

No. 109-190 (Criminal)

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

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UNITED STATES OF AMERICA

v.

AMERICAN MAGNESIUM CORPORATION, ET AL.

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INDICTMENT

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

#### PERIOD OF TIME INVOLVED

1. The combination and conspiracy hereinafter alleged was entered into during or about the year 1932 and continued at all times thereafter 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.

4. The term "base price" wherever used in this indictment refers to the price charged by The Dow Chemical Company for the sale of magnesium ingots to defendant American Magnesium Corporation.

#### THE DEFENDANTS

5. 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 metal 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 and controlled by Aluminum Company of America and General Aniline & Film Corporation (formerly American I. G. Chemical Corporation).

6. 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 plants in Midland, Michigan, and



using, distributing, and selling magnesium and magnesium products in interstate and foreign commerce.

7. 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 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. Prior to 1933, American Magnesium Corporation was a wholly owned subsidiary of Alcoa.

8. 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 now is 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. It has been for many years, and is now, engaged in the business of manufacturing magnesium and magnesium products, and aluminum products containing magnesium, at its plants in Germany, and using, distributing, and selling the same. In 1932, I. G. Farben and Alcoa organized Magnesium Development Corporation and, since that time, both I. G. Farben and Alcoa have jointly owned and controlled said company.

9. 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
Irving W. Wilson.....	Vice President of Aluminum Company of America; President of American Magnesium Corporation.	Pittsburgh, Pennsylvania.
Willard H. 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
Gustav Pistor.....	Member of Managing Board of I. G. Farbenindustrie, A. G.	Leipzig, Germany.

10. Walter H. Duisberg is not indicted but is named as a co-conspirator herein. Said Walter H. Duisberg has been a representative of defendant I. G. Farben in

this country and has served, during the time of the conspiracy, on the Board of Directors of defendant American Magnesium Corporation. Said co-conspirator also has served as President of and member of the Board of Directors of Magnesium Development Corporation, representing I. G. Farben in the affairs of this company. He also has served on the Board of Directors of General Aniline & Film Corporation, which has title to half the stock of defendant American Magnesium Corporation. During the period covered by this indictment, said co-conspirator has actively participated in the management of these enumerated corporations and has conferred in his official capacity with certain of the other defendants named herein, and has participated in, approved, authorized, ordered, or done, in whole or in part, the activities constituting the offenses hereafter charged in this indictment.

11. 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 individual defendants and the co-conspirator has actively engaged in the management of the business of the defendant 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 the co-conspirator 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.

12. Whenever it is hereafter 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 the co-conspirator 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

13. 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 thus 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 licenses (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 in-

clude 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

14. Prior to the first World War, no magnesium was produced commercially in the United States; domestic requirements were imported, principally from Germany. Between 1914 and 1918 Dow Chemical and AMC both started producing magnesium products. Three other companies in the United States also started producing magnesium products, 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.

15. From 1920 to 1927, Dow Chemical and AMC were the only domestic producers of magnesium. Prior to 1923, Dow Chemical did not engage in the fabrication of magnesium products. 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 sale of magnesium and the fabrication and sale of magnesium products, and in the sale of magnesium and magnesium products.

16. Throughout the period of time covered by this conspiracy, defendant Dow Chemical has been the only producer of magnesium in the United States. During



this same period, defendant AMC has purchased all of its requirements of magnesium from Dow Chemical. Such purchases aggregate a large percentage of Dow Chemical's sales of magnesium in the United States. Dow Chemical and AMC together fabricate and sell most of the magnesium products sold in the United States. Throughout this period, defendants Dow Chemical and AMC have had, between them, the power to control the prices of magnesium and magnesium products sold in interstate and foreign trade and commerce.

#### COMBINATION AND CONSPIRACY

17. Beginning in or about the month of August 1932, the exact date being to the Grand Jurors unknown, the defendants named herein, together with the co-conspirator and other persons to the Grand Jurors unknown, well knowing all the facts alleged in this indictment, and continuing at all times thereafter up to and including the date of the presentation of this indictment, 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 restrain 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:

18. Beginning in or about the month of August 1932, the defendants named herein, together with the co-

conspirator and other persons to the Grand Jurors unknown, the exact date being to the Grand Jurors unknown, and continuously to the date of the presentation of this indictment, 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 fix, maintain and stabilize the prices of magnesium and magnesium products in interstate and foreign commerce, by agreeing that:

(a) They would charge uniform and non-competitive prices for magnesium.

(b) Dow Chemical and AMC would not quote to each other's customers prices on magnesium products lower than those quoted by the other.

(c) Dow Chemical would not sell magnesium produced or magnesium products fabricated by it at less than a figure to be calculated in a uniform, arbitrary and artificial manner agreed upon by defendants Dow Chemical and AMC.

(d) Dow Chemical and AMC have agreed to fix, maintain and stabilize the price of all magnesium and magnesium products in interstate and foreign trade and commerce.

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

20. From in or about the month of August 1932 until on or about February 8, 1933, the exact dates being to the Grand Jurors unknown, representatives of defendants Alcoa, I. G. Farben, and AMC negotiated between and among themselves in regard to defendant

I. G. Farben's obtaining a half interest in and control of defendant AMC.

21. Following the negotiations described in paragraph 20 of this indictment, on or about February 8, 1933, defendant Alcoa and defendant I. G. Farben entered into a contract and agreement whereby:

(a) Defendant Alcoa would give defendant I. G. Farben half ownership and control of defendant AMC, in consideration for I. G. Farben's cancelling a claim of \$1,000,000 against their jointly owned subsidiary, Magnesium Development Corporation.

(b) Defendant I. G. Farben and Alcoa agreed that they would not employ their patents or technical knowledge to fabricate magnesium products, except through their jointly controlled subsidiary, defendant AMC.

(c) Defendants I. G. Farben and Alcoa agreed that they would continue certain negotiations, with defendant Dow Chemical, in regard to the purchasing by defendant AMC of its magnesium requirements from Dow Chemical and the eliminating and the controlling of price competition between Dow Chemical and AMC in fabricated magnesium products.

22. During the period set out in paragraph 20 of this indictment and continuing until on or about June 24, 1933, the exact dates being to the Grand Jurors unknown, defendants Alcoa, AMC and I. G. Farben negotiated with defendant Dow Chemical and the individual defendants connected with that company in regard to purchasing defendant AMC's total magnesium requirements from defendant Dow Chemical and in regard to

eliminating and controlling price competition in magnesium and magnesium products between defendants Dow Chemical and AMC. As a result of these negotiations, on or about June 24, 1933, the exact date being to the Grand Jurors unknown, defendants AMC and Dow Chemical executed a contract effectuating these purposes. This contract provided:

(a) Defendant AMC would purchase a minimum of 1,500,000 pounds of magnesium from defendant Dow Chemical during the five year period ending May 31, 1938.

(b) Sales were to be made by defendant Dow Chemical to defendant AMC at a "base" price which diminished as Dow Chemical's total sales of magnesium increased.

(c) Dow Chemical would charge no less than said "base" price to its own fabricating department in computing the cost of magnesium and magnesium products, or failing that, Dow Chemical would lower the "base" price to defendant AMC to parity with the price Dow Chemical charged itself.

(d) Dow Chemical would observe in the sale of magnesium and magnesium products a minimum price representing the "base" price plus the "fair cost" of fabrication or, failing that, Dow Chemical would reduce the "base" price to AMC to parity with a figure obtained by subtracting said "fair cost" from the actual sales price of such magnesium and magnesium products.

(e) Provisions were made for the methods to be used in ascertaining the "fair cost" of fabrication on an arbitrary basis, not determined by the actual cost.



(f) Provisions were made for an independent auditor to check the books of Dow Chemical and to determine said "fair cost" and "base" price and to report to defendant AMC to insure that the provisions described in subparagraphs (b), (c), (d), and (e) of this paragraph were carried out.

23. On or about November 24, 1938, the exact date being to the Grand Jurors unknown, the defendants Dow Chemical and AMC executed a new contract, which is still in effect, for the purchase of magnesium by defendant AMC from defendant Dow Chemical, effective as of the date of expiration and similar to the contract described in paragraph 22 of this indictment.

24. From on or about June 24, 1933 to the date of the presentation of this indictment, defendant AMC has purchased over 50% of the magnesium sold by defendant Dow Chemical for domestic consumption. Dow Chemical sold this magnesium to defendant AMC at the "base" price computed as set out in the contract described in paragraph 22 and reaffirmed as set out in paragraph 23 of this indictment. During this period the effect of these contracts was that Dow Chemical, to escape the necessity of having to lower said "base" price at which most of its magnesium was sold, fixed the selling prices of its magnesium and magnesium products above the minimum price determined as described in paragraphs 22 and 23 of this indictment.

25. From time to time since the effective date of the contracts described in paragraphs 22 and 23 of this indictment, including occasions within the three years

next preceding the date of the presentation of this indictment, the defendants have employed auditors to examine and audit the books of defendant Dow Chemical and report to defendant AMC in order to insure that defendant Dow Chemical was carrying out the terms of this combination and conspiracy.

26. From in or about the month of August 1932 up to and including occasions within the three years next preceding the date of the presentation of this indictment, the defendants and their representatives have held conferences and have communicated among themselves in regard to negotiating, executing, effectuating and carrying out the wrongful combination and conspiracy herein alleged, and the defendants have solicited orders, quoted prices, and made sales of magnesium and magnesium products at uniform and non-competitive prices in interstate and foreign trade and commerce under the terms of the aforesaid combination and conspiracy.

#### EFFECT OF THE COMBINATION AND CONSPIRACY

27. 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 sale of magnesium and the fabrication and sale of magnesium products.

(b) The defendants have prevented free trade and commerce by fixing, maintaining, and stabilizing the price of magnesium and magnesium products at an

artificial, arbitrary, unreasonable, and uncompetitive level.

(c) The defendants have prevented and restrained free and vigorous competition in the fabrication and sale of magnesium products and in the distribution of magnesium and magnesium products in interstate and foreign trade and commerce.

#### JURISDICTION AND VENUE

28. The combination and conspiracy hereinbefore alleged has operated and been carried out in part within the Southern District of New York. The defendants, in effectuating and carrying on 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 met in the Southern District of New York to discuss matters relating to the effectuating and carrying out of the terms of the combination and conspiracy and contracts described herein.

(b) At various dates, including dates within the three years next preceding the date of the presentation of this indictment, the defendant corporations have quoted prices and made sales of magnesium and magnesium products in the Southern District of New York according to the terms of said combination and conspiracy.

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 fabrication and sale of magnesium and 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:

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