MDC, and these patents were to be used only in the United States.

(c) MDC would grant royalty-free fabrication licenses under all fabrication patents to Alcoa and I. G. Farben.

(d) No licenses were to be granted for the production of magnesium under any patents held by MDC without the affirmative vote of a majority of all the directors of MDC.

(e) Neither of the companies would engage in the production of magnesium in the United

States without offering the other party an equal participation. In no event could the production exceed 4,000 tons yearly without the consent of I. G. Farben.

27. Pursuant to the Alig agreement, the defendants Alcoa and I. G. Farben organized defendant MDC and transferred to it all of the patents (many of which were competing patents) owned by defendants Alcoa and I. G. Farben relating to the production and fabrication of magnesium.

28. Defendant Dow Chemical was informed of the negotiations leading to the Alig agreement, and approved of its consummation. During the period from about November 1931 to about April 1932, defendants Alcoa, AMC and MDC negotiated with defendant Dow Chemical for the purpose of pooling the patents of defendant Dow Chemical with those of defendant MDC and for the purpose of forming a common or joint enterprise among defendants Dow Chemical, Alcoa, and I. G. Farben for the production of magnesium. Sometime in or about April 1932, these negotiations were suspended because of the refusal of defendant Dow Chemical to meet the demands of defendants Alcoa, AMC and MDC. In order to force defendant Dow Chemical to agree to the proposals advanced by the other defendants, in or about June 1932, defendant Dow Chemical was notified that suit would be brought against it for infringement of certain of the patents of defendant MDC. Subsequently, defendant MDC instituted a suit against defendant Dow Chemical charging patent infringement. Defendants Alcoa, I. G. Farben, AMC and MDC formulated plans for the

production of magnesium independently of defendant Dow Chemical.

29. In or about June 1932, negotiations were resumed between defendants Dow Chemical, AMC, Alcoa, and MDC which had as their objective the prevention of competition in the production of magnesium between defendants I. G. Farben, Alcoa, and AMC on the one hand and defendant Dow Chemical on the other, and for the purpose of controlling price competition in the sale of magnesium products. These negotiations culminated in a contract between defendants Dow Chemical and AMC, dated June 24, 1933, the terms of which are more fully hereinafter described.

30. On or about February 8, 1933, defendants Alcoa and I. G. Farben entered into a contract according to the terms of which defendant I. G. Farben was given the right to subscribe to 50% of the stock of defendant AMC. Defendants I. G. Farben and Alcoa further agreed that neither was thereafter to fabricate magnesium products in the United States independently of defendant AMC, thereby eliminating competition between themselves in the fabrication of magnesium products. In addition, the parties agreed to continue and conclude the negotiations with defendant Dow Chemical referred to in paragraph 29 hereof.

31. Because of the foreign exchange regulations of the German government, defendant I. G. Farben was unable to pay for its 50% interest in defendant AMC and, accordingly, defendant I. G. Farben assigned to its American affiliate, defendant General Aniline, then known as the American I. G. Chemical Corporation, its

right to subscribe to 50% of the stock of defendant AMC. Defendant General Aniline then bought from defendant Alcoa 50% of the stock of defendant AMC at the agreed purchase price. Defendant General Aniline, at about the same time, granted to defendant I. G. Farben an option to repurchase such stock for the same amount. Thereafter, on or about September 23, 1937, defendant I. G. Farben surrendered this option in return for a payment to it of approximately \$229,000 by defendant General Aniline, but defendant I. G. Farben retained the right to receive one-half of the dividends accruing to the stock in AMC held by defendant General Aniline, after certain deductions. The right of defendant I. G. Farben to participate in the profits of defendant AMC was surrendered by defendant I. G. Farben in October 1940, upon the further payment to defendant I. G. Farben by defendant General Aniline of the sum of \$200,000. At all times since the purchase of the one-half interest in defendant AMC by defendant General Aniline, it has elected three of the six directors of defendant AMC.

32. The contract of June 24, 1933 referred to in paragraph 29 above, provided that AMC purchase from Dow Chemical 1,500,000 pounds of magnesium over a period of five years at a sliding scale of prices, defendant AMC being permitted to pay for the magnesium so purchased lower prices than any other customer of defendant Dow Chemical. The same agreement required defendant Dow Chemical to charge its own fabricating department the same price which it charged defendant AMC for magnesium and provided

that if Dow Chemical should lower this price to its own fabricating department, the price to AMC would be reduced to the same level. Defendant Dow Chemical further agreed to observe in the sale of its magnesium products a minimum price computed by adding the "fair cost" of fabrication to the price which it charged to defendant AMC, for magnesium, or failing that, to reduce the price to defendant AMC to parity with a price obtained by subtracting said "fair cost" from the actual sales price charged by Dow Chemical for magnesium products. Immediately upon the signing of the contract of June 24, 1933, defendants Alcoa, AMC, I. G. Farben and MDC abandoned the plans which they had previously formulated for the establishment of a magnesium production plant which was to be independent of the defendant Dow Chemical.

33. From the date of the consummation of the contract of June 24, 1933, continuously to the date of the presentation of this indictment, including many occasions within the three years next preceding the presentation of this indictment, numerous conferences and meetings between defendants Dow Chemical and AMC have taken place, and the said defendants, by agreement, have refrained from price competition in the sale of magnesium products and have not solicited each other's customers.

34. On or about June 24, 1933, defendants Alcoa, AMC, MDC and Dow Chemical entered into negotiations contemplating the pooling of patents owned by defendants Dow Chemical and MDC. The patents owned by defendants Dow Chemical and MDC com-

prise the great bulk of patents relating to the fabrication of magnesium products in the United States and largely dominate and control it. These negotiations culminated in an agreement among defendants Dow Chemical, AMC and MDC dated January 1, 1934, by the terms of which defendants Dow Chemical and MDC cross-licensed each other under the patents then owned and subsequently to be acquired by each relative to the fabrication of magnesium with the right granted to each to sublicense others under such patents. In the case of such sublicenses granted to persons, firms, or corporations not purchasing magnesium from his licensor, the payment of royalty by such sublicensee was mandatory; the sublicense, however, was to be royalty-free if the sublicensee purchased magnesium from his licensor. The only types of sublicense issued by the parties under this agreement have been royalty-free sublicenses, and by virtue of the terms of this agreement, defendant Dow Chemical became obligated to pay to MDC a royalty of one cent per pound on all magnesium sold by it, with certain exceptions noted in the agreement.

35. As a separate but related agreement to that of January 1, 1934, the parties agreed to use a standard form of royalty-free sublicense which would issue to all sublicensees. Such standard royalty-free sublicense provided that such sublicenses were to be effective only to the extent of the magnesium sold to the sublicensee by his licensor.

36. Defendant AMC, at all times including the three years next preceding the date of the presentation of

this indictment, has not issued sublicenses for the fabrication of magnesium products. Defendant Dow Chemical, from time to time including occasions within the three years next preceding the date of the presentation of this indictment, has refused to issue sublicenses to many persons desiring to fabricate magnesium products and has granted a limited number of sublicenses to certain other persons, using the standard form of royalty-free sublicense agreed upon between it and defendants AMC, MDC and Alcoa, as alleged in paragraph 35 above.

37. On or about May 11, 1939, defendants Dow Chemical, AMC and Alcoa agreed that a new standard form of royalty-free sublicense be used in connection with the January 1, 1934 three-party license agreement set out in paragraph 34 above. This new form of royalty-free sublicense agreement did not bear on its face any provision requiring the fabricating sublicensee to buy his requirements of magnesium from his licensor.

38. While defendant Dow Chemical did change the standard form of its sublicense agreement, it did not change its method of doing business. Defendant Dow Chemical, from the granting of its first royalty-free sublicense to the date of the presentation of this indictment, has compelled and required each prospective sublicensee, as a condition precedent to the issuance of a royalty-free sublicense, to enter into a purchase contract with defendant Dow Chemical for its requirements of magnesium.

39. Defendant Dow Chemical from time to time, including occasions within the three years next preced-

ing the date of the presentation of this indictment, by various special arrangements with its sublicensees, adopted and enforced a policy of limiting and controlling competition among its sublicensees on the one hand, and between its sublicensees and itself on the other hand, by the following devices, among others:

(a) by restricting each sublicensee to a particular type of foundry operation;

(b) by issuing lists to certain of its sublicensees of customers whom the sublicensees were prohibited from soliciting;

(c) by assigning, in effect, to some of its sublicensees exclusive areas and prohibiting other sublicensees from encroaching therein;

(d) by prohibiting its sublicensees from soliciting customers of itself or other sublicensees and from engaging in price competition of any kind.

40. To eliminate competition between defendant Dow Chemical and defendant I. G. Farben in Europe, said two defendants entered into an agreement dated September 5, 1934, whereby I. G. Farben agreed to purchase certain quantities of magnesium from defendant Dow Chemical and defendant Dow Chemical agreed that it would not otherwise export any magnesium to Europe except for a specified limited annual quantity to a designated licensee in England. By its terms, this agreement could not be terminated by either party until January 1, 1938.

41. On or about November 23, 1938, defendant AMC entered into a contract for the purchase of magnesium from defendant Dow Chemical. This agreement, effective for a period of five years after

the termination of the contract of June 24, 1933, was similar to the agreement of June 24, 1933, in terms and effect.

42. During the period of time covered by this conspiracy, defendants I. G. Farben and Alcoa have attempted to purchase other patent processes relating to the production of magnesium which appeared to have commercial possibilities, both in the United States and abroad.

43. Defendants discouraged and prevented the use in the United States of other patent processes relating to the production of magnesium, by misrepresenting the commercial value of such processes.

EFFECTS OF THE COMBINATION AND CONSPIRACY

44. The combination and conspiracy hereinbefore described, has, within the three year period next preceding the date of the presentation of this indictment had the following results:

(a) The defendants have directly, substantially, and unreasonably restrained interstate and foreign trade and commerce in the production and sale of magnesium and in the fabrication and sale of magnesium products.

(b) There is only one producer of magnesium in the United States.

(c) The price of magnesium in the United States has been maintained at artificially and unreasonably high levels.

(d) The defendant Dow Chemical has sold magnesium without the United States at prices substantially lower than its prices to domestic users.

(e) The development and use of magnesium and magnesium products on a large scale in aircraft and other industries has been restricted, retarded, and discouraged.

(f) It has been necessary, in the present period of national emergency, to undertake the construction of additional plants for the production of the magnesium required by the national defense program.

(g) There now is a serious shortage of foundry facilities available for the fabrication of magnesium products necessary for the national defense, with the result that the production of aircraft and other matériel in which the use of magnesium products is necessary has been seriously impeded and delayed.

JURISDICTION AND VENUE

45. The combination and conspiracy hereinbefore alleged has operated and has been carried out in part within the Southern District of New York. The defendants, in effectuating and carrying out said combination and conspiracy, have, within said District, performed, among others, the following acts:

(a) At various dates, including dates within the three years next preceding the date of the presentation of this indictment, the defendant corporations have held numerous meetings and conferences in the Southern District of New York relating to the effectuating and carrying out of the terms of the combination and conspiracy and contracts described herein.

(b) The negotiations leading up to the contract of October 23, 1931 were, in part, carried on in the Southern District of New York.

(c) The negotiations leading up to the contract of January 1, 1934 were, in part, carried on in the Southern District of New York.

(d) Defendants Dow Chemical, Alcoa, and AMC maintain, and have maintained throughout the three years next preceding the date of the presentation of this indictment, offices in the City of New York, within the Southern District of New York, and have carried out throughout the aforementioned period and do now carry out the distribution and sale of magnesium and fabricated magnesium products.

(e) Defendant Dow Chemical, during and throughout the three years next preceding the date of the presentation of this indictment, has discussed and negotiated, by agents and officers in this District and through its New York office within the Southern District of New York, certain royalty-free license agreements referred to in paragraphs 35 and 37 of this indictment.

(f) Sublicensees of defendant Dow Chemical throughout the three years next preceding the date of the presentation of this indictment and at the present time have distributed and sold, and distribute and sell magnesium and fabricated magnesium products in New York City, within the Southern District of New York.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants, including the corporate defendants, throughout the period aforesaid, including the three years next preceding the date of the return of this indictment, at the places and in the manner and form

aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of trade and commerce in the production and sale of magnesium and the fabrication and sale of magnesium products among the several states of the United States of America, and with foreign nations, contrary to the form of the statute of the United States of America, in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege and incorporate as if herein set forth in full, each of the allegations set forth in paragraphs 1 through 17 inclusive of Count One of this indictment.

COMBINATION AND CONSPIRACY TO MONOPOLIZE

46. Beginning on or about March 4, 1927, the defendants Dow Chemical, Alcoa, AMC, Davis, Hunt, Bennett, and the remaining defendants, and the co-conspirators on various dates thereafter, and continuing at all times thereafter up to and including the date of the presentation of this indictment, together with other persons to the Grand Jurors unknown, well knowing all the facts herein, have been engaged in a wrongful and unlawful combination and conspiracy, formed in part and carried out in part within the Southern District of New York, to monopolize the aforesaid interstate and foreign trade and commerce in magnesium and magnesium products in violation of Section 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, that is to say:

47. Beginning on or about March 4, 1927, defendants Dow Chemical, Alcoa, AMC, Davis, Hunt, Bennett, and the remaining defendants and the co-conspirators, on various dates thereafter, and continuing at all times thereafter to the date of the presentation of this indictment, together with other persons to the Grand Jurors unknown, have been continuously engaged during, and throughout the periods of time aforesaid, in an unlawful combination and conspiracy formed in part and carried out in part within the Southern District of New York:

(a) To prevent any person other than Dow Chemical from producing magnesium.

(b) To limit the production and sale of fabricated magnesium products to the defendants and the defendants' sublicensees, and to eliminate competition among these fabricators in the solicitation, obtaining and retention of customers.

(c) To pool competing patents relating to the production of magnesium and fabrication of magnesium products in order to prevent any persons other than defendants from producing magnesium and defendants and their sublicensees from fabricating magnesium products.

48. Said unlawful combination and conspiracy to monopolize has been effectuated by divers means and methods, including, among others, the following:

49. An agreement was entered into on or about March 4, 1927, between the defendants Dow Chemical, AMC

and Alcoa, to cross-license certain patents relating to the fabrication of magnesium. Dow Chemical and AMC were each given the right to issue sublicenses under these patents on condition that such sublicensee use the magnesium produced by either party, and this agreement is still in force and effect.

50. During the period from on or about March 4, 1927, to on or about August 31, 1927, defendants Dow Chemical, AMC and Alcoa negotiated an agreement, the exact terms of which are unknown to the Grand Jurors. As a result of these negotiations AMC agreed to purchase, and did purchase all of its requirements of magnesium from Dow Chemical, and AMC agreed to stop and did stop producing magnesium. At all times thereafter, up to and including the date of the presentation of this indictment, defendant AMC obtained its requirements of magnesium from defendant Dow Chemical at prices more favorable than those prices quoted other purchasers from Dow Chemical. At all times thereafter, up to and including the date of the presentation of this indictment, defendant Alcoa obtained its requirements of magnesium from defendant AMC.

51. At some time during the latter part of 1928 or the early part of 1929, the exact date being to the Grand Jurors unknown, defendant I. G. Farben entered into negotiations with defendants Dow Chemical and Alcoa with the object of entering into a joint enterprise to produce magnesium in the United States.

52. As a result of these negotiations, defendants I. G. Farben, Alcoa, and Dow Chemical agreed that a study be made of the comparative costs of producing mag-

nesium metal of Dow Chemical and I. G. Farben to ascertain whether the I. G. Farben process of producing magnesium was commercially practical in the United States. Experts were retained by defendants Dow Chemical, Alcoa, and I. G. Farben and the reports of such experts, including a report by the co-conspirator Bakken, showed that magnesium made under the I. G. Farben processes could be produced in the United States competitively with that produced under the Dow processes.

53. During the period from the latter part of 1929 to on or about March 10, 1931, negotiations were carried on between defendants Alcoa and I. G. Farben in the United States and in Europe which culminated in a memorandum agreement between these two companies which was finally embodied in a formal contract (hereinafter termed the Alig agreement) dated October 23, 1931. This contract, among other things, provided:

(a) The two companies would form a third company (subsequently organized as the defendant MDC) to be jointly controlled by them and each company would be represented on the board of directors of MDC by three of its six directors.

(b) Each company would assign its then owned and subsequently acquired patents relating to the production and fabrication of magnesium to MDC, and these patents were to be used only in the United States.

(c) MDC would grant royalty-free fabrication licenses under all fabrication patents to Alcoa and I. G. Farben.

(d) No licenses were to be granted for the production of magnesium under any patents held by MDC without the affirmative vote of a majority of all the directors of MDC.

(e) Neither of the companies would engage in the production of magnesium in the United States without offering the other party an equal participation. In no event could the production exceed 4,000 tons yearly without the consent of I. G. Farben.

54. Pursuant to the Alig agreement, the defendants Alcoa and I. G. Farben organized defendant MDC and transferred to it all of the patents (many of which were competing patents) owned by defendants Alcoa and I. G. Farben relating to the production and fabrication of magnesium.

55. Defendant Dow Chemical was informed of the negotiations leading to the Alig agreement, and approved of its consummation. During the period from about November 1931 to about April 1932, defendants Alcoa, AMC and MDC negotiated with defendant Dow Chemical for the purpose of pooling the patents of defendant Dow Chemical with those of defendant MDC and for the purpose of forming a common or joint enterprise among defendants Dow Chemical, Alcoa and I. G. Farben for the production of magnesium. Sometime in or about April 1932, these negotiations were suspended because of the refusal of defendant Dow Chemical to meet the demands of defendants Alcoa, AMC and MDC. In order to force defendant Dow Chemical to agree to the proposals advanced by the other defendants, in or about June 1932, defendant Dow Chemical

was notified that suit would be brought against it for infringement of certain of the patents of defendant MDC. Subsequently, defendant MDC instituted a suit against defendant Dow Chemical charging patent infringement. Defendants Alcoa, I. G. Farben, AMC and MDC formulated plans for the production of magnesium independently of defendant Dow Chemical.

56. In or about June 1932, negotiations were resumed between defendants Dow Chemical, AMC, Alcoa, and MDC which had as their objective the prevention of competition in the production of magnesium between defendants I. G. Farben, Alcoa, and AMC on the one hand and defendant Dow Chemical on the other, and for the purpose of controlling price competition in the sale of magnesium products. These negotiations culminated in a contract between defendants Dow Chemical and AMC, dated June 24, 1933, the terms of which are more fully hereinafter described.

57. On or about February 8, 1933, defendants Alcoa and I. G. Farben entered into a contract according to the terms of which defendant I. G. Farben was given the right to subscribe to 50% of the stock of defendant AMC. Defendants I. G. Farben and Alcoa further agreed that neither was thereafter to fabricate magnesium products in the United States independently of defendant AMC, thereby eliminating competition between themselves in the fabrication of magnesium products. In addition, the parties agreed to continue and conclude the negotiations with defendant Dow Chemical referred to in paragraph 56 hereof.

58. Because of the foreign exchange regulations of the German government, defendant I. G. Farben was

unable to pay for its 50% interest in defendant AMC and, accordingly, defendant I. G. Farben assigned to its American affiliate, defendant General Aniline, then known as the American I. G. Chemical corporation, its right to subscribe to 50% of the stock of defendant AMC. Defendant General Aniline then bought from defendant Alcoa 50% of the stock of defendant AMC at the agreed purchase price. Defendant General Aniline, at about the same time, granted to defendant I. G. Farben an option to repurchase such stock for the same amount. Thereafter, on or about September 23, 1937, defendant I. G. Farben surrendered this option in return for a payment to it of approximately \$229,000 by defendant General Aniline, but defendant I. G. Farben retained the right to receive one-half of the dividends accruing to the stock in AMC held by defendant General Aniline after certain deductions. The right of defendant I. G. Farben to participate in the profits of defendant AMC was surrendered by defendant I. G. Farben in October, 1940, upon the further payment to defendant I. G. Farben by defendant General Aniline of the sum of \$200,000. At all times since the purchase of the one-half interest in defendant AMC by defendant General Aniline, it has elected three of the six directors of defendant AMC, representing the shares of stock in that company held by defendant General Aniline.

59. The contract of June 24, 1933 referred to in paragraph 56 above, provided that AMC purchase from Dow Chemical 1,500,000 pounds of magnesium over a period of five years at a sliding scale of prices, defendant AMC being permitted to pay for the magnesium so purchased

lower prices than any other customer of defendant Dow Chemical. The same agreement required defendant Dow Chemical to charge its own fabricating department the same price which it charged defendant AMC for magnesium and provided that if Dow Chemical should lower this price to its own fabricating department, the price to AMC would be reduced to the same level. Defendant Dow Chemical further agreed to observe in the sale of its magnesium products a minimum price computed by adding the "fair cost" of fabrication to the price which it charged to defendant AMC, for magnesium, or failing that, to reduce the price to defendant AMC to parity with a price obtained by subtracting said "fair cost" from the actual sales price charged by Dow Chemical for magnesium products. Immediately upon the signing of the contract of June 24, 1933, defendants Alcoa, AMC, I. G. Farben and MDC abandoned the plans which they had previously formulated for the establishment of a magnesium production plant which was to be independent of the defendant Dow Chemical.

60. From the date of the consummation of the contract of June 24, 1933, continuously to the date of the presentation of this indictment, including many occasions within the three years next preceding the presentation of this indictment, numerous conferences and meetings between defendants Dow Chemical and AMC have taken place and the said defendants, by agreement, have refrained from price competition in the sale of magnesium products and have not solicited each other's customers.

61. On or about June 24, 1933, defendants Alcoa, AMC, MDC and Dow Chemical entered into negotiations contemplating the pooling of patents owned by defendants Dow Chemical and MDC. The patents owned by defendants Dow Chemical and MDC comprise the great bulk of patents relating to the fabrication of magnesium products in the United States and largely dominate and control it. These negotiations culminated in an agreement among defendants Dow Chemical, AMC and MDC dated January 1, 1934, by the terms of which defendants Dow Chemical and MDC cross-licensed each other under the patents then owned and subsequently to be acquired by each relative to the fabrication of magnesium with the right granted to each to sublicense others under such patents. In the case of such sublicenses granted to persons, firms, or corporations not purchasing magnesium from his licensor, the payment of royalty by such sublicensee was mandatory; the sublicense, however, was to be royalty-free if the sublicensee purchased magnesium from his licensor. The only types of sublicense issued by the parties under this agreement have been royalty-free sublicenses, and by virtue of the terms of this agreement, defendant Dow Chemical became obligated to pay to MDC a royalty of one cent per pound on all magnesium sold by it, with certain exceptions noted in the agreement.

62. As a separate but related agreement to that of January 1, 1934, the parties agreed to use a standard form of royalty-free sublicense which would issue to all sublicensees. Such standard royalty-free sub-

license provided that such sublicenses were to be effective only to the extent of the magnesium sold to the sublicensee by his licensor.

63. Defendant AMC, at all times, including the three years next preceding the date of the presentation of this indictment, has not issued sublicenses for the fabrication of magnesium products. Defendant Dow Chemical, from time to time, including occasions within the three years next preceding the date of the presentation of this indictment, has refused to issue sublicenses to many persons desiring to fabricate magnesium products and has granted a limited number of sublicenses to certain other persons, using the standard form of royalty-free sublicense agreed upon between it and defendants AMC, MDC, and Alcoa, as alleged in paragraph 62 above.

64. On or about May 11, 1939, defendants Dow Chemical, AMC and Alcoa agreed that a new standard form of royalty-free sublicense be used in connection with the January 1, 1934 three-party license agreement set out in paragraph 61 above. This new form of royalty-free sublicense agreement did not bear on its face any provision requiring the fabricating sublicensee to buy his requirements of magnesium from his licensor.

65. While defendant Dow Chemical did change the standard form of its sublicense agreement, it did not change its method of doing business. Defendant Dow Chemical, from the granting of its first royalty-free sublicense to the date of the presentation of this indictment, has compelled and required each pro-

spective sublicensee, as a condition precedent to the issuance of a royalty-free sublicense, to enter into a purchase contract with defendant Dow Chemical for its requirements of magnesium.

66. Defendant Dow Chemical, from time to time, including occasions within the three years next preceding the date of the presentation of this indictment, by various special arrangements with its sublicensees adopted and enforced a policy of limiting and controlling competition among its sublicensees on the one hand, and between its sublicensees and itself on the other hand, by the following devices, among others:

(a) by restricting each sublicensee to a particular type of foundry operation;

(b) by issuing lists to certain of its sublicensees of customers whom the sublicensees were prohibited from soliciting;

(c) by assigning, in effect, to some of its sublicensees exclusive areas and prohibiting other sublicensees from encroaching therein;

(d) by prohibiting its sublicensees from soliciting customers of itself or other sublicensees and from engaging in price competition of any kind.

67. To eliminate competition between defendant Dow Chemical and defendant I. G. Farben in Europe, said two defendants entered into an agreement dated September 5, 1934, whereby I. G. Farben agreed to purchase certain quantities of magnesium from defendant Dow Chemical and defendant Dow Chemical agreed that it would not otherwise export any magnesium to Europe except for a specified limited annual quantity

to a designated licensee in England. By its terms, this agreement could not be terminated by either party until January 1, 1938.

68. On or about November 23, 1938, defendant AMC entered into a contract for the purchase of magnesium from defendant Dow Chemical. This agreement, effective for a period of five years after the termination of the contract of June 24, 1933, was similar to the agreement of June 24, 1933, in terms and effect.

69. During the period of time covered by this conspiracy, defendants I. G. Farben and Alcoa have attempted to purchase all other patent processes relating to the production of magnesium which appeared to have commercial possibilities, both in the United States and abroad.

70. Defendants discouraged and prevented the use in the United States of other patent processes relating to the production of magnesium, by misrepresenting the commercial value of such processes.

EFFECTS OF THE COMBINATION AND CONSPIRACY

71. The combination and conspiracy hereinbefore described, has, within the three year period next preceding the date of the presentation of this indictment, had the following results:

(a) The defendants have directly, substantially, and unreasonably restrained interstate and foreign trade and commerce in the production and sale of magnesium and in the fabrication and sale of magnesium products.

(b) There is only one producer of magnesium in the United States.

(c) The price of magnesium in the United States has been maintained at artificially and unreasonably high levels.

(d) The defendant Dow Chemical has sold magnesium without the United States at prices substantially lower than its prices to domestic users.

(e) The development and use of magnesium and magnesium products on a large scale in aircraft and other industries has been restricted, retarded, and discouraged.

(f) It has been necessary, in the present period of national emergency, to undertake the construction of additional plants for the production of the magnesium required by the national defense program.

(g) There now is a serious shortage of foundry facilities available for the fabrication of magnesium products necessary for the national defense, with the result that the production of aircraft and other material in which the use of magnesium products is necessary has been seriously impeded and delayed.

JURISDICTION AND VENUE

72. The combination and conspiracy hereinbefore alleged has operated and has been carried out in part within the Southern District of New York. The defendants, in effectuating and carrying out said combination and conspiracy, have, within said District, performed, among others, the following acts:

(a) At various dates, including dates within the three years next preceding the date of the presentation of this indictment, the defendant corporations have held numerous meetings and

conferences in the Southern District of New York relating to the effectuating and carrying out of the terms of the combination and conspiracy and contracts described herein.

(b) The negotiations leading up to the contract of October 23, 1931 were, in part, carried on in the Southern District of New York.

(c) The negotiations leading up to the contract of January 1, 1934 were, in part, carried on in the Southern District of New York.

(d) Defendants Dow Chemical, Alcoa, and AMC maintain, and have maintained throughout the three years next preceding the date of the presentation of this indictment, offices in the City of New York, within the Southern District of New York, and have carried out throughout the aforementioned period and do now carry out the distribution and sale of magnesium and fabricated magnesium products.

(e) Defendant Dow Chemical, during and throughout the three years next preceding the date of the presentation of this indictment, has discussed and negotiated, by agents and officers in this District and through its New York office within the Southern District of New York, certain royalty-free license agreements referred to in paragraphs 62 and 64 of this indictment.

(f) Sublicensees of defendant Dow Chemical throughout the three years next preceding the date of the presentation of this indictment and at the present time have distributed and sold, and distribute and sell magnesium and fabricated magnesium products in New York City, within the Southern District of New York.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants, in-

cluding the corporate defendants, throughout the period aforesaid, including the three years next preceding the date of the return of this indictment, at the places and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy to monopolize trade and commerce in the production and sale of magnesium and the fabrication and sale of magnesium products among the several states of the United States of America, and with foreign nations, contrary to the form of the statute of the United States of America, in such case made and provided, and against the peace and dignity of the United States of America.

COUNT III

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege and incorporate as if herein set forth in full, each of the allegations set forth in paragraphs 1 through 17, inclusive, of Count One of this indictment.

MONOPOLY

73. The defendants, well knowing all the facts herein, have, within the United States and within the Southern District of New York, monopolized and now monopolize the production, fabrication, sale and distribution of magnesium and magnesium products, in interstate and foreign trade and commerce, in violation of Section 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, commonly known as the Sherman Act, that is to say:

74. The defendants and the co-conspirators, together with other persons to the Grand Jurors unknown, well knowing all the facts herein, have, within the United States and within the Southern District of New York, monopolized and now monopolize the production and sale of magnesium and magnesium products in interstate and foreign trade and commerce in that they have acquired and exercised complete control of the production, fabrication, distribution, and sale of magnesium and magnesium products in interstate and foreign trade and commerce, and have unlawfully excluded all others not subject to such control from engaging in the production, fabrication, distribution and sale of magnesium and magnesium products in interstate and foreign trade and commerce.

75. The defendants have acquired the aforesaid monopoly wilfully, knowingly and intentionally, by the following acts and transactions, among others:

76. An agreement was entered into on or about March 4, 1927, between the defendants Dow Chemical, AMC and Alcoa, to cross-license certain patents relating to the fabrication of magnesium. Dow Chemical and AMC were each given the right to issue sublicenses under these patents on condition that such sublicensee use the magnesium produced by either party, and this agreement is still in force and in effect.

77. During the period from on or about March 4, 1927 to on or about August 31, 1927, defendants Dow Chemical, AMC and Alcoa negotiated an agreement, the exact terms of which are unknown to the Grand Jurors. As a result of these negotiations AMC agreed

to purchase, and did purchase all of its requirements of magnesium from Dow Chemical, and AMC agreed to stop and did stop producing magnesium. At all times thereafter, up to and including the date of the presentation of this indictment, defendant AMC obtained its requirements of magnesium from defendant Dow Chemical at prices more favorable than those prices quoted other purchasers from Dow Chemical. At all times thereafter, up to and including the date of the presentation of this indictment, defendant Alcoa obtained its requirements of magnesium from defendant AMC.

78. At some time during the latter part of 1928 or the early part of 1929, the exact date being to the Grand Jurors unknown, defendant I. G. Farben entered into negotiations with defendants Dow Chemical and Alcoa with the object of entering into a joint enterprise to produce magnesium in the United States.

79. During the period from the latter part of 1929 to on or about March 10, 1931, negotiations were carried on between defendants Alcoa and I. G. Farben in the United States and in Europe which culminated in a memorandum agreement between these two companies which was finally embodied in a formal contract (hereinafter termed the Alig agreement) dated October 23, 1931. This contract, among other things, provided:

(a) The two companies would form a third company (subsequently organized as the defendant MDC) to be jointly controlled by them and each company would be represented on the

Board of Directors of MDC by three of its six directors.

(b) Each company would assign its then owned and subsequently acquired patents relating to the production and fabrication of magnesium to MDC, and these patents were to be used only in the United States.

(c) MDC would grant royalty-free fabrication licenses under all fabrication patents to Alcoa and I. G. Farben.

(d) No licenses were to be granted for the production of magnesium under any patents held by MDC without the affirmative vote of a majority of all the directors of MDC.

(e) Neither of the companies would engage in the production of magnesium in the United States without offering the other party an equal participation. In no event could the production exceed 4,000 tons yearly without the consent of I. G. Farben.

80. Pursuant to the Alig agreement, the defendants Alcoa and I. G. Farben organized defendant MDC and transferred to it all of the patents (many of which were competing patents) owned by defendants Alcoa and I. G. Farben relating to the production and fabrication of magnesium.

81. Defendant Dow Chemical was informed of the negotiations leading to the Alig agreement, and approved of its consummation. During the period from about November 1931 to about April 1932, defendants Alcoa, AMC and MDC negotiated with defendant Dow Chemical for the purpose of pooling the patents of defendant Dow Chemical with those of defendant MDC and for the purpose of forming a

common or joint enterprise among defendants Dow Chemical, Alcoa and I. G. Farben for the production of magnesium. Sometime in or about April 1932, these negotiations were suspended because of the refusal of defendant Dow Chemical to meet the demands of defendants Alcoa, AMC and MDC. In order to force defendant Dow Chemical to agree to the proposals advanced by the other defendants, in or about June 1932, defendant Dow Chemical was notified that suit would be brought against it for infringement of certain of the patents of defendant MDC. Subsequently, defendant MDC instituted a suit against defendant Dow Chemical, charging patent infringement. Defendants Alcoa, I. G. Farben, AMC and MDC formulated plans for the production of magnesium independently of defendant Dow Chemical.

82. On or about February 8, 1933, defendants Alcoa and I. G. Farben entered into a contract according to the terms of which defendant I. G. Farben was given the right to subscribe to 50% of the stock of defendant AMC. Defendants I. G. Farben and Alcoa further agreed that neither was thereafter to fabricate magnesium products in the United States independently of defendant AMC, thereby eliminating competition between themselves in the fabrication of magnesium products.

83. Because of the foreign exchange regulations of the German government, defendant I. G. Farben was unable to pay for its 50% interest in defendant AMC and, accordingly, defendant I. G. Farben assigned to

its American affiliate, defendant General Aniline, then known as the American I. G. Chemical Corporation, its right to subscribe to 50% of the stock of defendant AMC. Defendant General Aniline then bought from defendant Alcoa 50% of the stock of defendant AMC at the agreed purchase price. Defendant General Aniline, at about the same time, granted to defendant I. G. Farben an option to repurchase such stock for the same amount. Thereafter, on or about September 23, 1937, defendant I. G. Farben surrendered this option in return for a payment to it of approximately \$229,000 by defendant General Aniline, but defendant I. G. Farben retained the right to receive one-half of the dividends accruing to the stock in AMC held by defendant General Aniline after certain deductions. The right of defendant I. G. Farben to participate in the profits of defendant AMC was surrendered by defendant I. G. Farben in October 1940, upon the further payment to defendant I. G. Farben by defendant General Aniline of the sum of \$200,000. At all times since the purchase of the one-half interest in defendant AMC by defendant General Aniline, it has elected three of the six directors of defendant AMC.

84. On June 24, 1933, defendants Dow Chemical and AMC entered into a contract providing for the purchase by the latter from the former of 1,500,000 pounds of magnesium over a period of five years at a sliding scale of prices, defendant AMC being permitted to pay for the magnesium so purchased lower prices than any other customers of defendant Dow Chemical. Immediately upon the signing of the con-

tract of June 24, 1933, defendants Alcoa, AMC, I. G. Farben and MDC abandoned the plans which they had previously formulated for the establishment of a magnesium production plant which was to be independent of the defendant Dow Chemical.

85. On or about June 24, 1933, defendants Alcoa, AMC, MDC and Dow Chemical entered into negotiations contemplating the pooling of patents owned by defendants Dow Chemical and MDC. The patents owned by defendants Dow Chemical and MDC comprise the great bulk of patents relating to the fabrication of magnesium products in the United States and largely dominate and control it. These negotiations culminated in an agreement among defendants *Dow Chemical*, AMC and MDC dated January 1, 1934, by the terms of which defendants Dow Chemical and MDC cross-licensed each other under the patents then owned and subsequently to be acquired by each relative to the fabrication of magnesium with the right granted to each to sublicense others under such patents. In the case of such sublicenses granted to persons, firms, or corporations not purchasing magnesium from his licensor, the payment of royalty by such sublicensee was mandatory; the sublicense, however, was to be royalty-free if the sublicensee purchased magnesium from his licensor. The only types of sublicense issued by the parties under this agreement have been royalty-free sublicenses, and by virtue of the terms of this agreement, defendant Dow Chemical became obligated to pay to MDC a royalty of one cent per pound on all magnesium sold by it, with certain exceptions noted in the agreement.

86. As a separate but related agreement to that of January 1, 1934, the parties agreed to use a standard form of royalty-free sublicense which would issue to all sublicensees. Such standard royalty-free sublicense provided that such sublicenses were to be effective only to the extent of the magnesium sold to the sublicensee by his licensor.

87. Defendant AMC at all times, including the three years next preceding the date of the presentation of this indictment, has not issued sublicenses for the fabrication of magnesium products. Defendant Dow Chemical from time to time, including occasions within the three years next preceding the date of the presentation of this indictment, has refused to issue sublicenses to many persons desiring to fabricate magnesium products, and has granted a limited number of sublicenses to certain other persons, using the standard form of royalty-free sublicense agreed upon between it and defendants AMC, MDC, and Alcoa, as alleged in paragraph 86 above.

88. On or about May 11, 1939, defendants Dow Chemical, AMC and Alcoa agreed that a new standard form of royalty-free sublicense be used in connection with the January 1, 1934 three-party license agreement set out in paragraph 85 above. This new form of royalty-free sublicense agreement did not bear on its face any provision requiring the fabricating sublicensee to buy his requirements of magnesium from his licensor.

89. While defendant Dow Chemical did change the standard form of its sublicense agreement, it did not change its method of doing business. Defendant Dow Chemical, from the granting of its first royalty-free

sublicense to the date of the presentation of this indictment, has compelled and required each prospective sublicensee, as a condition precedent to the issuance of a royalty-free sublicense, to enter into a purchase contract with defendant Dow Chemical for its requirements of magnesium.

90. Defendant Dow Chemical from time to time, including the three years next preceding the date of the presentation of this indictment, by various special arrangements with its sublicensees adopted and enforced a policy of limiting and controlling competition among its sublicensees on the one hand, and between its sublicensees and itself on the other hand, by the following devices, among others:

(a) by restricting each sublicensee to a particular type of foundry operation;

(b) by issuing lists to certain of its sublicensees of customers whom the sublicensees were prohibited from soliciting;

(c) by assigning, in effect, to some of its sublicensees exclusive areas and prohibiting other sublicensees from encroaching therein;

(d) by prohibiting its sublicensees from soliciting customers of itself or other sublicensees and from engaging in price competition of any kind.

91. Dow Chemical and I. G. Farben entered into an agreement dated September 5, 1934 whereby I. G. Farben agreed to purchase certain quantities of magnesium from defendant Dow Chemical and defendant Dow Chemical agreed that it would not otherwise export any magnesium to Europe except for a specified limited annual quantity to a designated licensee in England. By

its terms, this agreement could not be terminated by either party until January 1, 1938.

92. On or about November 23, 1938, defendant AMC entered into a contract for the purchase of magnesium from defendant Dow Chemical. This agreement, effective for a period of five years after the termination of the contract of June 24, 1933, was similar to the agreement of June 24, 1933 in terms and effect.

EFFECTS OF THE MONOPOLY

93. The monopoly in the production, fabrication, sale and distribution of magnesium and magnesium products in interstate and foreign trade and commerce, created and maintained by the defendants herein, has, within the three year period next preceding the date of the presentation of this indictment, had the following results:

(a) Dow Chemical is the sole producer of magnesium in the United States;

(b) Dow Chemical and AMC fabricate approximately two-thirds of the magnesium products sold in the United States;

(c) Dow Chemical and AMC have licensed only a limited number of other fabricators of magnesium, who sell one-third of the magnesium products sold in the United States, and completely dominate and control the fabrication of magnesium products by these fabricators;

(d) The defendants have refused to license other prospective fabricators of magnesium products;

(e) The defendants have excluded others from the production of magnesium in the United States;

(f) The use and development of magnesium and fabricated magnesium in the United States have been restricted and stifled. In Germany over 400% more magnesium is produced for use than in the United States;

(g) There is a scarcity of supply of magnesium;

(h) Artificially and unreasonably high prices for magnesium and magnesium products have been charged and defendant Dow Chemical is enabled to sell magnesium in the United States for substantially higher prices than those charged and obtained by it in foreign countries;

(i) There is a serious shortage of foundry facilities available for the fabrication of magnesium products necessary for the National Defense.

(j) Through abuses of the patent privilege, a framework of control has resulted, enabling the defendants completely to prevent potential producers and potential fabricators of magnesium from engaging in the production and fabrication of magnesium.

JURISDICTION AND VENUE

94. The monopoly hereinbefore alleged has operated and has been carried out in part within the Southern District of New York. The defendants, in effectuating and carrying out said monopoly have, within said District, performed, among others, the following acts:

(a) At various dates, including dates within the three years next preceding the date of the presentation of this indictment, the defendant corporations have held numerous meetings and conferences in the Southern District of New

York relating to the effectuating and carrying out of the monopoly described herein.

(b) The negotiations leading up to the contract of October 23, 1931 were, in part, carried on in the Southern District of New York.

(c) The negotiations leading up to the contract of January 1, 1934 were, in part, carried on in the Southern District of New York.

(d) Defendants Dow Chemical, Alcoa, and AMC maintain, and have maintained throughout the three years next preceding the date of the presentation of this indictment, offices in the City of New York, within the Southern District of New York, and have carried out throughout the aforementioned period and do now carry out the distribution and sale of magnesium and fabricated magnesium products.

(e) Defendant Dow Chemical, during and throughout the three years next preceding the date of the presentation of this indictment, has discussed and negotiated, by agents and officers in this District and through its New York office within the Southern District of New York, certain royalty-free license agreements referred to in paragraphs 86 and 88 of this indictment.

(f) Sublicensees of defendant Dow Chemical throughout the three years next preceding the date of the presentation of this indictment and at the present time have distributed and sold, and distribute and sell magnesium and fabricated magnesium products in New York City, within the Southern District of New York.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants, including the corporate defendants, throughout

the period aforesaid, including the three years next preceding the date of the return of this indictment, at the places and in the manner and form aforesaid, unlawfully have monopolized trade and commerce in the production and sale of magnesium and the fabrication and sale of magnesium products among the several states of the United States of America, and with foreign nations, contrary to the form of the statute of the United States of America, in such case made and provided, and against the peace and dignity of the United States of America.

A true bill:

ISAAC H. B. KEATING,

Foreman.

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