

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

v.

INTERNATIONAL SALT COMPANY, INCORPORATED,  
EDWARD L. FULLER and HERVEY J. OSBORN,

Defendants

Civil No. \_\_\_\_\_

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief:

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Antitrust Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, commonly known as the Clayton Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 1 of the Sherman Antitrust Act, and of Section 3 of the Clayton Act.

2. The defendants maintain executive offices and transact business within the Southern District of New York. The violations of law hereinafter described have been and are being carried out in part within the Southern District of New York.

## II

### DEFENDANTS

3. The International Salt Company, Incorporated (hereinafter sometimes referred to as International Salt), a corporation organized and existing under the laws of the State of New Jersey, with its executive offices at 475 Fifth Avenue, New York, New York, is made a defendant herein. International Salt is the largest producer of salt for industrial and domestic uses in the United States.

4. Edward L. Fuller, who is and was at all times hereinafter mentioned president and a member of the board of directors of International Salt, is made a defendant herein.

5. Hervey J. Osborn, who is and was at all times hereinafter mentioned executive vice president and secretary, and a member of the board of directors of International Salt, is made a defendant herein.

## III

### NATURE OF TRADE AND COMMERCE

6. The defendant International Salt is engaged in the business of manufacturing and supplying salt for industrial, agricultural, medicinal and home purposes. It is also engaged in the manufacture and distribution of a machine known as the Lixate Process Dissolver (hereinafter sometimes referred to as the Lixator), which is manufactured or claimed to be manufactured by defendant International Salt under U. S. patent No. 2,281,140, granted on April 28, 1942 and now owned by said defendant. Defendant International Salt is also engaged in the manufacture and distribution of a machine known as the Saltomat Automatic Salt Depositor (hereinafter sometimes referred to as the Saltomat), which is manufactured or claimed to be manufactured by said defendant under U. S. patent No. 2,308,189, granted on January 12, 1943, and now owned by said defendant.

7. The aforesaid Lixator dissolves rock salt, a raw material sold by defendant International Salt and other companies, into a salt brine solution. This brine is an essential part of the manufacturing processes of many industries, as, for example, the meat packing, refrigeration, tanning, canning, dyeing, soap making, steel, laundry, etc. industries.

8. The aforesaid Saltomat is used as a dispenser of salt tablets by persons in factories, offices and homes where the heat is intense. These salt tablets, sold by defendant International Salt and other companies, serve to replace some of the salt lost by the body through perspiration because of heat.

9. Defendant International Salt manufactures the above machines and rock salt and salt tablets suitable for use therein, at plants located in New York, Michigan and Louisiana and ships in interstate commerce large quantities of its said machines, rock salt and salt tablets made in those plants to customers throughout the United States. In 1944, defendant International Salt sold and shipped in interstate commerce approximately 119,000 tons of salt having a value of approximately \$500,000 to be used in connection with the aforesaid Lixator and Saltomat. Salt of the same kind and quality as that made and sold by the defendant International Salt, which is equally suitable for use in said Lixator and Saltomat, is and has been during all the times hereinafter mentioned, made, sold and shipped in interstate commerce by other salt companies in competition with the salt and salt tablets made and sold by the defendant International Salt.

#### IV

#### UNLAWFUL CONTRACTS

10. The defendants have continuously, during all the times herein mentioned, brought about, entered into and maintained the

illegal agreements hereinafter alleged, in restraint of the above described trade and commerce in rock salt and salt tablets among the several states of the United States, in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act, all as hereinafter set forth. The said restraint and the performance of the unlawful agreements hereinafter alleged are continuing and will continue unless the relief prayed for in this complaint is granted.

11. The defendants now are and have been for the past three years engaged in making and entering into lease agreements with various persons, at present more than 750, for the use of said Lixator, on a printed form, a copy of which is attached hereto as Exhibit A, and made a part hereof as though fully set forth herein. The defendants likewise are now and have been for the past two years engaged in making and entering into lease agreements with various persons, at present approximately 100, for the use of the aforesaid Saltomat, on a printed form, a copy of which is attached hereto as Exhibit B with the same force and effect as though fully set forth herein.

12. The said form of lease agreement, Exhibit A, under which the use of the Lixator is and has been leased by the defendants to various persons as aforesaid, contains the following provisions, among others;

(a) In consideration of the rental to be paid by the lessee, defendant International Salt leases the Lixator to the named lessee for a term of five years, and thereafter from year to year at the nominal rental of \$1 per year. The said lease is of indefinite term and duration.

(b) It is mutually agreed "that the said LIXATE Process Dissolver shall be used for dissolving and converting into brine only those grades of rock salt purchased by the Lessee from the Lessor at prices and upon terms and conditions hereafter agreed upon".

(c) "If, at any time during the term of this lease a general reduction in price of grades of salt suitable for use in the said LIXATE Process Dissolver shall be made, said Lessee shall give said Lessor an opportunity to provide a competitive grade of salt at any such competitive price quoted, and in case said Lessor shall fail or be unable to do so, said Lessee, upon continued payment of the rental herein agreed upon, shall have the privilege of continued use of the said equipment with salt purchased in the open market, until such time as said Lessor shall furnish a suitable grade of salt at the said competitive price."

(d) If the Lessee "shall at any time discontinue purchasing its requirements of salt from said Lessor . . . said Lessor shall have the right, upon thirty days' written notice of intention to do so, to remove the said LIXATE Process Dissolver from the possession of said Lessee."

13. The said form of lease agreement, Exhibit B, under which the use of the Saltomat is and has been leased by the defendants to various persons as aforesaid, contains the following provisions, among others:

(a) In consideration of the yearly rental to be paid by the Lessee, defendant International Salt leases the Saltomat to the named Lessee. The said lease is of indefinite term and duration.

(b) It is mutually agreed "that the said Salt Tablet Depositor (s) shall be used only in conjunction with Salt Tablets sold or manufactured by the Lessor, and that the Lessee shall purchase from the Lessor, or its agent, Salt Tablets for use in the Salt Tablet Depositor (s) at prices and upon terms and conditions hereinafter agreed upon."

(c) The only provision in the lease agreement for any reduction in the price of lessor's salt tablets is as follows: "If, at any time during the term of this lease, a general reduction in Lessor's price of Salt Tablets suitable for use in the Depositor (s) shall be made, said Lessor shall provide said Lessee with Salt Tablets at a like price."

(d) If the Lessee should "at any time discontinue purchasing its requirements of Salt Tablets for Salt Tablet Depositor (s) from said Lessor, or its agent, . . . said Lessor shall have the right, upon ten days' written notice of intention to do so, to remove the said Salt Tablet Depositor (s) from the premises and/or possession of said Lessee."

14. The aforesaid lease agreements have been carried out in all respects and are now in full force and effect.

15. The rock salt and salt tablets made and sold by defendant International Salt for use in the aforesaid Lixator and Saltomat are unpatented articles.

16. The defendants have refused to grant licenses or other rights to other persons to manufacture or sell said Lixator or Saltomat and have refused to sell such machines or lease them free of the aforesaid restrictions.

17. In bringing about, maintaining and carrying out the aforesaid agreements with various persons, the defendants intended to, and did lessen competition in the sale of salt and salt tablets for use in said LIXATE Process Dissolver and Saltomat.

18. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did prevent other manufacturers of salt and salt tablets suitable for use in said Lixator or Saltomat from selling their products to users of said machines in competition with defendant International Salt.

19. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did prevent the users of said Lixator and Saltomat from purchasing salt and salt tablets suitable for use therein from any company except the defendant, International Salt, and on any prices or terms except those fixed by defendant, International Salt.

20. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did suppress and restrain competition in the sale of salt and salt tablets by tying the use of the said unpatented, raw materials to the use of the aforesaid patented machines, which said tying agreements are in violation of Section 1 of the Sherman Antitrust Act and Section 3 of the Clayton Act.

21. The defendants Edward L. Fuller and Harvey J. Osborn have authorized, ordered or done some or all of the acts of defendant, International Salt, constituting the offenses herein complained of.

V.

EFFECTS OF THE UNLAWFUL CONTRACTS

22. Defendants by the aforesaid restrictive leases have substantially lessened competition in the sale of salt, rock salt and salt tablets to the aforesaid Lessees of Lixators and Saltomats. In 1944 the defendant, International Salt, sold approximately 119,000 tons of salt having a value of approximately \$500,000 for use in said machines and by the aforesaid restrictive leases, the defendants have prevented all competition in the sale of salt for such use.

23. The illegal practices herein described have continued during the period of time herein mentioned and are continuing.

24. The effects of the said practices have not been dissipated but are continuing. Such effects will continue until competitive supply of salt to the aforesaid Lessees is restored and defendant's monopoly thereof brought to an end.

25. Lessees of the aforesaid machinery have already paid to defendant, in the form of initial rental, most if not all of the

reasonable cash value of said machinery, excluding from valuation thereof returns to defendants from the supply of salt to the Lessees. The said Lessees have been led to rely upon possession of the said machinery in the conduct of their business, which said machinery was made available to them in return for such initial rentals and in return for giving to defendant a monopoly in supply of salt to such Lessees. The effects of defendant's improper practices and its monopolistic position supported thereby would be aggravated if defendant should now remove all machinery from possession of said Lessees or should compel them to pay a second time the value thereof, or if the patents used by defendant to support its monopoly should, until competitive conditions are restored, be enforced against other consumers of salt who are not now Lessees from defendant.

PRAYER

WHEREFORE, Plaintiff demands judgment as follows:

- (1) That the aforesaid form lease agreements be adjudged and decreed unlawful and in violation of the Sherman Antitrust Act and the Clayton Act;
- (2) That observances of the aforesaid tying clause in the form lease agreements alleged be perpetually enjoined;
- (3) That the defendants and the officers, directors, agents, representatives of, and all persons and corporations acting or claiming to act on behalf of defendant International Salt, be perpetually enjoined from participating in, maintaining or carrying out the restrictions in the aforesaid form lease agreements, or from reviving or renewing the same, or from granting or claiming any rights giving effect thereto;
- (4) That defendant International Salt, its officers, directors, agents, representatives and all persons and corporations acting or claiming to act on its behalf, be required to lease or sell to present Lessees the machines now under lease to them at reasonable rental or price, with credit to each Lessee for all amounts already paid by it



for use of the machinery in excess of the reasonable cash value of the rental thereof and without attributing any value to the patents or to the supply of salt for use with such machinery;

(5) That the defendant International Salt, its officers, directors, agents, representatives, and all persons acting or claiming to act on behalf of International Salt, be enjoined from instituting or maintaining any action or other legal proceedings for the infringement of the patents hereinbefore referred to.

(6) That pursuant to Section 5 of the Sherman Antitrust Act, an order be made and entered herein requiring such of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant and directing the marshals of the districts in which they severally reside to serve summons upon them;

(7) That plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises and that plaintiff recover the costs of this suit.

Dated: New York, New York

July 26, 1945.

/s/ Tom C. Clark  
TOM C. CLARK  
Attorney General

/s/ Maurice Godin  
MAURICE GODIN  
Special Attorney

/s/ Wendell Berge  
WENDELL BERGE  
Assistant Attorney General

/s/ Herbert A. Berman  
HERBERT A. BERMAN  
Special Assistant to the Attorney General

/s/ Lawrence S. Apsey  
LAWRENCE S. APSEY  
Special Assistant to the Attorney General

/s/ John F. X. McGohey  
JOHN F. X. MCGOHEY  
United States Attorney

LEASE

EXHIBIT "A"

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
between International Salt Company, Inc., of Scranton, Pa., hereinafter  
called the Lessor, and \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the sum \_\_\_\_\_  
Dollars, (\$ \_\_\_\_\_) per year, payable yearly in advance for five  
years, said Lessor hereby leases to said Lessee one \_\_\_\_\_  
inch diameter LIXATE\* Process Dissolver. After expiration of the  
said five year period the rental to be paid by said Lessee shall  
be at the rate of One Dollar (\$1.00) per year.

It is mutually agreed the transportation charges on the LIXATE\*  
Process Dissolver from Detroit, Michigan, to destination are for  
the Lessee's account and are in addition to the rental basis mentioned  
herein.

It is further mutually agreed that the said LIXATE\* Process  
Dissolver shall be installed by and at the expense of said Lessee  
and shall be maintained and kept in repair during the term of this  
lease by and at the expense of said Lessee; that the said LIXATE\*  
Process Dissolver shall be used for dissolving and converting into  
brine only those grades of rock salt purchased by the Lessee from  
the Lessor at prices and upon terms and conditions hereafter agreed  
upon, PROVIDED:

If at any time during the term of this lease a general reduction  
in price of grades of salt suitable for use in the said LIXATE\* Process  
Dissolver shall be made, said Lessee shall give said Lessor an oppor-

tunity to provide a competitive grade of salt at any such competitive price quoted, and in case said Lessor shall fail or be unable to do so, said Lessee, upon continued payment of the rental herein agreed upon, shall have the privilege of continued use of the said equipment with salt purchased in the open market, until such time as said Lessor shall furnish a suitable grade of salt at the said competitive price.

It is further mutually agreed that the said LIXATE\* Process Dissolver is and shall continue to be the exclusive property of said Lessor and can not be sold, loaned or otherwise transferred to any other person or corporation without the written consent of said Lessor; that should said Lessee fail to pay promptly the aforesaid rental, or shall at any time discontinue purchasing its requirements of salt from said Lessor, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon thirty days' written notice of intention to do so, to remove the said LIXATE\* Process Dissolver from the possession of said Lessee.

In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

WITHOUT HOPPER

WITH HOPPER

INTERNATIONAL SALT COMPANY, INC., Lessor

BY \_\_\_\_\_

\_\_\_\_\_, Lessee

BY \_\_\_\_\_

INTERNATIONAL SALT COMPANY,  
Incorporated.

SCRANTON, PA.

LEASE

Memorandum of Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_ by and between INTERNATIONAL SALT COMPANY, INC., a corporation  
of the State of New Jersey (hereinafter called the Lessor), and \_\_\_\_\_

\_\_\_\_\_  
(hereinafter called the Lessee):

WITNESSETH: That for and in consideration of the sum of \_\_\_\_\_  
Dollars, (\$ \_\_\_\_\_) per year, payable yearly in advance, for one year  
or part thereof, said Lessor hereby leases to said Lessee Saltomat  
Automatic Salt Tablet Depositor(s), described as follows:

It is mutually agreed that the said Salt Tablet Depositor(s) is (are)  
to be delivered F.O.B. Lessee's Railroad Station, charges prepaid.

It is further mutually agreed that the said Salt Tablet Depositor(s)  
shall be installed and maintained in good condition during the term  
of this lease; that the said Salt Tablet Depositor(s) shall be used  
only in conjunction with Salt Tablets sold or manufactured by the  
Lessor, and that the Lessee shall purchase from the Lessor, or its  
agent, Salt Tablets for use in the Salt Tablet Depositor(s) at prices  
and upon terms and conditions hereinafter agreed upon, Provided:

If, at any time during the term of this lease, a general reduction  
in Lessor's price of Salt Tablets suitable for use in the Depositor(s)  
shall be made, said Lessor shall provide said Lessee with Salt Tablets  
at a like price.

It is further mutually agreed that Lessor shall be under no liability  
to anyone for injury resulting from said machine or the use thereof  
while it is in Lessee's custody or possession, and the Lessee agrees  
to hold Lessor harmless from any such claim of liability and all  
expense resulting therefrom or in connection therewith; that the

said Salt Tablet Depositor(s) is (are) and shall continue to be the exclusive property of said Lessor and cannot be sold, loaned or otherwise transferred to any person or corporation without the written consent of said Lessor; that should Lessee fail to pay promptly the aforesaid rental, or at any time discontinue purchasing its requirements of Salt Tablets for said Salt Tablet Depositor(s) from said Lessor, or its agent, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon ten days' written notice of intention to do so, to remove the said Salt Tablet Depositor(s) from the premises and/or possession of said Lessee.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

INTERNATIONAL SALT COMPANY, INC., Lessor

BY \_\_\_\_\_

BY \_\_\_\_\_ Lessee