

**STATE OF MAINE
KENNEBEC, ss.**

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO.**

STATE OF MAINE,

Plaintiff

v.

K+S AKTIENGESELLSCHAFT,

and

INTERNATIONAL SALT COMPANY, LLC,

Defendants

**COMPLAINT
(Injunctive Relief Requested)**

INTRODUCTION

This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S. §§ 1101, 1102-A, 1104 and 5 M.R.S. § 207, seeking injunctive relief to remedy and prevent adverse effects on competition which may result from the proposed acquisition of the whole of the assets of Morton International, Inc. ("Morton"), a subsidiary of The Dow Chemical Company ("Dow"), by K+S Aktiengesellschaft ("K+S"), the parent of International Salt Company, LLC ("ISCO").

I. PARTIES

1. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Office of the Attorney General, is charged by statute with the enforcement of the antitrust laws, including 10 M.R.S. §§ 1101, 1102, 1102-A, 1104, and 5 M.R.S. § 207.
2. Defendant K+S is a German stock corporation, organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Bertha-von-Suttner Str. 7, 34131 Kassel, Germany.

3. Defendant ISCO is a Delaware limited liability company, existing, and doing business under and by virtue of the laws of the United States as a wholly-owned subsidiary of K+S, with its offices and principal place of business located at 655 Northern Boulevard, Clarks Summit, Pennsylvania 18411.
4. K+S is, and at all relevant times herein has been, engaged in "commerce" for purposes of 10 M.R.S. § 1102-A and 5 M.R.S. § 207.
5. ISCO is, and at all relevant times herein has been, engaged in "commerce" for purposes of 10 M.R.S. § 1102-A and 5 M.R.S. § 207.

II. JURISDICTION & VENUE

6. This Court has jurisdiction of this action pursuant to 4 M.R.S. § 105, 10 M.R.S. § 1104, 5 M.R.S. § 209 and 14 M.R.S. § 6051(13).
7. Venue is proper in this Court pursuant to 14 M.R.S. § 501 and 5 M.R.S. § 209.

III. THE PROPOSED TRANSACTION

8. Pursuant to a Stock Purchase Agreement dated April 1, 2009 (the "Agreement"), K+S proposes to acquire Morton, from Dow, for approximately \$1.675 billion (the "Acquisition").

IV. THE RELEVANT MARKETS

9. The relevant product market in which to analyze the effects of the Acquisition is the sale and delivery of bulk de-icing salt.
10. The relevant geographic area within which to analyze the effects of the Acquisition is the state of Maine.

V. STRUCTURE OF THE MARKET

11. The market for the sale and delivery of bulk de-icing salt to customers in Maine is highly concentrated. Post acquisition, a combined ISCO and Morton will have a market share in excess of 70 percent in the state of Maine.
12. The post-merger Herfindahl-Hirschman Index ("HHI"), an index employed by the federal antitrust enforcement agencies to measure market concentration (as reflected in the U.S. Department of Justice and Federal Trade Commission *Horizontal Merger*

Guidelines), is 5,142 and the acquisition will increase HHI levels by 1,914. These market concentration levels far exceed the thresholds set out in the *Horizontal Merger Guidelines* and thus create a presumption that the proposed merger will create or enhance market power.

13. ISCO and Morton are actual and substantial competitors in the relevant market. They are two of a small number of firms in the relevant market and are the principal bidders for the sale and delivery of bulk de-icing salt to customers in the state of Maine. The percentage of bids won by ISCO and Morton combined for major state and municipal government contracts exceeds 70 percent during each of the last three years.

VI. ENTRY CONDITIONS

14. Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition as set forth in Paragraph 15 below. Entry into the relevant market is a difficult process because of, among other things, the lack of acceptable stockpile space along the coast of Maine upon which to store bulk de-icing road salt. As a result, new entry into the relevant market sufficient to achieve a significant market impact within two years is unlikely.

VII. EFFECTS OF THE ACQUISITION

15. The effect of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the relevant market in violation of 10 M.R.S. § 1102-A, in the following ways, among others:
 - (a) by eliminating actual, direct, and substantial competition between ISCO and Morton in the market for the sale and delivery of bulk de-icing salt in Maine;
 - (b) by increasing the ability of ISCO to raise prices unilaterally in the market for the sale and delivery of bulk de-icing salt in Maine; and
 - (c) by increasing the likelihood of coordinated interaction among ISCO and the few remaining firms in the market for the sale and delivery of bulk de-icing salt in Maine.

VII. CAUSE OF ACTION

Count 1

Violation of Monopolies & Profiteering Law

1. The Agreement described in Paragraph 8 constitutes a contract in restraint of trade or commerce in violation of 10 M.R.S. § 1101.

Count 2

Violation of Monopolies & Profiteering Law

2. The effect of the Acquisition described in Paragraph 8, if consummated, may be to substantially lessen competition or tend to create a monopoly in violation of 10 M.R.S. § 1102-A.

Count 3

Violation of Unfair Trade Practice Act

3. The Acquisition described in Paragraph 8, if consummated, would constitute an unfair method of competition in the conduct of trade or commerce in violation of 5 M.R.S. § 207.

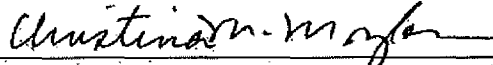
VII. REQUEST FOR RELIEF

WHEREFORE, the State of Maine requests that this Court:

- A. Declare that the Agreement described in Paragraph 8 constitutes a violation of 10 M.R.S. § 1101;
- B. Declare that the Acquisition described in Paragraph 8, if consummated, would constitute a violation of 10 M.R.S. § 1102-A;
- C. Declare that the Acquisition described in Paragraph 8, if consummated, would constitute a violation of 5 M.R.S. § 207;
- D. Permanently enjoin the Defendants from consummating the Acquisition described in Paragraph 8;
- E. Award the Attorney General his costs of investigation, costs of suit and reasonable attorney fees; and
- F. Award such further relief as the Court deems just and proper.

Dated at Augusta, Maine this 26th day of October, 2009.

JANET T. MILLS
Attorney General


CHRISTINA M. MOYLAN (Maine Bar No. 7095)
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8838

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-09-291

STATE OF MAINE,)
)
) Plaintiff)
)
) v.)
)
) K+S AKTIENGESELLSCHAFT,)
)
) and)
)
) INTERNATIONAL SALT COMPANY, LLC,)
)
) Defendants)

CONSENT JUDGMENT

WHEREAS, K+S Aktiengesellschaft ("K+S"), the parent of International Salt Company, LLC ("ISCO") desires to acquire the whole of the assets of Morton International, Inc. ("Morton"), a subsidiary of The Dow Chemical Company ("Dow"); and

WHEREAS, the State of Maine, by and through its Attorney General, filed the Complaint herein alleging violations of 10 M.R.S. §§ 1101, 1102, 1102-A, 1104, and 5 M.R.S. § 207, seeking injunctive relief to remedy and prevent potential adverse effects on competition which may result from the proposed acquisition, on _____, 2009; and

WHEREAS, the parties have consented to the entry of this Judgment for the purposes of settlement only, without this Judgment constituting evidence against or any admission by any party, and without trial of any issue of fact or law, and without this Judgment constituting any admission of liability or wrongdoing by Defendants or any other party, and with the understanding that Defendants' position is that they have at all times been in compliance with all applicable laws, and with the understanding that by entering into this Judgment, Defendants do not agree or concede that the claims

or allegations asserted by the State have merit, except that the Defendants admit to this Court's jurisdiction;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED and DECREED as follows:

I.

IT IS ORDERED that this Court has jurisdiction of the subject matter of this action and over the Defendants. The Complaint states a claim upon which relief can be granted against the Defendants under 10 M.R.S. § 1102-A and 1104.

II.

IT IS FURTHER ORDERED that, as used in this Judgment, the following definitions shall apply:

- A. "Acquisition" means the acquisition of Morton International, Inc., a subsidiary of Dow Chemical Company, by K+S.
- B. "Commission" means the Federal Trade Commission.
- C. "Commission-approved Acquirer" means the acquirer approved by the Commission pursuant to Paragraph III. of this Judgment. If approved by the Commission, "Commission-approved Acquirer" means Eastern.
- D. "Customers" means the State of Maine Department of Transportation Region 1 ("Maine DOT Region 1") and Greater Portland Council of Governments ("GPCOG").
- E. "Defendants" means K+S and ISCO, individually and collectively.
- F. "Deicing Salt" means salt (sodium chloride) used to melt snow and ice on roads and highways.
- G. "Divestiture Agreement" means the agreements, licenses, assignments, and all other agreements entered into between the Commission-approved Acquirer and the Defendants and approved by the Commission pursuant to Paragraph III. of this Judgment; if approved by the Commission, "Divestiture Agreement" includes the Eastern Divestiture Agreement.
- H. "Divestiture Assets" means the assets required by this Judgment to be divested and includes all of the following:

1. Maine Divestiture Assets, and
 2. Searsport Stockpile Space.
- I. "Eastern" means Eastern Salt Company, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 134 Middle Street, Suite 210, Lowell, MA 01852.
- J. "Eastern Divestiture Agreement" means the "Asset Purchase Agreement (Maine)" (including all exhibits, appendices, and annexes) executed by Eastern and ISCO on September 10, 2009, and attached to this Judgment as confidential appendix A.
- K. "K+S" means K+S Aktiengesellschaft, its directors, officers, employees, agents, representatives, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by K+S, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- L. "ISCO" means International Salt Company, LLC.
- M. "Maine Book of Business" means all rights to contracts between Defendant ISCO and the State of Maine Department of Transportation Region 1 ("Maine DOT Region 1") requiring delivery of Deicing Salt, and between Defendant ISCO and Greater Portland Council of Governments ("GPCOG"), requiring delivery of untreated Deicing Salt, based on awarded volumes totaling approximately 100,000 tons of Deicing Salt in the state of Maine for the period beginning in the winter season of 2009 and ending in the spring of 2010, approved by the appropriate governmental entities in the state; *provided, however*, that for purposes of the Eastern Divestiture Agreement that is referenced and attached to this Judgment, "Maine Book of Business" means the Customer contracts as described in Disclosure Schedule 4.03(a) of that agreement. "Maine Book of Business" includes all books, records, and other information necessary to allow Eastern (or another Acquirer of the Maine Divestiture Assets approved by the Maine Attorney General) to perform under the included contracts but shall not include any of Defendant's historical information (bid, cost, or pricing) relating to this or any other contract.
- N. "Maine Divestiture Assets" means:
1. Maine Stockpile Space,
 2. Maine Book of Business, and
 3. Other Services.
- O. "Maine Stockpile Space" means access to at least 40,000 square feet of contiguous stockpile space with a capacity of approximately 40,000 tons located at the Portland Terminal for a period at least through April 30, 2012.
- P. "McCabe" means McCabe Bait Co., Inc., a company providing general freight trucking and Other Services, located at 136 North St., Kennebunk, ME 04046.

- Q. "Other Services" means all services provided in connection with Deicing Salt after the Deicing Salt has been transported by ship to the port, including but not limited to offloading the Deicing Salt from vessels, stevedoring, stockpiling or building the stockpile, transporting Deicing Salt from the vessel to the stockpile and from the stockpile to the ultimate Customer, drayage of the product to the stockpile, wharfage, and scaling or weighing trucks.
- R. "Portland Terminal" means the terminal located at 59 Main Street, South Portland, ME, owned and operated by Sprague.
- S. "FTC Order means" the Decision and Order and Agreement Containing Consent Order approved by the FTC on September 25, 2009, and submitted for public comment for the period through October 26, 2009.
- T. "Searsport Stockpile Space" means access to approximately 2.75 acres of contiguous stockpile space with a capacity of approximately 90,000 tons located at the Searsport Terminal for a period at least through April 30, 2011.
- U. "Searsport Terminal" means the terminal located at Mack Point – Trundy Road, Searsport, ME 04974, owned and operated by Sprague.
- V. "Sprague" means Sprague Energy Corp, headquartered in Portsmouth, New Hampshire, which provides space for Deicing Salt and Other Services.
- W. "Stockpile" means a pile of salt at a storage terminal.
- X. "Third Party" means an entity other than Defendants or the Commission-approved Acquirer, including but not limited to the Maine Department of Transportation, the Greater Portland Council of Governments, Sprague and McCabe.

III.

IT IS FURTHER ORDERED that:

- A. By no later than twenty (20) days after the Acquisition occurs, the Defendants shall divest the Maine Divestiture Assets to Eastern pursuant to and in accordance with the Eastern Divestiture Agreement, absolutely and in good faith, and at no minimum price; *provided, however*, that if Defendants have divested the Maine Divestiture Assets to Eastern prior to the date the FTC Order becomes final and if, at the time the Commission determines to make the FTC Order final:
 - 1. the Commission determines and notifies Defendants that Eastern is not an acceptable acquirer of the Maine Divestiture Assets, then Defendants shall immediately rescind the transaction with Eastern and shall divest the Maine Divestiture Assets no later than six (6) months from the date the FTC Order

- becomes final, absolutely and in good faith, at no minimum price, to an Acquirer approved by the Maine Attorney General and only in a manner that receives the prior approval of the Maine Attorney General;
2. the Commission determines and notifies the Defendants that the manner in which the divestiture was accomplished is not acceptable, the Maine Attorney General may direct the Defendants to effect such modifications to the manner of divesting the Maine Divestiture Assets to Eastern (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Judgment.
- B. If Defendants have divested the Maine Divestiture Assets to Eastern (or another Acquirer approved by the Maine Attorney General) pursuant to the Eastern Divestiture Agreement (or another Divestiture Agreement), and the Commission has approved Eastern (or another Acquirer approved by the Maine Attorney General) and the manner in which the divestiture was accomplished, then solely at the option of Eastern (or another Acquirer approved by the Maine Attorney General), Defendants shall divest the Searsport Stockpile Space to Eastern (or another Acquirer approved by the Maine Attorney General) no later than August 15, 2010, pursuant to the terms applicable to divestiture of the Searsport Stockpile Space as included in the Eastern Divestiture Agreement (or another Divestiture Agreement).
- C. Prior to completing the Acquisition, Defendants shall:
1. Obtain all consents and approvals from all Third Parties and satisfy all other conditions required to transfer all rights and divest all assets as required by Paragraph III.A., including obtaining any consents or waivers of, or making any payments to, Third Parties; and
 2. Provide written notification to all Customers that Deicing Salt provided as part of the Maine Book of Business divested to Eastern or another Acquirer approved by the Maine Attorney General will be provided by the Commission-approved Acquirer and not by Defendants.
- D. The Eastern Divestiture Agreement (or any other Divestiture Agreement effectuating divestiture of the Maine Divestiture Assets) shall not limit or contradict, or be construed to limit or contradict, the terms of this Judgment, it being understood that nothing in this Judgment shall be construed to reduce any rights or benefits of any Acquirer approved by the Maine Attorney General or to reduce any obligations of Defendants under such agreements, and each such agreement, if approved by the Maine Attorney General as the Divestiture Agreement, shall be incorporated by reference into this Judgment and made a part hereof. Defendants shall comply with all terms of the Eastern Divestiture Agreement (or any other Divestiture Agreement effectuating divestiture of the Maine Divestiture Assets), and any breach by Defendants of any term of the Eastern Divestiture Agreement (or any other Divestiture Agreement effectuating divestiture of the Maine Divestiture Assets) shall constitute a violation of this Judgment. If any term of the Eastern Divestiture Agreement (or any other Divestiture Agreement effectuating divestiture of the Maine Divestiture Assets) varies from the terms of this Judgment ("Judgment Term"), then to the extent that

Defendants cannot fully comply with both terms, the Judgment Term shall determine Defendants' obligations under this Judgment. Any material modification of the Eastern Divestiture Agreement (or any other Divestiture Agreement effectuating divestiture of the Maine Divestiture Assets) between the date the Commission approves the Divestiture Agreement and the Closing Date, without the prior approval of the Maine Attorney General, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Judgment. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, for a period of five (5) years after the relevant Closing Date, any modification of a Divestiture Agreement, without the approval of the Maine Attorney General, shall constitute a failure to comply with this Judgment. Defendants shall provide written notice to the Maine Attorney General not more than five (5) days after any modification (material or otherwise) of the Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

- E. Until Defendants comply with Paragraph III. of this Judgment, Defendants shall take such actions as are necessary to maintain the viability and marketability of the Maine Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Maine Divestiture Assets.
- F. The purpose of the divestiture of the Maine Divestiture Assets, the Searsport Stockpile Space, and the additional requirements in Paragraph III. is to ensure the continued use of the assets in the same business in which the assets were engaged at the time of the announcement of the proposed Acquisition by Defendants and to remedy the lessening of competition in the sale and delivery of Deicing Salt in Maine resulting from the Acquisition as alleged in the Complaint.

IV.

IT IS FURTHER ORDERED that

- A. If the Eastern or another Acquirer approved by the Maine Attorney General is unable to satisfy the terms of the Maine Book of Business, then ISCO shall perform under the terms as requested by the affected Customer as specified by the Customer in its formal consent to transfer its contract from ISCO to Eastern or another Acquirer approved by the Maine Attorney General.
- B. Defendants shall not interfere with, or in any other way impede, the ability of the Eastern or another Acquirer approved by the Maine Attorney General to extend or enter into agreements with Sprague, McCabe, or other Third Parties, relating to the supply or sale of Deicing Salt in Maine.

- C. If any Customer, or person acting on behalf of any Customer, that would otherwise acquire Deicing Salt as part of the Maine Book of Business contacts Defendants with respect to placing an order, or places an order, for Deicing Salt, Defendants shall:
1. Notify the Customer-designated representative with responsibilities for procurement relating to that Customer, of that contact in such a manner that the representative receives the notification within 24 hours of the contact, or the placement of the order; and
 2. Maintain an accurate and verifiable record of that contact.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Judgment becomes final, every sixty (60) Days thereafter until Defendants have fully complied with Paragraphs III.A. and III.C, and every ninety (90) days thereafter until Defendants have complied with all remaining obligations of this Judgment and the Divestiture Agreement, Defendants shall submit to the Maine Attorney General a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Judgment. Defendants shall include in its reports, among other things that are required from time to time:
1. A full description of the efforts being made to comply with the relevant Paragraphs of this Judgment;
 2. A description of all substantive contacts or negotiations related to the divestitures and the identity of all parties contacted and copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing its obligations pursuant to Paragraph III. of this Judgment.
- B. One year after the Judgment becomes final, annually for the next three (3) years on the anniversary of the date the Judgment becomes final, and at other times as the Maine Attorney General may require, Defendants shall file a verified written report with the Maine Attorney General setting forth in detail the manner and form in which they have complied and are complying with the Judgment.

VI.

IT IS FURTHER ORDERED that Defendants shall notify the Maine Attorney General at least thirty (30) days prior to any proposed (1) dissolution of the Defendants, (2) acquisition, merger or consolidation of the Defendants, or (3) any other change in the Defendants that may affect compliance obligations arising out of this Judgment, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Defendants.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the Defendants, the Defendants shall, without restraint or interference, permit any duly authorized representative(s) of the Maine Attorney General:

- A. Access, during business office hours of the Defendants and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Defendants related to compliance with this Order, which copying services shall be provided by the Defendants at their expense; and
- B. To interview officers, directors, or employees of the Defendants, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that, no later than thirty (30) days after the date of this Consent Judgment, the Defendants shall pay to the Maine Attorney General \$15,000 as reimbursement for costs.

IX.

IT IS FURTHER ORDERED that jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further directions as may be necessary or appropriate for the construction or carrying out of this Consent Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof; *provided however* that to the extent the Commission agrees to amend or modify the FTC Order, the Defendants will not be deemed to violate this Consent Judgment while any conforming modification proposal is pending before this Court.

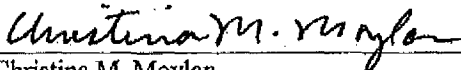
X.

IT IS FURTHER ORDERED that entry of this Consent Judgment is in the public interest.

CONSENTED TO:

**THE STATE OF MAINE
JANET T. MILLS
MAINE ATTORNEY GENERAL**

Dated: 10-26-09


Christina M. Moylan
Assistant Attorney General
Consumer Protection Division

K+S AKTIENGESELLSCHAFT

Dated:


Andreas Göebel
General Counsel

Dated:

Jan Peter Nonnenkamp
Chief Financial Officer

INTERNATIONAL SALT COMPANY, LLC

Dated: 10/7/09


Mark L. Roberts
President

FRESHFIELDS BRUCKHAUS DERINGER US LLP

Dated:

Bruce C. McCulloch Esq.
Counsel to K+S AKTIENGESELLSCHAFT and
INTERNATIONAL SALT COMPANY LLC

CONSENTED TO:

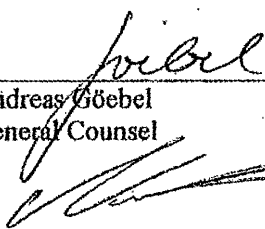
**THE STATE OF MAINE
JANET T. MILLS
MAINE ATTORNEY GENERAL**

Dated:

Christina M. Moylan
Assistant Attorney General
Consumer Protection Division

K+S AKTIENGESELLSCHAFT

Dated: 7 October 2009



Andreas Goebel
General Counsel

Dated: 7 October 2009

Jan Peter Nonnenkamp
Chief Financial Officer

INTERNATIONAL SALT COMPANY, LLC

Dated:

Mark L. Roberts
President

FRESHFIELDS BRUCKHAUS DERINGER US I

CONSENTED TO:

**THE STATE OF MAINE
JANET T. MILLS
MAINE ATTORNEY GENERAL**

Dated:

Christina M. Moylan
Assistant Attorney General
Consumer Protection Division

K+S AKTIENGESELLSCHAFT

Dated:

Andreas Göebel
General Counsel

Dated:

Jan Peter Nonnenkamp
Chief Financial Officer

INTERNATIONAL SALT COMPANY, LLC

Dated:

Mark L. Roberts
President

FRESHFIELD'S BRUCKHAUS DERINGER US LLP

Dated:

October 7, 2009

Bruce C. McCulloch Esq.
Counsel to K+S AKTIENGESELLSCHAFT and
INTERNATIONAL SALT COMPANY LLC

Dated: 10/25/09

PIERCE ATWOOD LLP



James R. Erwin (Maine Bar No. _____)
Counsel to K+S KTIENGESELLSCHAFT and
INTERNATIONAL SALT COMPANY LLC

It is hereby ORDERED and DECREED as set forth above. Judgment shall enter in accordance with the above terms, which are incorporated herein by this reference.

Dated: 16-28-09



JUSTICE, SUPERIOR COURT