

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 GETCHELL BROS., INC., a)
 Maine corporation with offices)
 in Brewer, Penobscot County,)
 Maine,)
)
 WILLARD FARNHAM, an individual)
 residing in)
 Penobscot County, Maine,)
)
 F.J. O'HARA & SONS, INC.,)
 a Maine corporation with)
 offices in Rockland, Knox)
 County, Maine, and)
)
 FRANCIS J. O'HARA, II, an)
 individual residing in)
 Camden, Knox County, Maine)
)
 Defendants)

CONSENT DECREE OF
GETCHELL BROS., INC.
and WILLARD FARNHAM

Plaintiff, State of Maine, having filed its Complaint on September 14, 1989, and Plaintiff and Defendants Getchell Bros., Inc. and Willard Farnham (hereinafter referred to as Defendants) having consented to the entry of this Consent Decree without trial or adjudication of any issue of any fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue; now, therefore, before the taking of any testimony and

without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

I. DEFINITIONS

A. Wholesale ice business. For purposes of this Consent Decree, the term "wholesale ice business" shall mean any person who engages in the regular and continuous sale of bulk or packaged ice.

B. Bulk ice. For purposes of this Consent Decree, the term "bulk ice" shall mean ice sold in any form, including cubes, fragments or blocks, to the ultimate end user but not including users who purchase ice at retail establishments for personal, household or family use.

C. Packaged ice. For purposes of this Consent Decree, the term "packaged ice" shall mean ice sold in any form, including cubes, fragments or blocks, to a retail business which then sells that ice to the ultimate end user for personal, household or family use.

D. Chain stores. For purposes of this Consent Decree, the term "chain stores" shall mean two or more retail establishments such as supermarkets, convenience stores or drug stores operated by the same person.

II. JURISDICTION

This Court has jurisdiction of the subject matter of this action.

III. RELIEF

A. Injunctions

1. Defendants, their agents, employees or other persons acting for them or under their control, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from soliciting, entering into, or engaging in any contract, combination or conspiracy with any competing wholesale ice business to:

a. refrain from soliciting particular customers for the sale of packaged or bulk ice;

b. divide or allocate the geographic areas in which Defendants or any competing wholesale ice business will sell packaged or bulk ice; and

c. divide or allocate the customers to whom Defendants or any competing wholesale ice business will sell packaged or bulk ice.

Nothing in this paragraph shall prohibit Defendants from establishing otherwise lawful distributorship arrangements for the sale of packaged or bulk ice.

2. Defendants, their agents, employees or other persons acting for them or under their control, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from entering into any agreement or contract with Defendants F.J. O'Hara & Sons, Inc. and Francis J. O'Hara, II with respect to the sale of packaged or bulk ice to chain stores within the State of Maine. The permanent injunction ordered by this

paragraph A.2. shall become effective 180 days after the date this Consent Decree is entered by the Superior Court and shall expire three years thereafter.

B. Penalties

1. Defendant Getchell Bros., Inc. shall pay to the State of Maine a civil penalty in the amount of \$30,000 pursuant to 10 M.R.S.A. § 1104 (Supp. 1988).

2. Defendant Willard Farnham shall pay to the State of Maine a civil penalty in the amount of \$5,000 pursuant to 10 M.R.S.A. § 1104 (Supp. 1988).

C. Costs

Defendants shall pay to the State of Maine the amount of \$2,925 as reimbursement for investigative costs and costs of suit pursuant to 5 M.R.S.A. § 209 (Supp. 1988).

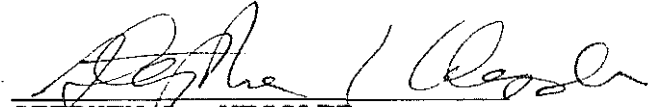
IV. RETENTION OF JURISDICTION

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

Consented to on behalf of the
State of Maine by:

JAMES E. TIERNEY
Attorney General

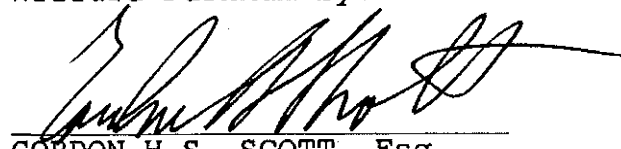
DATED: 9/14/89


STEPHEN L. WESSLER
Deputy Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

DATED:

Consented to on behalf of Defendants
Getchell Bros., Inc. and
Willard Farnham by:


DATED: 9/14/89


GORDON H.S. SCOTT, Esq.
Counsel for Defendants
Eaton, Peabody, Bradford & Veague
Two Central Plaza
Augusta, Maine 04330
207-622-3747

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and FRANCIS J. O'HARA, II

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2. Defendant Francis J. O'Hara, II shall pay to the State of Maine a civil penalty in the amount of \$5,000 pursuant to 10 M.R.S.A. § 1104 (Supp. 1988).

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Consented to on behalf of the
State of Maine by:

JAMES E. TIERNEY
Attorney General

DATED:

9/14/89



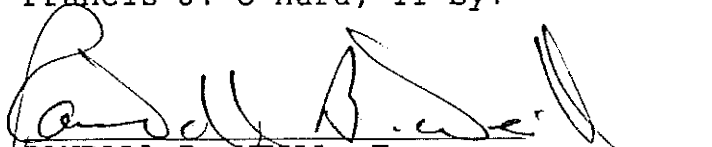
STEPHEN L. WESSLER
Deputy Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

DATED:

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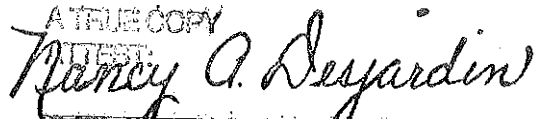
RANDALL B. WEILL, Esq.
Counsel for Defendants
Flaherty, Beliveau & Pachios
443 Congress St.
Portland, Maine 04101
207-775-5831

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JUSTICE, SUPERIOR COURT

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paragraph A.2. shall become effective 180 days after the date this Consent Decree is entered by the Superior Court and shall expire three years thereafter.

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Consented to on behalf of the
State of Maine by:

JAMES E. TIERNEY
Attorney General

DATED: 9/14/89



STEPHEN L. WESSLER
Deputy Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

DATED:

Consented to on behalf of Defendants
Getchell Bros., Inc. and
Willard Farnham by:


DATED: 9/14/89

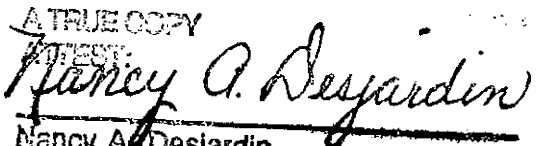


GORDON H.S. SCOTT, Esq.
Counsel for Defendants
Eaton, Peabody, Bradford & Veague
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It is hereby ORDERED and DECREED as set forth above.

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JUSTICE, SUPERIOR COURT

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STATE OF MAINE
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 FRANCIS J. O'HARA, II, an)
 individual residing in)
 Camden, Knox County, Maine)
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 Defendants)

COMPLAINT
(Request for Permanent
Injunction and Civil Penalties)

REC'D & FILED
NANCY A. DESJARDIN

SEP 14 1989

CLERK OF COURTS
KENNEBEC COUNTY

I. INTRODUCTION

1. This is an action to enjoin Defendants from engaging in unreasonable restraints of trade and unfair methods of competition in the packaged ice industry within the State of Maine and to assess civil penalties for such conduct.

II. JURISDICTION AND PARTIES

2. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 152 (Supp. 1988), 5 M.R.S.A. § 209 (Supp. 1988), and 10 M.R.S.A. § 1104 (Supp. 1988).

3. The State of Maine, by and through its Attorney General, brings this action seeking injunctive relief and civil penalties for anticompetitive conduct of the Defendants in the operation of packaged ice businesses within this State.

4. Defendant Getchell Bros., Inc. is a Maine corporation with offices in Brewer, Penobscot County, Maine. Defendant Getchell Bros., Inc. manufactures and sells packaged ice in the State of Maine.

5. Willard Farnham, an individual residing in Penobscot County, Maine, is the president of Getchell Bros., Inc. Defendant Farnham has directed and controlled the conduct of Getchell Bros., Inc. as set forth in this Complaint.

6. F.J. O'Hara & Sons, Inc. is a Maine corporation with offices in Rockland, Knox County, Maine. Defendant F.J. O'Hara & Sons, Inc. manufactures and sells packaged ice within the State.

7. Defendant Francis J. O'Hara, II, an individual residing in Camden, Knox County, Maine, is the president of F.J. O'Hara & Sons, Inc. Defendant O'Hara has directed and controlled the conduct of Defendant F.J. O'Hara & Sons, Inc. as set forth in this Complaint.

III. NATURE OF TRADE AND COMMERCE

8. Ice companies manufacture and distribute ice in a variety of shapes, sizes and forms falling into two general categories: packaged ice and bulk ice. "Packaged ice" is sold in five to ten pound plastic bags which are placed into refrigerated boxes outside of retail establishments. The refrigerated boxes are known in the industry as "merchandisers." Ice companies generally provide the merchandisers to retail accounts, such as supermarkets, convenience stores, marinas and campgrounds. Packaged ice is sold in two forms: cubes and blocks.

9. The term "bulk ice" refers to large quantities of ice purchased by businesses for their own use rather than for resale to consumers. One of the major purchasers of bulk ice in Maine are fishing boats.

10. Defendant F.J. O'Hara & Sons, Inc. and Defendant Getchell Bros., Inc. manufacture and distribute both packaged and bulk ice in the State of Maine.

11. Defendant F.J. O'Hara & Sons, Inc. and Defendant Getchell Bros., Inc. are the two largest ice companies within the State of Maine.

IV. FIRST CAUSE OF ACTION:

AGREEMENT TO DIVIDE TERRITORIES

12. Paragraphs 1 through 11 are incorporated by reference into this first cause of action.

13. Beginning in October, 1983 and continuing until the present, the Defendants have engaged in a continuing combination and conspiracy, the substantial terms of which were, through agreement, understanding and concerted action to divide and allocate among themselves the geographical areas within the State of Maine in which said Defendants would engage in the sale of packaged ice.

14. As part of the combination and conspiracy described in the preceding paragraph, the Defendants have jointly sold packaged ice to chain store customers.

15. For the purpose of effectuating the combination and conspiracy described in this First Cause of Action, the Defendants did those things which they combined and conspired to do.

16. Defendants' actions have had and continue to have the effect of depriving Defendants' customers of the benefits of free and open competition

17. Defendants' conduct as described in this First Cause of Action constitutes a contract, combination or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

V. SECOND CAUSE OF ACTION: AGREEMENT

NOT TO SOLICIT CUSTOMERS

18. Paragraphs 1 through 16 are incorporated by reference into the second cause of action.

19. Beginning in October, 1983 and continuing to the present, the Defendants have engaged in a continuing combination and conspiracy, the substantial terms of which were, through agreement, understanding and concerted action to refrain from soliciting each other's customers.

20. For the purpose of effectuating the combination and conspiracy described in the preceding paragraph, the Defendants did those things which they combined and conspired to do.

21. Defendants' actions have had and continue to have the effect of depriving Defendants' customers of the benefits of free and open competition in the purchase of packaged ice.

22. Defendants' conduct as described in this Second Cause of Action constitutes a contract, combination or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

WHEREFORE, Plaintiff State of Maine respectfully requests that this Court:

1. Declare that the conduct of Defendants as set forth in this Complaint constitutes violations of 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).

2. Permanently enjoin Defendants, their agents, employees, assigns, or other persons acting for them or under their control, from entering into or continuing in any combination or conspiracy with a competing firm, or soliciting any competing firm to:

- a. Refrain from soliciting particular customers; and
- b. Divide or allocate the geographic areas in which Defendants or any other business will sell ice.

3. Permanently enjoin Defendants, their agents, employees, assigns or other persons acting for them or under their control, from entering into or continuing in any combination or conspiracy with each other to jointly service any accounts, including chain store accounts.


4. Order each Defendant pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1988) to pay a civil penalty for each course of conduct constituting a violation of 10 M.R.S.A. § 1101 (1980).

5. Order the Defendants to pay the Department of the Attorney General for the costs of the investigation of this matter and the costs of suit.

6. Grant such other relief as the court deems just and proper.

DATED: 9/14/89

JAMES E. TIERNEY
Attorney General


~~STEPHEN L. WESSLER~~
Deputy Attorney General
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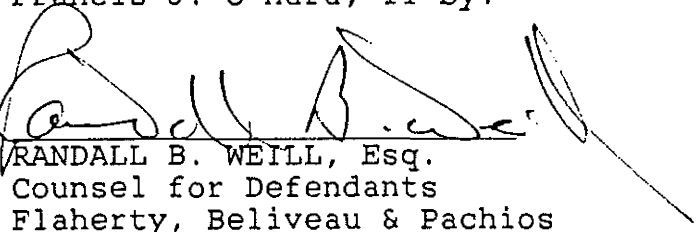

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RANDALL B. WEILL, Esq.
Counsel for Defendants
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