

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-87-342

STATE OF MAINE,)
)
Plaintiff,)
)
v..)
)
McCain Foods Limited, a)
Canadian corporation with)
a registered office in)
Bangor, Maine,)
)
McCain Foods, Inc., a Maine)
corporation with a registered)
office in Bangor, Maine,)
)
Thomas Equipment Ltd., a)
Canadian corporation with a)
registered office in Presque)
Isle, Maine,)
)
Defendants)

JUDGMENT

Plaintiff, the STATE OF MAINE, having filed the Complaint herein on September 21, 1987, and defendants having filed an Answer and having served upon plaintiff an Offer of Judgment which was rejected by plaintiff but nevertheless resulted, following negotiations, in the filing of this Judgment,

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

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, and under the mini-Sherman Act, 10 M.R.S.A. § 1101.

II. DEFINITIONS

As used in this final judgment:

- (a) "McCain" means the defendant McCain Foods, Inc.;
- (b) "Thomas" means the defendant Thomas Equipment Ltd.;
- (c) "'Agents" includes, without limitation, directors, officers, employees, assigns or other persons acting for or under the control of McCain or Thomas (as applicable);
- (d) "Court" means the Superior Court of Kennebec County;
- (e) "Department" means the State of Maine, Department of the Attorney General;
- (f) "Decree" means this Judgment;
- (g) "State" means the State of Maine.

III. RELIEF

1. McCain and Thomas and their agents are hereby permanently enjoined from entering into any contract,

conspiracy or combination with any grower in the State to tie the purchase by McCain or Thomas of agricultural produce to the purchase by growers of fertilizer or agricultural equipment or machinery.

2. McCain and its agents are hereby permanently enjoined:

(a) from permitting Thomas to grant potato contracts to growers in the State on McCain's behalf, and from allocating expected contract volume for any given crop year to Thomas for that purpose;

(b) from discriminating among growers in the State, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas;

(c) from indicating to any grower in the State in any manner that their willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas; and

(d) from purchasing potatoes from Thomas, except in cases where (i) Thomas has granted credit to a customer, accepting as collateral a security interest in, or the assignment of a potato contract, and the customer has defaulted on his or her obligation, resulting in ownership of the potatoes by Thomas; or (ii) Thomas, as holder of a mortgage on a parcel of real estate, including growing crops, has foreclosed on its mortgage following default by the obligor, resulting in ownership of potatoes by Thomas.

3. Thomas and its agents are hereby permanently enjoined:

(a) from granting contracts to purchase potatoes for processing at McCain's facilities to growers in the State;

(b) from communicating the names of Thomas' customers in the State to McCain, except in cases where a customer has applied to Thomas for credit, offering as collateral a security interest in, or the assignment of a potato contract which the customer had been granted by McCain prior to making such credit application; and

(c) from indicating to any grower in the State in any manner that it can assist him or her in selling potatoes to McCain.

4. McCain is hereby ordered:

(a) to mail to each grower in the State with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his or her last known residence or post office address, by certified mail, return receipt requested, within 30 days of the date of this Decree, a Notice, in the form attached hereto, to the effect that pursuant to this Decree, McCain has ceased to allow Thomas to procure potato contracts or potatoes for McCain, commencing in the crop year 1988; that Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers; that in the future McCain will grant potato contracts to growers solely

on the basis of the quality of their produce, and other legitimate commercial considerations; and that McCain will not be influenced in the granting of potato contracts to growers by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future; and

(b) to file with the Department a report of the mailing described in subparagraph 4(a) above, attaching completed return receipts, within 15 days of its receipt of such completed return receipts.

5. McCain and Thomas are hereby ordered:

(a) to supply, to all those of their present employees who in their capacities as such have in the past six years had any contact with growers in the State, or exercised responsibility in relation to granting potato contracts to growers in the State, or in making decisions with regard to the granting of potato contracts to growers in the State, within 30 days of the date of this Decree, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree;

(b) to supply to all employees newly hired or transferred during a period of eight years following the date of this Decree, who in their capacities as such fall

into any of the categories described in subparagraph 5(a) above, immediately upon such hiring or transfer, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree; and

(c) to maintain records adequate to demonstrate compliance with the provisions of this paragraph, and to permit the Department, upon reasonable notice, to inspect such records.

6. Defendants are hereby ordered, pursuant to 5 M.R.S.A. § 209, to pay to the Department the costs of its investigation of defendants, in the amount of \$10,630.

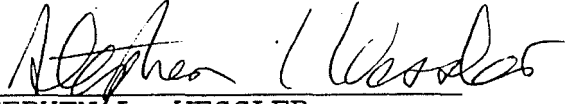
IV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the 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 implementation of the Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. If the Department and the defendants disagree concerning the interpretation of any of the provisions of the Decree, either party may apply to the Court for resolution of any such disagreement.

Dated:

12/11/87

CONSENTED TO ON BEHALF OF THE
STATE OF MAINE BY:

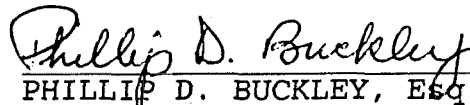


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer and Antitrust
Division



FRANCIS E. ACKERMAN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333

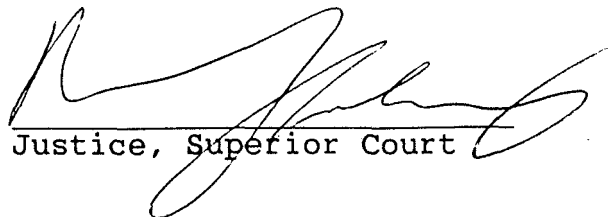
CONSENTED TO ON BEHALF OF
DEFENDANTS BY:



PHILLIP D. BUCKLEY, Esq.
Counsel for Defendants
Rudman & Winchell
84 Harlow Street
P.O. Box 1401
Bangor, Maine 04401

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

Dated: 12-11-87



Justice, Superior Court

A TRUE COPY

ATTEST:

Robin Savage
Asst. Clerk of Courts

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-87-342

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JUDGMENT

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

REC'D & FILED
NANCY A. DESJARDIN

DEC 11 1987

CLERK OF COURTS
KENNEBEC COUNTY

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, and under the mini-Sherman Act, 10 M.R.S.A. § 1101.

II. DEFINITIONS

As used in this final judgment:

- (a) "McCain" means the defendant McCain Foods, Inc.;
- (b) "Thomas" means the defendant Thomas Equipment Ltd.;
- (c) "'Agents" includes, without limitation, directors, officers, employees, assigns or other persons acting for or under the control of McCain or Thomas (as applicable);
- (d) "Court" means the Superior Court of Kennebec County;
- (e) "Department" means the State of Maine, Department of the Attorney General;
- (f) "Decree" means this Judgment;
- (g) "State" means the State of Maine.

III. RELIEF

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conspiracy or combination with any grower in the State to tie the purchase by McCain or Thomas of agricultural produce to the purchase by growers of fertilizer or agricultural equipment or machinery.

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(a) from permitting Thomas to grant potato contracts to growers in the State on McCain's behalf, and from allocating expected contract volume for any given crop year to Thomas for that purpose;

(b) from discriminating among growers in the State, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas;

(c) from indicating to any grower in the State in any manner that their willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas; and

(d) from purchasing potatoes from Thomas, except in cases where (i) Thomas has granted credit to a customer, accepting as collateral a security interest in, or the assignment of a potato contract, and the customer has defaulted on his or her obligation, resulting in ownership of the potatoes by Thomas; or (ii) Thomas, as holder of a mortgage on a parcel of real estate, including growing crops, has foreclosed on its mortgage following default by the obligor, resulting in ownership of potatoes by Thomas.

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on the basis of the quality of their produce, and other legitimate commercial considerations; and that McCain will not be influenced in the granting of potato contracts to growers by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future; and

(b) to file with the Department a report of the mailing described in subparagraph 4(a) above, attaching completed return receipts, within 15 days of its receipt of such completed return receipts.

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into any of the categories described in subparagraph 5(a) above, immediately upon such hiring or transfer, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree; and

(c) to maintain records adequate to demonstrate compliance with the provisions of this paragraph, and to permit the Department, upon reasonable notice, to inspect such records.

6. Defendants are hereby ordered, pursuant to 5 M.R.S.A. § 209, to pay to the Department the costs of its investigation of defendants, in the amount of \$10,630.

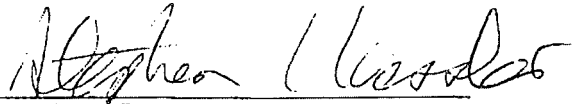
IV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the 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 implementation of the Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. If the Department and the defendants disagree concerning the interpretation of any of the provisions of the Decree, either party may apply to the Court for resolution of any such disagreement.

Dated:

12/11/87

CONSENTED TO ON BEHALF OF THE
STATE OF MAINE BY:

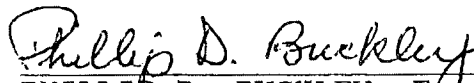


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer and Antitrust
Division



FRANCIS E. ACKERMAN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333

CONSENTED TO ON BEHALF OF
DEFENDANTS BY:

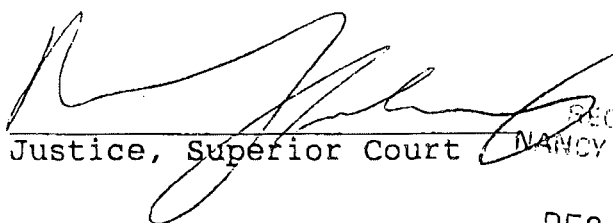


PHILLIP D. BUCKLEY, Esq.
Counsel for Defendants
Rudman & Winchell
84 Harlow Street
P.O. Box 1401
Bangor, Maine 04401

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

Dated:

12-11-87



Justice, Superior Court

RECEIVED
NANCY A. DESJARDINS

DEC 11 1987

CLERK OF COURTS
KENNEBEC COUNTY

NOTICE

On December 11, 1987, the Department of the Attorney General and McCain Foods Limited, McCain Foods, Inc. ("McCain") and Thomas Equipment Ltd. ("Thomas") entered into a Judgment which was approved by the Kennebec County Superior Court. The Judgment resolved a lawsuit in which the State alleged that McCain Foods Limited, McCain and Thomas had violated state antitrust laws by an arrangement whereby Thomas and McCain conditioned the granting of potato contracts for delivery of potatoes at McCain's Easton plant on the purchase by growers of fertilizer and equipment from Thomas. While entering into the Judgment, McCain Foods Limited, McCain and Thomas denied that they had violated state antitrust laws.

The purpose of this Notice is to notify all growers with whom McCain has contracted for the purchase of potatoes at any time during the past six years of certain provisions of the Judgment. The Judgment imposes a permanent injunction on McCain and Thomas, requires them to take the actions detailed below, and binds them on a permanent basis. Pursuant to the Judgment, as of December 11, 1987:

1. McCain has ceased to allow Thomas to procure potatoes or potato contracts for McCain.
2. Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers.

3. McCain will in the future grant potato contracts to growers solely on the basis of the quality of their produce, and other legitimate commercial considerations.

4. McCain will not be influenced, in granting potato contracts to growers, by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future.

McCain and Thomas will in addition take measures, as required by the Judgment, to ensure that present and future employees who have contact with growers, or responsibility in the area of potato contracts, are made fully aware of the provisions outlined above, and of the need for compliance with them.

FILED
NOV 11 1987

DEC 11 1987

CLERK OF COURTS
KENNEDY COUNTY

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
McCAIN FOODS, LTD., a)
Canadian corporation with)
a registered office in)
Bangor, Maine;)
)
McCAIN FOODS, INC., a Maine)
corporation with a registered)
office in Bangor, Maine;)
)
THOMAS EQUIPMENT, LTD., a)
Canadian corporation with)
a registered office in)
Presque Isle, Maine,)
)
Defendants)

COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1986) and 10 M.R.S.A. §§ 1101-1107 (1979 & Supp. 1986).

II. PARTIES

2. Plaintiff, STATE OF MAINE, sues in its sovereign capacity. By statute, the State, through the Department of the

Attorney General, is charged with the enforcement of antitrust laws, including 5 M.R.S.A. § 207 (1979) and 10 M.R.S.A. § 1101 (1979).

3. Defendant McCAIN FOODS, LTD. (hereinafter referred to as the "parent corporation") is a Canadian corporation with principal offices in Florenceville, New Brunswick, Canada, and a registered office in Bangor, Maine. The parent corporation is a multinational conglomerate whose primary business is the processing and sale of food products worldwide. The parent corporation plays a role in coordinating relationships between and among its various subsidiaries, including those actively engaged in business in Maine.

4. Defendant McCAIN FOODS, INC. (hereinafter referred to as "McCain") is a Maine corporation with principal offices in Easton, Maine, and a registered office in Bangor, Maine. McCain, a wholly-owned subsidiary of the parent corporation, operates two manufacturing facilities, in Easton and Presque Isle, Maine. The two facilities are engaged primarily in the production of processed potato products.

5. Defendant THOMAS EQUIPMENT, LTD. (hereinafter referred to as "Thomas") is a Canadian corporation with principal offices in Centreville, New Brunswick, Canada, and a registered office in Presque Isle, Maine. Thomas, a wholly-owned subsidiary of the parent corporation, manufactures agricultural machinery and fertilizer in Canada, and sells both products in Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 (Supp. 1986), 5 M.R.S.A. § 209 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 14 M.R.S.A. § 6051(13) (1980).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209 (Supp. 1986) and 14 M.R.S.A. § 501 (1980).

IV. NATURE OF TRADE AND COMMERCE

A. Processing of Potatoes

8. McCain processes potatoes for the production of frozen french fries at its manufacturing facilities in Easton and Presque Isle, Maine. McCain has owned the Easton facility since 1975 and the Presque Isle facility since February, 1987.

9. McCain purchases over 20 percent of potatoes grown in the County, and is the largest purchaser of potatoes in the County.

10. McCain purchases potatoes from growers located throughout Aroostook County, Maine (hereinafter referred to as the "County"). Over 70 percent of McCain's purchases of potatoes for processing are made pursuant to contracts entered into with growers each spring for delivery over the period running from the fall harvest through June of the succeeding year, at prices negotiated in advance with the Agricultural Bargaining Council, a growers' collective bargaining organization. McCain makes the balance of its purchases of

potatoes for processing from growers on the so-called "spot" market. McCain processes over 90 percent of potatoes processed in the County; prior to its acquisition of the Presque Isle facility, McCain processed over 50 percent of potatoes processed in the County.

11. For a number of reasons, including, but not limited to, the following, processed potato contracts with McCain are in significant demand by growers:

(a) The fresh market, on which potatoes are sold as table stock, has a history of volatility: extreme fluctuations in price in recent years have caused many growers to suffer heavy losses, and have caused some growers to go out of business. In contrast, the processing market has a history of relative stability: processing contract prices have tended to hold steady at levels which allow growers to realize a reasonable return on their investments.

(b) The availability of potato contracts on the fresh market is limited.

(c) Creditors encourage growers to seek processing contracts.

(d) Growers who succeed in obtaining processing contracts in any given year are encouraged by processors, including McCain, to invest in special storage facilities, thereby rendering them to a greater degree dependent upon the stable prices and contractual security of the processing market.

(e) Processing contracts hold a special attraction for growers because they permit a greater degree of assurance in planning for the future.

B. Equipment and Fertilizer.

12. Growers in the County use a variety of agricultural machines and machine components designed for use in potato production operations, including but not limited to harvesters, windrowers, loaders, bin-pilers, bulk bodies and chain (hereinafter referred to collectively as "equipment").

13. The market for equipment in the County is in large part divided between two manufacturers, Thomas and Lockwood Corporation, of Gering, Nebraska. Thomas sells on its own account; Lockwood machines are sold by several independent dealers.

14. Growers in the County use a variety of fertilizers of different grades and qualities for various purposes in connection with their farming operations.

15. Thomas sells fertilizer under the brand name McCain Fertilizer; Thomas' fertilizer division is known as McCain Fertilizer. Thomas' major competitors in the market for fertilizer in the County are Nutrite Corp. and Agway, Inc.

V. VIOLATIONS

16. Since 1980, McCain has followed a practice of allocating to Thomas between 20 and 40% of the total volume of its contracts to purchase potatoes, thereby delegating to

Thomas authority to grant contracts to growers on McCain's behalf. McCain continues to follow this practice.

17. McCain has also followed a parallel practice of refusing to grant first-time contracts to growers, while allowing Thomas to do so.

18. Thomas grants potato contracts allocated to it by McCain only to growers who purchase equipment or fertilizer from Thomas.

19. The conduct described in paragraphs 16 through 18 above has had the effect of imposing the following conditions, among others, on growers:

a. For many growers already holding McCain contracts any increase in the volume of potatoes under contract has been made conditional upon a purchase of fertilizer or equipment from Thomas;

b. For growers who at various times have been otherwise unable to secure contracts from McCain, the grant of a McCain contract has been made conditional upon purchases of fertilizer or equipment from Thomas; and

c. For growers who at various times have been subjected to cuts in the volume of potatoes under contract to McCain, the ability to offset or avoid the effect of such a cut has been made conditional upon the purchase of fertilizer or equipment from Thomas.

20. The conduct described in paragraphs 16 through 19 above has been and is coordinated and operated by officers and employees of the parent company as well as of McCain and Thomas.

21. The primary purpose of the conduct described in paragraphs 16 through 20 above has been and is to promote Thomas' sales of fertilizer and equipment by giving Thomas an advantage over its competitors in both markets.

22. McCain possesses and possessed sufficient economic power as a purchaser of potatoes to permit defendants to effectively coerce growers to purchase fertilizer or equipment from Thomas.

23. In addition to the conduct described in paragraphs 16 through 22 above, defendants have engaged in coercive practices which have, in fact, forced growers to purchase fertilizer or equipment from Thomas, including, but not limited to, the following coercive practices:

(a) Employees of McCain and Thomas have communicated the nature and purpose of the conduct described in paragraphs 16 through 22 above to growers throughout the County by actions and words with the result that the nature and purpose of the described conduct have become well-known to growers.

(b) Employees of McCain have refused contracts to growers and at the same time indicated to them that Thomas had contracts available.

(c) Employees of McCain have inquired of growers seeking to obtain contracts whether they purchased fertilizer or equipment from Thomas, and on receiving negative answers, have refused them contracts.

(d) Employees of McCain have indicated to growers that an important criterion in whether a contract would be granted to a particular grower was whether or not he purchased fertilizer or equipment from Thomas.

(e) Employees of Thomas have informed growers that unless they bought fertilizer or equipment from Thomas, they would lose their contracts with McCain.

(f) Defendants have cooperated by arranging for McCain to cut growers' contract volume, and for Thomas to immediately contact such growers to inform them that they could avoid the impact of the cut by purchasing fertilizer or equipment from Thomas.

24. Defendants' conduct as described in paragraphs 16 through 23 above has had the following effects, among others:

(a) Many growers, who would otherwise have made their purchases of fertilizer or equipment elsewhere or not at all, have made purchases from Thomas solely in order to obtain a contract with McCain, or in order to increase the volume of their contracts with McCain, or in order to ensure against any decrease in the volume of their contracts with McCain.

(b) Thomas' ability to reward growers purchasing its fertilizer or equipment with McCain contracts has given it an advantage over its competitors in both markets which bears no relation to the prices it charges or the quality of its products and service.

(c) Many growers who have been persuaded to purchase fertilizer or equipment from Thomas by the availability of potato contracts have paid a penalty in terms of price, quality or service, or in that they were persuaded to purchase an item which they did not need at the time of the purchase.

(d) Thomas' competitors in the markets for fertilizer and equipment have suffered damage to their businesses.

25. Thomas has sold a substantial volume of fertilizer and equipment as a result of the conduct described in paragraphs 16 through 23 above.

COUNT ONE

26. Defendants' conduct with respect to fertilizer sales as described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

COUNT TWO

27. Defendants' conduct with respect to equipment sales described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

VI. PRAYER

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

- A. Declare that defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).
- B. Permanently enjoin defendants, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from entering into any contract, conspiracy or combination in restraint of trade; and
 - (ii) from engaging in any unfair method of competition.
- C. Permanently enjoin McCain and its parent corporation, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from permitting Thomas to grant potato contracts to growers on McCain's behalf, and from

allocating expected contract volume for any given crop year to Thomas for that purpose;

- (ii) from discriminating among growers, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas, or on the basis of a grower's role in testifying on behalf of any party to this action; and
- (iii) from indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas.

D. Permanently enjoin Thomas, its agents, officers, employees, assigns or other persons acting for it or under its control

- (i) from granting contracts to purchase potatoes for processing at McCain facilities to growers;
- (ii) from communicating the names of Thomas' customers to McCain; and
- (iii) from indicating to any grower in any manner that it can assist him in selling potatoes to McCain, or that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's

willingness to purchase equipment or fertilizer from Thomas.

- E. Order McCain to mail to each grower with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his last known residence or post box address, by certified mail, return receipt requested, a notice to effect that pursuant to an order of this Court McCain has ceased to allocate potato contracts to Thomas; that Thomas will in future play no role whatever in granting potato contracts to growers; that in future, McCain will grant potato contracts to growers solely on the basis of the quality of their product, and other legitimate commercial considerations; and that decisions to grant or not to grant potato contracts to growers will in no way be influenced by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas;
- F. Order McCain to file with the Court a report of the mailings described in subpart E above, attaching completed return receipts, within one month of the date of the court's decree;
- G. Order defendants to supply, to all those employees who in their capacities as such have any contact with

growers, including newly hired or transferred employees on a continuing basis, copies of the notice described in subpart E above, together with copies of the Court's decree in this action, and a written directive to all such employees requiring them to comply fully with the terms of the notice and of the decree;

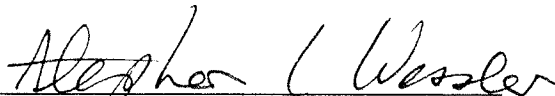
- H. Order defendants to file with the Court sworn affidavits signed respectively by defendants' chief executive officers, stating in detail the manner in which defendants have complied with the requirements set forth in subpart G above, and listing by name those employees to whom copies of the notice and decree have been supplied in accordance therewith;
- I. Order defendants to file with the Court notarized statements signed by each employee listed in the affidavits described in subpart H above stating that he or she has read the notice and decree with which he or she has been supplied and fully understands their purport;
- J. Order defendants to file annually with the Court sworn affidavits in the form described in subpart H above in relation to newly hired or transferred employees, together with notarized statements in the form described in subpart I above signed by each such employee;


- K. Assess against the defendants collectively a civil penalty pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) for each course of conduct constituting an antitrust violation;
- L. Assess against the defendants the costs of this suit and of the investigation of defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986);
- M. Grant such other relief as the Court deems just and proper.

DATED: 9-21-87

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH
Deputy Attorney General


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division


FRANCIS E. ACKERMAN
Assistant Attorney General

State House Station #6
Augusta, Maine 04333
Telephone: (207) 289-3661

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
McCAIN FOODS, LTD., a)
Canadian corporation with)
a registered office in)
Bangor, Maine;)
)
McCAIN FOODS, INC., a Maine)
corporation with a registered)
office in Bangor, Maine;)
)
THOMAS EQUIPMENT, LTD., a)
Canadian corporation with)
a registered office in)
Presque Isle, Maine,)
)
Defendants)

COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1986) and 10 M.R.S.A. §§ 1101-1107 (1979 & Supp. 1986)..

II. PARTIES

2. Plaintiff, STATE OF MAINE, sues in its sovereign capacity. By statute, the State, through the Department of the Attorney General, is charged with the enforcement of antitrust

laws, including 5 M.R.S.A. § 207 (1979) and 10 M.R.S.A. § 1101 (1979).

3. Defendant McCAIN FOODS, LTD. (hereinafter referred to as the "parent corporation") is a Canadian corporation with principal offices in Florenceville, New Brunswick, Canada, and a registered office in Bangor, Maine. The parent corporation is a multinational conglomerate whose primary business is the processing and sale of food products worldwide. The parent corporation plays a role in coordinating relationships between and among its various subsidiaries, including those actively engaged in business in Maine.

4. Defendant McCAIN FOODS, INC. (hereinafter referred to as "McCain") is a Maine corporation with principal offices in Easton, Maine, and a registered office in Bangor, Maine. McCain, a wholly-owned subsidiary of the parent corporation, operates two manufacturing facilities, in Easton and Presque Isle, Maine. The two facilities are engaged primarily in the production of processed potato products.

5. Defendant THOMAS EQUIPMENT, LTD. (hereinafter referred to as "Thomas") is a Canadian corporation with principal offices in Centreville, New Brunswick, Canada, and a registered office in Presque Isle, Maine. Thomas, a wholly-owned subsidiary of the parent corporation, manufactures agricultural machinery and fertilizer in Canada, and sells both products in Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 (Supp. 1986), 5 M.R.S.A. § 209 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 14 M.R.S.A. § 6051(13) (1980).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209 (Supp. 1986) and 14 M.R.S.A. § 501 (1980).

IV. NATURE OF TRADE AND COMMERCE

A. Processing of Potatoes

8. McCain processes potatoes for the production of frozen french fries at its manufacturing facilities in Easton and Presque Isle, Maine. McCain has owned the Easton facility since 1975 and the Presque Isle facility since February, 1987.

9. McCain purchases over 20 percent of potatoes grown in the County, and is the largest purchaser of potatoes in the County.

10. McCain purchases potatoes from growers located throughout Aroostook County, Maine (hereinafter referred to as the "County"). Over 70 percent of McCain's purchases of potatoes for processing are made pursuant to contracts entered into with growers each spring for delivery over the period running from the fall harvest through June of the succeeding year, at prices negotiated in advance with the Agricultural Bargaining Council, a growers' collective bargaining organization constituted pursuant to 13 M.R.S.A. §§ 1953-1965

(1981 & Supp. 1986). McCain makes the balance of its purchases of potatoes for processing from growers on the so-called "spot" market. McCain processes over 80 percent of potatoes processed in the County; prior to its acquisition of the Presque Isle facility, McCain processed over 60 percent of potatoes processed in the County.

11. For a number of reasons, including, but not limited to, the following, processed potato contracts with McCain are in significant demand by growers:

(a) The fresh market, on which potatoes are sold as table stock, has a history of volatility: extreme fluctuations in price in recent years have caused many growers to suffer heavy losses, and have caused some growers to go out of business. In contrast, the processing market has a history of relative stability: processing contract prices have tended to hold steady at levels which allow growers to realize a reasonable return on their investments.

(b) The availability of potato contracts on the fresh market is limited.

(c) Creditors encourage growers to seek processing contracts.

(d) Growers who succeed in obtaining processing contracts in any given year are encouraged by processors, including McCain, to invest in special storage facilities, thereby rendering them to a greater degree dependent upon the stable prices and contractual security of the processing market.

(e) Processing contracts hold a special attraction for growers because they permit a greater degree of assurance in planning for the future.

B. Equipment and Fertilizer.

12. Growers in the County use a variety of agricultural machines and machine components designed for use in potato production operations, including but not limited to harvesters, windrowers, loaders, bin-pilers, bulk bodies and chain (hereinafter referred to collectively as "equipment").

13. The market for equipment in the County is in large part divided between two manufacturers, Thomas and Lockwood Corporation, of Gering, Nebraska. Thomas sells on its own account; Lockwood machines are sold by several independent dealers.

14. Growers in the County use a variety of fertilizers of different grades and qualities for various purposes in connection with their farming operations.

15. Thomas sells fertilizer under the brand name McCain Fertilizer; Thomas' fertilizer division is known as McCain Fertilizer. Thomas' major competitors in the market for fertilizer in the County are Nutrite Corp. and Agway, Inc.

V. VIOLATIONS

16. Since 1980, McCain has followed a practice of allocating to Thomas between 20 and 40% of the total volume of its contracts to purchase potatoes, thereby delegating to

Thomas authority to grant contracts to growers on McCain's behalf. McCain continues to follow this practice.

17. McCain has also followed a parallel practice of refusing to grant first-time contracts to growers, while allowing Thomas to do so.

18. Thomas grants potato contracts allocated to it by McCain only to growers who purchase equipment or fertilizer from Thomas.

19. The conduct described in paragraphs 16 through 18 above has had the effect of imposing the following conditions, among others, on growers:

a. For many growers already holding McCain contracts any increase in the volume of potatoes under contract has been made conditional upon a purchase of fertilizer or equipment from Thomas;

b. For growers who at various times have been otherwise unable to secure contracts from McCain, the grant of a McCain contract has been made conditional upon purchases of fertilizer or equipment from Thomas; and

c. For growers who at various times have been subjected to cuts in the volume of potatoes under contract to McCain, the ability to offset or avoid the effect of such a cut has been made conditional upon the purchase of fertilizer or equipment from Thomas.

20. The conduct described in paragraphs 16 through 19 above has been and is coordinated and operated by officers and employees of the parent company as well as of McCain and Thomas.

21. The primary purpose of the conduct described in paragraphs 16 through 20 above has been and is to promote Thomas' sales of fertilizer and equipment by giving Thomas an advantage over its competitors in both markets.

22. McCain possesses and possessed sufficient economic power as a purchaser of potatoes to permit defendants to effectively coerce growers to purchase fertilizer or equipment from Thomas.

23. In addition to the conduct described in paragraphs 16 through 22 above, defendants have engaged in coercive practices which have, in fact, forced growers to purchase fertilizer or equipment from Thomas, including, but not limited to, the following coercive practices:

(a) Employees of McCain and Thomas have communicated the nature and purpose of the conduct described in paragraphs 16 through 22 above to growers throughout the County by actions and words with the result that the nature and purpose of the described conduct have become well-known to growers.

(b) Employees of McCain have refused contracts to growers and at the same time indicated to them that Thomas had contracts available.

(c) Employees of McCain have inquired of growers seeking to obtain contracts whether they purchased fertilizer or equipment from Thomas, and on receiving negative answers, have refused them contracts.

(d) Employees of McCain have indicated to growers that an important criterion in whether a contract would be granted to a particular grower was whether or not he purchased fertilizer or equipment from Thomas.

(e) Employees of Thomas have informed growers that unless they bought fertilizer or equipment from Thomas, they would lose their contracts with McCain.

(f) Defendants have cooperated by arranging for McCain to cut growers' contract volume, and for Thomas to immediately contact such growers to inform them that they could avoid the impact of the cut by purchasing fertilizer or equipment from Thomas.

24. Defendants' conduct as described in paragraphs 16 through 23 above has had the following effects, among others:

(a) Many growers, who would otherwise have made their purchases of fertilizer or equipment elsewhere or not at all, have made purchases from Thomas solely in order to obtain a contract with McCain, or in order to increase the volume of their contracts with McCain, or in order to ensure against any decrease in the volume of their contracts with McCain.

(b) Thomas' ability to reward growers purchasing its fertilizer or equipment with McCain contracts has given it an advantage over its competitors in both markets which bears no relation to the prices it charges or the quality of its products and service.

(c) Many growers who have been persuaded to purchase fertilizer or equipment from Thomas by the availability of potato contracts have paid a penalty in terms of price, quality or service, or in that they were persuaded to purchase an item which they did not need at the time of the purchase.

(d) Thomas' competitors in the markets for fertilizer and equipment have suffered damage to their businesses.

25. Thomas has sold a substantial volume of fertilizer and equipment as a result of the conduct described in paragraphs 16 through 23 above.

COUNT ONE

26. Defendants' conduct with respect to fertilizer sales as described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

COUNT TWO

27. Defendants' conduct with respect to equipment sales described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

VI. PRAYER

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

- A. Declare that defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).
- B. Permanently enjoin defendants, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from entering into any contract, conspiracy or combination in restraint of trade; and
 - (ii) from engaging in any unfair method of competition.
- C. Permanently enjoin McCain and its parent corporation, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from permitting Thomas to grant potato contracts to growers on McCain's behalf, and from

allocating expected contract volume for any given crop year to Thomas for that purpose;

- (ii) from discriminating among growers, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas, or on the basis of a grower's role in testifying on behalf of any party to this action; and
- (iii) from indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas.

D. Permanently enjoin Thomas, its agents, officers, employees, assigns or other persons acting for it or under its control

- (i) from granting contracts to purchase potatoes for processing at McCain facilities to growers;
- (ii) from communicating the names of Thomas' customers to McCain; and
- (iii) from indicating to any grower in any manner that it can assist him in selling potatoes to McCain, or that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's

willingness to purchase equipment or fertilizer from Thomas.

- E. Order McCain to mail to each grower with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his last known residence or post box address, by certified mail, return receipt requested, a notice to effect that pursuant to an order of this Court McCain has ceased to allocate potato contracts to Thomas; that Thomas will in future play no role whatever in granting potato contracts to growers; that in future, McCain will grant potato contracts to growers solely on the basis of the quality of their product, and other legitimate commercial considerations; and that decisions to grant or not to grant potato contracts to growers will in no way be influenced by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas;
- F. Order McCain to file with the Court a report of the mailings described in subpart E above, attaching completed return receipts, within one month of the date of the Court's decree;
- G. Order defendants to supply, to all those employees who in their capacities as such have any contact with

growers, including newly hired or transferred employees on a continuing basis, copies of the notice described in subpart E above, together with copies of the Court's decree in this action, and a written directive to all such employees requiring them to comply fully with the terms of the notice and of the decree;

- H. Order defendants to file with the Court sworn affidavits signed respectively by defendants' chief executive officers, stating in detail the manner in which defendants have complied with the requirements set forth in subpart G above, and listing by name those employees to whom copies of the notice and decree have been supplied in accordance therewith;
- I. Order defendants to file with the Court notarized statements signed by each employee listed in the affidavits described in subpart H above stating that he or she has read the notice and decree with which he or she has been supplied and fully understands their purport;
- J. Order defendants to file annually with the Court sworn affidavits in the form described in subpart H above in relation to newly hired or transferred employees, together with notarized statements in the form described in subpart I above signed by each such employee;

- K. Assess against the defendants collectively a civil penalty pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) for each course of conduct constituting an antitrust violation;
- L. Assess against the defendants the costs of this suit and of the investigation of defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986);
- M. Grant such other relief as the Court deems just and proper.

DATED:

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH
Deputy Attorney General

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division

FRANCIS E. ACKERMAN
Assistant Attorney General

State House Station #6
Augusta, Maine 04333
Telephone: (207) 289-3661

CASE TRACKING☐ INQUIRY ONLY

Case Number	<input type="text"/>	Opened	<input type="text" value="1987"/>	10-Day Letter	<input type="text"/>	Closed	<input type="text"/>
Case Name	McCain Foods, Ltd. & Thomas Equipment, Ltd.						
Nature	<input type="text" value="AT Antitrust"/>			Assigned	<input type="text"/>		
	<input type="text"/>			Ackerman	<input type="text" value="Wessler"/>	<input type="text"/>	
	<input type="text"/>			Opposing Counsel	<input type="text"/>		
Type of Matter	<input type="text"/>			<input type="text"/>			
	<input checked="" type="checkbox"/> Civil <input type="checkbox"/> Criminal			<input type="text"/>			
Complaining Party	<input type="text"/>						
Potential Defendant	<input type="text"/>						
Summary	Conditioned purchase of potatoes from growers upon purchase of fertilizer or farm equipment.						
Status	<input type="text" value="Closed"/>					<input type="radio"/> Open <input checked="" type="radio"/> Closed	
Agenda	<input type="text"/>						
Dates/Deadlines	<input type="text"/>						

CIVIL			
Docket No.	<input type="text"/>	Assurance of Discontinuance	<input type="text"/>
Court	<input type="text" value="Kennebec County Superior Court"/>	Consent Decree	<input type="text"/>
Complaint	<input type="text" value="9/21/87"/>	Final Order	<input type="text"/>
Resolution	<input type="text" value="Enjoined future tying; provide notice of Order to employees and growers; pay costs of \$10,630."/>		

CRIMINAL				
Docket No.	<input type="text"/>	Court	<input type="text"/>	<input type="radio"/> Plea <input type="radio"/> Jury <input type="radio"/> Jury Waived
Charging Instrument	<input type="text"/>	Date	<input type="text"/>	Verdict <input type="text"/> Date <input type="text"/>
Plea at Arraignment	<input type="text"/>	Date	<input type="text"/>	Sentence Date <input type="text"/>
Sentence	<input type="text"/>			

OTHER COURT			
Docket No.	<input type="text"/>	Adversary Proceeding No.	<input type="text"/>
Court	<input type="text"/>	Petition	<input type="text"/>
Nature of Action	<input type="text"/>	Final Order	<input type="text"/>
Dates / Deadlines	<input type="text"/>		

Date Archived	<input type="text"/>	Box Number	<input type="text"/>	Archive Locator	<input type="text"/>	Date Destroyed	<input type="text"/>
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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
McCAIN FOODS, LTD., a)
Canadian corporation with)
a registered office in)
Bangor, Maine;)
)
McCAIN FOODS, INC., a Maine)
corporation with a registered)
office in Bangor, Maine;)
)
THOMAS EQUIPMENT, LTD., a)
Canadian corporation with)
a registered office in)
Presque Isle, Maine,)
)
Defendants)

COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1986) and 10 M.R.S.A. §§ 1101-1107 (1979 & Supp. 1986)..

II. PARTIES

2. Plaintiff, STATE OF MAINE, sues in its sovereign capacity. By statute, the State, through the Department of the Attorney General, is charged with the enforcement of antitrust

laws, including 5 M.R.S.A. § 207 (1979) and 10 M.R.S.A. § 1101 (1979).

3. Defendant McCAIN FOODS, LTD. (hereinafter referred to as the "parent corporation") is a Canadian corporation with principal offices in Florenceville, New Brunswick, Canada, and a registered office in Bangor, Maine. The parent corporation is a multinational conglomerate whose primary business is the processing and sale of food products worldwide. The parent corporation plays a role in coordinating relationships between and among its various subsidiaries, including those actively engaged in business in Maine.

4. Defendant McCAIN FOODS, INC. (hereinafter referred to as "McCain") is a Maine corporation with principal offices in Easton, Maine, and a registered office in Bangor, Maine. McCain, a wholly-owned subsidiary of the parent corporation, operates two manufacturing facilities, in Easton and Presque Isle, Maine. The two facilities are engaged primarily in the production of processed potato products.

5. Defendant THOMAS EQUIPMENT, LTD. (hereinafter referred to as "Thomas") is a Canadian corporation with principal offices in Centreville, New Brunswick, Canada, and a registered office in Presque Isle, Maine. Thomas, a wholly-owned subsidiary of the parent corporation, manufactures agricultural machinery and fertilizer in Canada, and sells both products in Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 (Supp. 1986), 5 M.R.S.A. § 209 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 14 M.R.S.A. § 6051(13) (1980).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209 (Supp. 1986) and 14 M.R.S.A. § 501 (1980).

IV. NATURE OF TRADE AND COMMERCE

A. Processing of Potatoes

8. McCain processes potatoes for the production of frozen french fries at its manufacturing facilities in Easton and Presque Isle, Maine. McCain has owned the Easton facility since 1975 and the Presque Isle facility since February, 1987.

9. McCain purchases over 20 percent of potatoes grown in the County, and is the largest purchaser of potatoes in the County.

10. McCain purchases potatoes from growers located throughout Aroostook County, Maine (hereinafter referred to as the "County"). Over 70 percent of McCain's purchases of potatoes for processing are made pursuant to contracts entered into with growers each spring for delivery over the period running from the fall harvest through June of the succeeding year, at prices negotiated in advance with the Agricultural Bargaining Council, a growers' collective bargaining organization constituted pursuant to 13 M.R.S.A. §§ 1953-1965

(1981 & Supp. 1986). McCain makes the balance of its purchases of potatoes for processing from growers on the so-called "spot" market. McCain processes over 80 percent of potatoes processed in the County; prior to its acquisition of the Presque Isle facility, McCain processed over 60 percent of potatoes processed in the County.

11. For a number of reasons, including, but not limited to, the following, processed potato contracts with McCain are in significant demand by growers:

(a) The fresh market, on which potatoes are sold as table stock, has a history of volatility: extreme fluctuations in price in recent years have caused many growers to suffer heavy losses, and have caused some growers to go out of business. In contrast, the processing market has a history of relative stability: processing contract prices have tended to hold steady at levels which allow growers to realize a reasonable return on their investments.

(b) The availability of potato contracts on the fresh market is limited.

(c) Creditors encourage growers to seek processing contracts.

(d) Growers who succeed in obtaining processing contracts in any given year are encouraged by processors, including McCain, to invest in special storage facilities, thereby rendering them to a greater degree dependent upon the stable prices and contractual security of the processing market.

(e) Processing contracts hold a special attraction for growers because they permit a greater degree of assurance in planning for the future.

B. Equipment and Fertilizer.

12. Growers in the County use a variety of agricultural machines and machine components designed for use in potato production operations, including but not limited to harvesters, windrowers, loaders, bin-pilers, bulk bodies and chain (hereinafter referred to collectively as "equipment").

13. The market for equipment in the County is in large part divided between two manufacturers, Thomas and Lockwood Corporation, of Gering, Nebraska. Thomas sells on its own account; Lockwood machines are sold by several independent dealers.

14. Growers in the County use a variety of fertilizers of different grades and qualities for various purposes in connection with their farming operations.

15. Thomas sells fertilizer under the brand name McCain Fertilizer; Thomas' fertilizer division is known as McCain Fertilizer. Thomas' major competitors in the market for fertilizer in the County are Nutrite Corp. and Agway, Inc.

V. VIOLATIONS

16. Since 1980, McCain has followed a practice of allocating to Thomas between 20 and 40% of the total volume of its contracts to purchase potatoes, thereby delegating to

Thomas authority to grant contracts to growers on McCain's behalf. McCain continues to follow this practice.

17. McCain has also followed a parallel practice of refusing to grant first-time contracts to growers, while allowing Thomas to do so.

18. Thomas grants potato contracts allocated to it by McCain only to growers who purchase equipment or fertilizer from Thomas.

19. The conduct described in paragraphs 16 through 18 above has had the effect of imposing the following conditions, among others, on growers:

a. For many growers already holding McCain contracts any increase in the volume of potatoes under contract has been made conditional upon a purchase of fertilizer or equipment from Thomas;

b. For growers who at various times have been otherwise unable to secure contracts from McCain, the grant of a McCain contract has been made conditional upon purchases of fertilizer or equipment from Thomas; and

c. For growers who at various times have been subjected to cuts in the volume of potatoes under contract to McCain, the ability to offset or avoid the effect of such a cut has been made conditional upon the purchase of fertilizer or equipment from Thomas.

20. The conduct described in paragraphs 16 through 19 above has been and is coordinated and operated by officers and employees of the parent company as well as of McCain and Thomas.

21. The primary purpose of the conduct described in paragraphs 16 through 20 above has been and is to promote Thomas' sales of fertilizer and equipment by giving Thomas an advantage over its competitors in both markets.

22. McCain possesses and possessed sufficient economic power as a purchaser of potatoes to permit defendants to effectively coerce growers to purchase fertilizer or equipment from Thomas.

23. In addition to the conduct described in paragraphs 16 through 22 above, defendants have engaged in coercive practices which have, in fact, forced growers to purchase fertilizer or equipment from Thomas, including, but not limited to, the following coercive practices:

(a) Employees of McCain and Thomas have communicated the nature and purpose of the conduct described in paragraphs 16 through 22 above to growers throughout the County by actions and words with the result that the nature and purpose of the described conduct have become well-known to growers.

(b) Employees of McCain have refused contracts to growers and at the same time indicated to them that Thomas had contracts available.

(c) Employees of McCain have inquired of growers seeking to obtain contracts whether they purchased fertilizer or equipment from Thomas, and on receiving negative answers, have refused them contracts.

(d) Employees of McCain have indicated to growers that an important criterion in whether a contract would be granted to a particular grower was whether or not he purchased fertilizer or equipment from Thomas.

(e) Employees of Thomas have informed growers that unless they bought fertilizer or equipment from Thomas, they would lose their contracts with McCain.

(f) Defendants have cooperated by arranging for McCain to cut growers' contract volume, and for Thomas to immediately contact such growers to inform them that they could avoid the impact of the cut by purchasing fertilizer or equipment from Thomas.

24. Defendants' conduct as described in paragraphs 16 through 23 above has had the following effects, among others:

(a) Many growers, who would otherwise have made their purchases of fertilizer or equipment elsewhere or not at all, have made purchases from Thomas solely in order to obtain a contract with McCain, or in order to increase the volume of their contracts with McCain, or in order to ensure against any decrease in the volume of their contracts with McCain.

(b) Thomas' ability to reward growers purchasing its fertilizer or equipment with McCain contracts has given it an advantage over its competitors in both markets which bears no relation to the prices it charges or the quality of its products and service.

(c) Many growers who have been persuaded to purchase fertilizer or equipment from Thomas by the availability of potato contracts have paid a penalty in terms of price, quality or service, or in that they were persuaded to purchase an item which they did not need at the time of the purchase.

(d) Thomas' competitors in the markets for fertilizer and equipment have suffered damage to their businesses.

25. Thomas has sold a substantial volume of fertilizer and equipment as a result of the conduct described in paragraphs 16 through 23 above.

COUNT ONE

26. Defendants' conduct with respect to fertilizer sales as described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

COUNT TWO

27. Defendants' conduct with respect to equipment sales described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

VI. PRAYER

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

- A. Declare that defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).
- B. Permanently enjoin defendants, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from entering into any contract, conspiracy or combination in restraint of trade; and
 - (ii) from engaging in any unfair method of competition.
- C. Permanently enjoin McCain and its parent corporation, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from permitting Thomas to grant potato contracts to growers on McCain's behalf, and from

- allocating expected contract volume for any given crop year to Thomas for that purpose;
- (ii) from discriminating among growers, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas, or on the basis of a grower's role in testifying on behalf of any party to this action; and
 - (iii) from indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas.

- D. Permanently enjoin Thomas, its agents, officers, employees, assigns or other persons acting for it or under its control
- (i) from granting contracts to purchase potatoes for processing at McCain facilities to growers;
 - (ii) from communicating the names of Thomas' customers to McCain; and
 - (iii) from indicating to any grower in any manner that it can assist him in selling potatoes to McCain, or that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's

willingness to purchase equipment or fertilizer from Thomas.

- E. Order McCain to mail to each grower with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his last known residence or post box address, by certified mail, return receipt requested, a notice to effect that pursuant to an order of this Court McCain has ceased to allocate potato contracts to Thomas; that Thomas will in future play no role whatever in granting potato contracts to growers; that in future, McCain will grant potato contracts to growers solely on the basis of the quality of their product, and other legitimate commercial considerations; and that decisions to grant or not to grant potato contracts to growers will in no way be influenced by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas;
- F. Order McCain to file with the Court a report of the mailings described in subpart E above, attaching completed return receipts, within one month of the date of the Court's decree;
- G. Order defendants to supply, to all those employees who in their capacities as such have any contact with .

growers, including newly hired or transferred employees on a continuing basis, copies of the notice described in subpart E above, together with copies of the Court's decree in this action, and a written directive to all such employees requiring them to comply fully with the terms of the notice and of the decree;

- H. Order defendants to file with the Court sworn affidavits signed respectively by defendants' chief executive officers, stating in detail the manner in which defendants have complied with the requirements set forth in subpart G above, and listing by name those employees to whom copies of the notice and decree have been supplied in accordance therewith;
- I. Order defendants to file with the Court notarized statements signed by each employee listed in the affidavits described in subpart H above stating that he or she has read the notice and decree with which he or she has been supplied and fully understands their purport;
- J. Order defendants to file annually with the Court sworn affidavits in the form described in subpart H above in relation to newly hired or transferred employees, together with notarized statements in the form described in subpart I above signed by each such employee;

- K. Assess against the defendants collectively a civil penalty pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) for each course of conduct constituting an antitrust violation;
- L. Assess against the defendants the costs of this suit and of the investigation of defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986);
- M. Grant such other relief as the Court deems just and proper.

DATED:

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH
Deputy Attorney General

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division

FRANCIS E. ACKERMAN
Assistant Attorney General

State House Station #6
Augusta, Maine 04333
Telephone: (207) 289-3661

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-87-342

STATE OF MAINE,)
)
Plaintiff,)
)
v.)
)
McCain Foods Limited, a)
Canadian corporation with)
a registered office in)
Bangor, Maine,)
)
McCain Foods, Inc., a Maine)
corporation with a registered)
office in Bangor, Maine,)
)
Thomas Equipment Ltd., a)
Canadian corporation with a)
registered office in Presque)
Isle, Maine,)
)
Defendants)

JUDGMENT

Plaintiff, the STATE OF MAINE, having filed the Complaint herein on September 21, 1987, and defendants having filed an Answer and having served upon plaintiff an Offer of Judgment which was rejected by plaintiff but nevertheless resulted, following negotiations, in the filing of this Judgment,

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

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, and under the mini-Sherman Act, 10 M.R.S.A. § 1101.

II. DEFINITIONS

As used in this final judgment:

- (a) "McCain" means the defendant McCain Foods, Inc.;
- (b) "Thomas" means the defendant Thomas Equipment Ltd.;
- (c) "'Agents" includes, without limitation, directors, officers, employees, assigns or other persons acting for or under the control of McCain or Thomas (as applicable);
- (d) "Court" means the Superior Court of Kennebec County;
- (e) "Department" means the State of Maine, Department of the Attorney General;
- (f) "Decree" means this Judgment;
- (g) "State" means the State of Maine.

III. RELIEF

1. McCain and Thomas and their agents are hereby permanently enjoined from entering into any contract,

conspiracy or combination with any grower in the State to tie the purchase by McCain or Thomas of agricultural produce to the purchase by growers of fertilizer or agricultural equipment or machinery.

2. McCain and its agents are hereby permanently enjoined:

(a) from permitting Thomas to grant potato contracts to growers in the State on McCain's behalf, and from allocating expected contract volume for any given crop year to Thomas for that purpose;

(b) from discriminating among growers in the State, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas;

(c) from indicating to any grower in the State in any manner that their willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas; and

(d) from purchasing potatoes from Thomas, except in cases where (i) Thomas has granted credit to a customer, accepting as collateral a security interest in, or the assignment of a potato contract, and the customer has defaulted on his or her obligation, resulting in ownership of the potatoes by Thomas; or (ii) Thomas, as holder of a mortgage on a parcel of real estate, including growing crops, has foreclosed on its mortgage following default by the obligor, resulting in ownership of potatoes by Thomas.

3. Thomas and its agents are hereby permanently enjoined:

(a) from granting contracts to purchase potatoes for processing at McCain's facilities to growers in the State;

(b) from communicating the names of Thomas' customers in the State to McCain, except in cases where a customer has applied to Thomas for credit, offering as collateral a security interest in, or the assignment of a potato contract which the customer had been granted by McCain prior to making such credit application; and

(c) from indicating to any grower in the State in any manner that it can assist him or her in selling potatoes to McCain.

4. McCain is hereby ordered:

(a) to mail to each grower in the State with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his or her last known residence or post office address, by certified mail, return receipt requested, within 30 days of the date of this Decree, a Notice, in the form attached hereto, to the effect that pursuant to this Decree, McCain has ceased to allow Thomas to procure potato contracts or potatoes for McCain, commencing in the crop year 1988; that Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers; that in the future McCain will grant potato contracts to growers solely

on the basis of the quality of their produce, and other legitimate commercial considerations; and that McCain will not be influenced in the granting of potato contracts to growers by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future; and

(b) to file with the Department a report of the mailing described in subparagraph 4(a) above, attaching completed return receipts, within 15 days of its receipt of such completed return receipts.

5. McCain and Thomas are hereby ordered:

(a) to supply, to all those of their present employees who in their capacities as such have in the past six years had any contact with growers in the State, or exercised responsibility in relation to granting potato contracts to growers in the State, or in making decisions with regard to the granting of potato contracts to growers in the State, within 30 days of the date of this Decree, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree;

(b) to supply to all employees newly hired or transferred during a period of eight years following the date of this Decree, who in their capacities as such fall

into any of the categories described in subparagraph 5(a) above, immediately upon such hiring or transfer, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree; and

(c) to maintain records adequate to demonstrate compliance with the provisions of this paragraph, and to permit the Department, upon reasonable notice, to inspect such records.

6. Defendants are hereby ordered, pursuant to 5 M.R.S.A. § 209, to pay to the Department the costs of its investigation of defendants, in the amount of \$10,630.

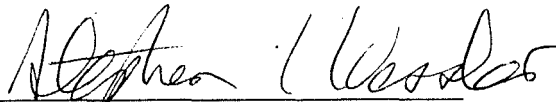
IV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the 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 implementation of the Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. If the Department and the defendants disagree concerning the interpretation of any of the provisions of the Decree, either party may apply to the Court for resolution of any such disagreement.

Dated:

12/11/87

CONSENTED TO ON BEHALF OF THE
STATE OF MAINE BY:

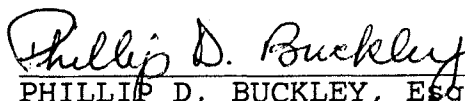


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer and Antitrust
Division



FRANCIS E. ACKERMAN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333

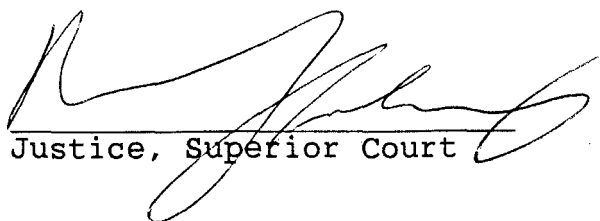
CONSENTED TO ON BEHALF OF
DEFENDANTS BY:



PHILLIP D. BUCKLEY, Esq.
Counsel for Defendants
Rudman & Winchell
84 Harlow Street
P.O. Box 1401
Bangor, Maine 04401

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

Dated: 12-11-87



Justice, Superior Court

A TRUE COPY

ATTEST:

Robin Savage
asst. Clerk of Courts

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

MCCAIN FOODS, LTD., a Canadian
corporation with a registered
office in Bangor, Maine;

MCCAIN FOODS, INC., a Maine
corporation with a registered
office in Bangor, Maine;

THOMAS EQUIPMENT, LTD., a
Canadian corporation with a
registered office in Presque
Isle, Maine,

Defendants

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OFFER OF JUDGMENT -
RULE 68
MAINE RULES OF CIVIL
PROCEDURE

TO: JAMES E. TIERNEY, ESQ.
Attorney General

JAMES T. KILBRETH, ESQ.
Deputy Attorney General

STEPHEN L. WESSLER, ESQ.
Assistant Attorney General

FRANCIS E. ACKERMAN, ESQ.
Assistant Attorney General

State House Station 6
Augusta, Maine 04333


The Defendants, McCain Foods, Inc., McCain Foods, Ltd.,
and Thomas Equipment, Ltd., offer to allow judgment in this
action to be taken against each and all of them by entry of a
Judicial Decree in the form and content attached hereto. This

Offer of Judgment is made for the purposes specified in Rule 68 and is not to be construed either as an admission that the Defendants are liable in this action or that the Plaintiff has a right to obtain any relief as set forth in its Prayer.

If this Offer of Judgment is acceptable, please note the Plaintiff's acceptance below and return to the undersigned within ten (10) days of receipt of this Offer of Judgment.

Dated at Bangor, Maine, this 7th day of October, 1987.


PHILLIP D. BUCKLEY, ESQ.


GERALD E. RUDMAN, ESQ.


ROBERT E. SUTCLIFFE, ESQ.

RUDMAN & WINCHELL
Attorneys for Defendants
McCain Foods, Inc.,
McCain Foods, Ltd., and
Thomas Equipment, Ltd.

84 Harlow Street, P.O. Box 1401
Bangor, Maine 04401

PLAINTIFF ACCEPTS THIS OFFER OF JUDGMENT:

JAMES E. TIERNEY, ESQ.
ATTORNEY GENERAL

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

MCCAIN FOODS, LTD., a Canadian
corporation with a registered
office in Bangor, Maine;

MCCAIN FOODS, INC., a Maine
corporation with a registered
office in Bangor, Maine;

THOMAS EQUIPMENT, LTD., a
Canadian corporation with a
registered office in Presque
Isle, Maine,

Defendants

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JUDGMENT

The Defendants, McCain Foods, Ltd. (McCain, Ltd.),
McCain Foods, Inc. (McCain), and Thomas Equipment, Ltd. (Thomas),
in this action, having served upon the Plaintiffs an Offer of
Judgment to be taken against them, and the Plaintiffs, within ten
(10) days after service thereof, served written notice upon the
Defendants that the Offer was accepted, and the Offer and notice
of acceptance and proof of service thereof having been filed by
the Plaintiffs, it is hereby,

ORDERED, ADJUDGED, AND DECREED THAT:

I. INJUNCTIVE RELIEF

1. McCain, its agents, officers, employers, assigns,
or other persons acting for it or under its control is hereby
permanently enjoined from:

a) permitting Thomas to grant potato contracts to potato growers for sale to McCain, and from allocating expected volumes of potatoes for which McCain enters into contracts with potato growers for any given crop year to Thomas for that purpose; and

b) discriminating among growers of potatoes in Aroostook County in determining which potato growers will receive contracts for potatoes on the basis of any grower's willingness to purchase equipment or fertilizer from Thomas; and

c) indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a potato grower's willingness to purchase equipment or fertilizer from Thomas.

2. Thomas, its agents, officers, employers, assigns, or other persons acting for it or under its control is hereby permanently enjoined from:

a) granting contracts to potato growers which obligate McCain to purchase potatoes for processing at McCain facilities; and

b) communicating the name of Thomas' customers to McCain apart from the seeking or obtaining of collateral for any sales of equipment or fertilizer from its customers which may include the assignment of, or grant of a security interest in and to any potato contract which any of Thomas' customers may have with any processor; and

c) indicating to any grower in any manner that it can assist him or her in selling potatoes under contract to McCain.

II. GROWER NOTIFICATION

McCain shall mail to each grower with whom it has entered into a contract for the purchase of potatoes at any time during the last six (6) years, at his or her last known residence or post office box address by certified mail, return receipt requested, within sixty (60) days of the date of this Order, a notice to the effect that pursuant to the Order of this Court, McCain has ceased to allow Thomas to procure potato contracts for McCain commencing in the crop year 1988; and, that, in the future, Thomas will play no role whatever in granting McCain potato contracts to growers; and, that, McCain will grant potato contracts to growers in its sole discretion; and, that, McCain will not be influenced in the granting of any such contracts by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas.

III. EMPLOYEE NOTIFICATION

McCain and Thomas will supply all employees who have direct contact with growers of potatoes in any capacity other than ministerial, including newly hired or transferred employees on a continuing basis, copies of the notice described above, and a written directive to all such employees requiring them to comply fully with the terms of the notice.

IV. PAYMENT OF INVESTIGATIVE COSTS

There is hereby assessed against McCain and Thomas, collectively, the cost of this suit to and through the date hereof, and of the investigation of Defendants made by the

Attorney General pursuant to 5 M.R.S.A. § 209, in the sum of Five
Thousand Dollars (\$5,000.00).

Dated: , 1987

JUSTICE
SUPERIOR COURT OF MAINE

STATE OF MAINE

KENNEBEC

, ss.

SUPERIOR COURT

CV-

STATE OF MAINE

Plaintiff

SUMMONS

vs.

MCCAIN FOODS, LTD., MCCAIN FOODS, INC.
and THOMAS EQUIPMENT, LTD.

Defendant

TO THE DEFENDANT:

The Plaintiff has begun a lawsuit against you in the Superior Court for Kennebec County. If you wish to oppose this lawsuit, you or your attorney must prepare and file a written Answer to the attached Complaint within 20 days from the day this summons was served upon you. You or your attorney must file your Answer by delivering it in person or by mail to the office of the Clerk of the Superior Court, Kennebec County Courthouse, Augusta, Maine. On or before the day you file your Answer, you or your attorney must mail a copy of your Answer to the Plaintiff's attorney, whose name and address appear below.

IMPORTANT WARNING: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU FILE YOUR ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR EMPLOYER MAY BE ORDERED TO PAY PART OF YOUR WAGES TO THE PLAINTIFF OR YOUR PERSONAL PROPERTY, INCLUDING BANK ACCOUNTS, AND YOUR REAL ESTATE MAY BE TAKEN TO SATISFY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS LAWSUIT, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you believe the Plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the office of the Clerk of the Superior Court, at the above named County Courthouse or any other County Courthouse, for information as to places where you may seek legal assistance.

Dated: September 21, 1987

Nancy A. Desjardins
Clerk of the Superior Court

(Seal of Court)

Stephen L. Wessler, Assistant Attorney General

Francis E. Ackerman, Asst. Attorney General 207-289-3661

Name of Plaintiff's Attorney

Telephone

State House Station #6, Augusta, Maine 04333

Address

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

MCCAIN FOODS, LTD., a Canadian
corporation with a registered
office in Bangor, Maine;

MCCAIN FOODS, INC., a Maine
corporation with a registered
office in Bangor, Maine;

THOMAS EQUIPMENT, LTD., a
Canadian corporation with a
registered office in Presque
Isle, Maine,

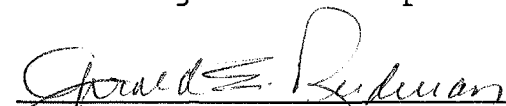
Defendants

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ACCEPTANCE OF SERVICE
OF PROCESS

Service of Summons and Complaint in the above-captioned
action on behalf of McCain Foods, Ltd., McCain Foods, Inc., and
Thomas Equipment, Ltd. is hereby acknowledged and accepted.

Dated: September 22, 1987


GERALD E. RUDMAN, ESQ.

RUDMAN & WINCHELL
Attorneys for Defendants
McCain Foods, Inc.,
McCain Foods, Ltd., and
Thomas Equipment, Ltd.
84 Harlow Street, P.O. Box 1401
Bangor, Maine 04401

COPY

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff

v.

MCCAIN FOODS, LTD., a Canadian
corporation with a registered
office in Bangor, Maine;

MCCAIN FOODS, INC., a Maine
corporation with a registered
office in Bangor, Maine;

THOMAS EQUIPMENT, LTD., a
Canadian corporation with a
registered office in Presque
Isle, Maine,

Defendants

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ANSWER OF
DEFENDANTS

NOW COMES the Defendants, McCain Foods, Ltd., McCain Foods, Inc., and Thomas Equipment, Ltd., by and through their attorneys, Rudman & Winchell, and answer the Plaintiff's Complaint as follows:

I. INTRODUCTION

1. No response is required.

II. PARTIES

2.- 5. The Defendants admit each and every allegation contained in Paragraphs 2 through 5, inclusive, of the Complaint.

III. JURISDICTION AND VENUE

6.- 7. The Defendants admit each and every allegation contained in Paragraph 6 and 7 of the Complaint.

IV. NATURE OF TRADE AND COMMERCE

8. The Defendants admit the allegations contained in Paragraph 8 of the Complaint.

9. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and, therefore, deny the same.

10. The Defendants admit that McCain purchases potatoes from growers located throughout Aroostook County pursuant to contracts and from the spot market. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the percentages alleged in Paragraph 10 of the Complaint and leave the Plaintiff to its proof.

11. The Defendants deny each and every allegation contained in Paragraph 11 of the Complaint.

12. The Defendants admit the allegations contained in Paragraph 12 of the Complaint.

13. The Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. The Defendants admit the allegations contained in Paragraph 14 of the Complaint.

15. The Defendants admit the allegations contained in Paragraph 15 of the Complaint.

V. VIOLATIONS

16. The Defendants admit the allegations contained in Paragraph 16 of the Complaint.

17. The Defendants deny each and every allegation contained in Paragraph 17 of the Complaint.

18. The Defendants admit the allegations contained in Paragraph 18 of the Complaint.

19. The Defendants deny each and every allegation contained in Paragraph 19 of the Complaint.

20. The Defendants deny each and every allegation contained in Paragraph 20 of the Complaint.

21. The Defendants deny each and every allegation contained in Paragraph 21 of the Complaint.

22. The Defendants deny each and every allegation contained in Paragraph 22 of the Complaint.

23. The Defendants deny each and every allegation contained in Paragraph 23 of the Complaint.

24. The Defendants deny each and every allegation contained in Paragraph 24 of the Complaint.

25. The Defendants deny each and every allegation contained in Paragraph 25 of the Complaint.

26. The Defendants deny each and every allegation contained in Paragraph 26 of the Complaint.

27. The Defendants deny each and every allegation contained in Paragraph 27 of the Complaint.

WHEREFORE, the Defendants, McCain Foods, Ltd, McCain Foods, Inc., and Thomas Equipment, Ltd. each demand that the Plaintiff's Complaint be dismissed and judgment be entered in favor of each

of them and that each of them be awarded their respective costs and grant such other and further relief as the Court deems just.

Dated: September 30, 1987


GERALD E. RUDMAN, ESQ.


PHILLIP D. BUCKLEY, ESQ.


ROBERT E. SUTCLIFFE, ESQ.

RUDMAN & WINCHELL
Attorneys for Defendants
McCain Foods, Inc.,
McCain Foods, Ltd., and
Thomas Equipment, Ltd.
84 Harlow Street, P.O. Box 1401
Bangor, Maine 04401

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-87-342

STATE OF MAINE,

Plaintiff

v.

SPECIAL ASSIGNMENT

MCCAIN FOODS, LTD.,
MCCAIN FOODS, INC. and
THOMAS EQUIPMENT, LTD.,

Defendants

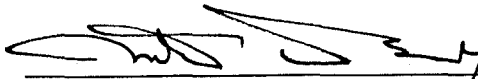
To the Honorable Donald G. Alexander, Justice, Superior Court:

WHEREAS the above entitled case is now pending in the Superior Court in and for the County of Kennebec; and

WHEREAS it appears advisable that a single justice hear the case and any matters in connection therewith to a final conclusion of same;

NOW, THEREFORE, IT IS HEREBY ORDERED that Justice Alexander be and is hereby assigned to hear and dispose of all matters that may arise in connection with said case, including hearing the case on the merits, to the exclusion of all other justices, hearings to be set at such times and places as Justice Alexander may in his sound discretion decide, with the least interference with his schedule of other assignments, and notwithstanding that some other separate session of the Superior Court may be in progress at the same time.

Dated: October 15, 1987


MORTON A. BRODY
Chief Justice, Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-87-342

STATE OF MAINE,

Plaintiff

v.

SPECIAL ASSIGNMENT

MCCAIN FOODS, LTD.,
MCCAIN FOODS, INC. and
THOMAS EQUIPMENT, LTD.,

Defendants

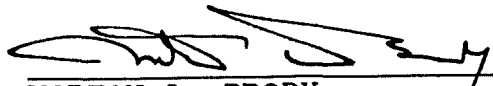
To the Honorable Donald G. Alexander, Justice, Superior Court:

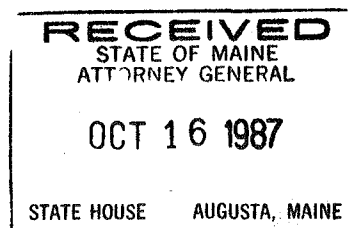
WHEREAS the above entitled case is now pending in the Superior Court in and for the County of Kennebec; and

WHEREAS it appears advisable that a single justice hear the case and any matters in connection therewith to a final conclusion of same;

NOW, THEREFORE, IT IS HEREBY ORDERED that Justice Alexander be and is hereby assigned to hear and dispose of all matters that may arise in connection with said case, including hearing the case on the merits, to the exclusion of all other justices, hearings to be set at such times and places as Justice Alexander may in his sound discretion decide, with the least interference with his schedule of other assignments, and notwithstanding that some other separate session of the Superior Court may be in progress at the same time.

Dated: October 15, 1987


MORTON A. BRODY
Chief Justice, Superior Court



NOTICE

On December 11, 1987, the Department of the Attorney General and McCain Foods Limited, McCain Foods, Inc. ("McCain") and Thomas Equipment Ltd. ("Thomas") entered into a Judgment which was approved by the Kennebec County Superior Court. The Judgment resolved a lawsuit in which the State alleged that McCain Foods Limited, McCain and Thomas had violated state antitrust laws by an arrangement whereby Thomas and McCain conditioned the granting of potato contracts for delivery of potatoes at McCain's Easton plant on the purchase by growers of fertilizer and equipment from Thomas. While entering into the Judgment, McCain Foods Limited, McCain and Thomas denied that they had violated state antitrust laws.

The purpose of this Notice is to notify all growers with whom McCain has contracted for the purchase of potatoes at any time during the past six years of certain provisions of the Judgment. The Judgment imposes a permanent injunction on McCain and Thomas, requires them to take the actions detailed below, and binds them on a permanent basis. Pursuant to the Judgment, as of December 11, 1987:

1. McCain has ceased to allow Thomas to procure potatoes or potato contracts for McCain.
2. Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers.

3. McCain will in the future grant potato contracts to growers solely on the basis of the quality of their produce, and other legitimate commercial considerations.

4. McCain will not be influenced, in granting potato contracts to growers, by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future.

McCain and Thomas will in addition take measures, as required by the Judgment, to ensure that present and future employees who have contact with growers, or responsibility in the area of potato contracts, are made fully aware of the provisions outlined above, and of the need for compliance with them.

NOTICE

On December 11, 1987, the Department of the Attorney General and McCain Foods Limited, McCain Foods, Inc. ("McCain") and Thomas Equipment Ltd. ("Thomas") entered into a Judgment which was approved by the Kennebec County Superior Court. The Judgment resolved a lawsuit in which the State alleged that McCain Foods Limited, McCain and Thomas had violated state antitrust laws by an arrangement whereby Thomas and McCain conditioned the granting of potato contracts for delivery of potatoes at McCain's Easton plant on the purchase by growers of fertilizer and equipment from Thomas. While entering into the Judgment, McCain Foods Limited, McCain and Thomas denied that they had violated state antitrust laws.

The purpose of this Notice is to notify all growers with whom McCain has contracted for the purchase of potatoes at any time during the past six years of certain provisions of the Judgment. The Judgment imposes a permanent injunction on McCain and Thomas, requires them to take the actions detailed below, and binds them on a permanent basis. Pursuant to the Judgment, as of December 11, 1987:

1. McCain has ceased to allow Thomas to procure potatoes or potato contracts for McCain.
2. Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers.

3. McCain will in the future grant potato contracts to growers solely on the basis of the quality of their produce, and other legitimate commercial considerations.

4. McCain will not be influenced, in granting potato contracts to growers, by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future.

McCain and Thomas will in addition take measures, as required by the Judgment, to ensure that present and future employees who have contact with growers, or responsibility in the area of potato contracts, are made fully aware of the provisions outlined above, and of the need for compliance with them.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-87-342

STATE OF MAINE,)
)
Plaintiff,)
)
v.)
)
McCAIN FOODS LIMITED, a)
Canadian corporation with)
a registered office in)
Bangor, Maine,)
)
McCAIN FOODS, INC., a Maine)
corporation with a registered)
office in Bangor, Maine,)
)
THOMAS EQUIPMENT LTD., a)
Canadian corporation with a)
registered office in Presque)
Isle, Maine,)
)
Defendants)

JUDGMENT

Plaintiff, the STATE OF MAINE, having filed the Complaint herein on September 21, 1987, and defendants having filed an Answer and having served upon plaintiff an Offer of Judgment which was rejected by plaintiff but nevertheless resulted, following negotiations, in the filing of this Judgment,

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

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, and under the mini-Sherman Act, 10 M.R.S.A. § 1101.

II. DEFINITIONS

As used in this final judgment:

- (a) "McCain" means the defendant McCain Foods, Inc.;
- (b) "Thomas" means the defendant Thomas Equipment Ltd.;
- (c) "'Agents" includes, without limitation, directors, officers, employees, assigns or other persons acting for or under the control of McCain or Thomas (as applicable);
- (d) "Court" means the Superior Court of Kennebec County;
- (e) "Department" means the State of Maine, Department of the Attorney General;
- (f) "Decree" means this Judgment;
- (g) "State" means the State of Maine.

III. RELIEF

1. McCain and Thomas and their agents are hereby permanently enjoined from entering into any contract,

conspiracy or combination with any grower in the State to tie the purchase by McCain or Thomas of agricultural produce to the purchase by growers of fertilizer or agricultural equipment or machinery.

2. McCain and its agents are hereby permanently enjoined:

(a) from permitting Thomas to grant potato contracts to growers in the State on McCain's behalf, and from allocating expected contract volume for any given crop year to Thomas for that purpose;

(b) from discriminating among growers in the State, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas;

(c) from indicating to any grower in the State in any manner that their willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas; and

(d) from purchasing potatoes from Thomas, except in cases where (i) Thomas has granted credit to a customer, accepting as collateral a security interest in, or the assignment of a potato contract, and the customer has defaulted on his or her obligation, resulting in ownership of the potatoes by Thomas; or (ii) Thomas, as holder of a mortgage on a parcel of real estate, including growing crops, has foreclosed on its mortgage following default by the obligor, resulting in ownership of potatoes by Thomas.

3. Thomas and its agents are hereby permanently enjoined:

(a) from granting contracts to purchase potatoes for processing at McCain's facilities to growers in the State;

(b) from communicating the names of Thomas' customers in the State to McCain, except in cases where a customer has applied to Thomas for credit, offering as collateral a security interest in, or the assignment of a potato contract which the customer had been granted by McCain prior to making such credit application; and

(c) from indicating to any grower in the State in any manner that it can assist him or her in selling potatoes to McCain.

4. McCain is hereby ordered:

(a) to mail to each grower in the State with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his or her last known residence or post office address, by certified mail, return receipt requested, within 30 days of the date of this Decree, a Notice, in the form attached hereto, to the effect that pursuant to this Decree, McCain has ceased to allow Thomas to procure potato contracts or potatoes for McCain, commencing in the crop year 1988; that Thomas will not in the future grant contracts to purchase potatoes for processing at McCain's facilities to growers; that in the future McCain will grant potato contracts to growers solely

on the basis of the quality of their produce, and other legitimate commercial considerations; and that McCain will not be influenced in the granting of potato contracts to growers by a grower's purchase of or refusal to purchase equipment or fertilizer from Thomas, whether past or future; and

(b) to file with the Department a report of the mailing described in subparagraph 4(a) above, attaching completed return receipts, within 15 days of its receipt of such completed return receipts.

5. McCain and Thomas are hereby ordered:

(a) to supply, to all those of their present employees who in their capacities as such have in the past six years had any contact with growers in the State, or exercised responsibility in relation to granting potato contracts to growers in the State, or in making decisions with regard to the granting of potato contracts to growers in the State, within 30 days of the date of this Decree, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree;

(b) to supply to all employees newly hired or transferred during a period of eight years following the date of this Decree, who in their capacities as such fall

into any of the categories described in subparagraph 5(a) above, immediately upon such hiring or transfer, copies of the Notice described in paragraph 4 above, together with copies of this Decree, and a written directive to all such employees requiring them to comply fully with the terms of the Notice and of the Decree; and

(c) to maintain records adequate to demonstrate compliance with the provisions of this paragraph, and to permit the Department, upon reasonable notice, to inspect such records.

6. Defendants are hereby ordered, pursuant to 5 M.R.S.A. § 209, to pay to the Department the costs of its investigation of defendants, in the amount of \$10,630.

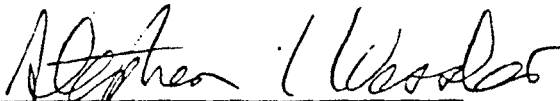
IV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the 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 implementation of the Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. If the Department and the defendants disagree concerning the interpretation of any of the provisions of the Decree, either party may apply to the Court for resolution of any such disagreement.

Dated:

12/11/87

CONSENTED TO ON BEHALF OF THE
STATE OF MAINE BY:

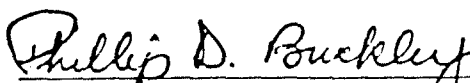


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer and Antitrust
Division



FRANCIS E. ACKERMAN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333

CONSENTED TO ON BEHALF OF
DEFENDANTS BY:

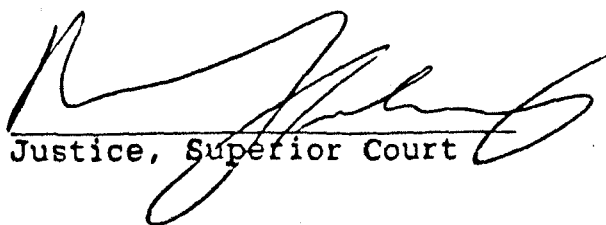


PHILLIP D. BUCKLEY, Esq.
Counsel for Defendants
Rudman & Winchell
84 Harlow Street
P.O. Box 1401
Bangor, Maine 04401

It is hereby ordered and decreed as set forth above.

Judgment shall enter in accordance with the above terms, which
are incorporated by reference herein.

Dated: 12-11-87



Justice, Superior Court

TRUE COPY

TEST:

Robert Savage
Clerk of Courts

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 McCAIN FOODS, LTD., a)
 Canadian corporation with)
 a registered office in)
 Bangor, Maine;)
)
 McCAIN FOODS, INC., a Maine)
 corporation with a registered)
 office in Bangor, Maine;)
)
 THOMAS EQUIPMENT, LTD., a)
 Canadian corporation with)
 a registered office in)
 Presque Isle, Maine,)
)
 Defendants)

COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1986) and 10 M.R.S.A. §§ 1101-1107 (1979 & Supp. 1986).

II. PARTIES

2. Plaintiff, STATE OF MAINE, sues in its sovereign capacity. By statute, the State, through the Department of the Attorney General, is charged with the enforcement of antitrust

laws, including 5 M.R.S.A. § 207 (1979) and 10 M.R.S.A. § 1101 (1979).

3. Defendant McCAIN FOODS, LTD. (hereinafter referred to as the "parent corporation") is a Canadian corporation with principal offices in Florenceville, New Brunswick, Canada, and a registered office in Bangor, Maine. The parent corporation is a multinational conglomerate whose primary business is the processing and sale of food products worldwide. The parent corporation plays a role in coordinating relationships between and among its various subsidiaries, including those actively engaged in business in Maine.

4. Defendant McCAIN FOODS, INC. (hereinafter referred to as "McCain") is a Maine corporation with principal offices in Easton, Maine, and a registered office in Bangor, Maine. McCain, a wholly-owned subsidiary of the parent corporation, operates two manufacturing facilities, in Easton and Presque Isle, Maine. The two facilities are engaged primarily in the production of processed potato products.

5. Defendant THOMAS EQUIPMENT, LTD. (hereinafter referred to as "Thomas") is a Canadian corporation with principal offices in Centreville, New Brunswick, Canada, and a registered office in Presque Isle, Maine. Thomas, a wholly-owned subsidiary of the parent corporation, manufactures agricultural machinery and fertilizer in Canada, and sells both products in Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 (Supp. 1986), 5 M.R.S.A. § 209 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 14 M.R.S.A. § 6051(13) (1980).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209 (Supp. 1986) and 14 M.R.S.A. § 501 (1980).

IV. NATURE OF TRADE AND COMMERCE

A. Processing of Potatoes

8. McCain processes potatoes for the production of frozen french fries at its manufacturing facilities in Easton and Presque Isle, Maine. McCain has owned the Easton facility since 1975 and the Presque Isle facility since February, 1987.

9. McCain purchases over 20 percent of potatoes grown in the County, and is the largest purchaser of potatoes in the County.

10. McCain purchases potatoes from growers located throughout Aroostook County, Maine (hereinafter referred to as the "County"). Over 70 percent of McCain's purchases of potatoes for processing are made pursuant to contracts entered into with growers each spring for delivery over the period running from the fall harvest through June of the succeeding year, at prices negotiated in advance with the Agricultural Bargaining Council, a growers' collective bargaining organization constituted pursuant to 13 M.R.S.A. §§ 1953-1965

(1981 & Supp. 1986). McCain makes the balance of its purchases of potatoes for processing from growers on the so-called "spot" market. McCain processes over 80 percent of potatoes processed in the County; prior to its acquisition of the Presque Isle facility, McCain processed over 60 percent of potatoes processed in the County.

11. For a number of reasons, including, but not limited to, the following, processed potato contracts with McCain are in significant demand by growers:

(a) The fresh market, on which potatoes are sold as table stock, has a history of volatility: extreme fluctuations in price in recent years have caused many growers to suffer heavy losses, and have caused some growers to go out of business. In contrast, the processing market has a history of relative stability: processing contract prices have tended to hold steady at levels which allow growers to realize a reasonable return on their investments.

(b) The availability of potato contracts on the fresh market is limited.

(c) Creditors encourage growers to seek processing contracts.

(d) Growers who succeed in obtaining processing contracts in any given year are encouraged by processors, including McCain, to invest in special storage facilities, thereby rendering them to a greater degree dependent upon the stable prices and contractual security of the processing market.

(e) Processing contracts hold a special attraction for growers because they permit a greater degree of assurance in planning for the future.

B. Equipment and Fertilizer.

12. Growers in the County use a variety of agricultural machines and machine components designed for use in potato production operations, including but not limited to harvesters, windrowers, loaders, bin-pilers, bulk bodies and chain (hereinafter referred to collectively as "equipment").

13. The market for equipment in the County is in large part divided between two manufacturers, Thomas and Lockwood Corporation, of Gering, Nebraska. Thomas sells on its own account; Lockwood machines are sold by several independent dealers.

14. Growers in the County use a variety of fertilizers of different grades and qualities for various purposes in connection with their farming operations.

15. Thomas sells fertilizer under the brand name McCain Fertilizer; Thomas' fertilizer division is known as McCain Fertilizer. Thomas' major competitors in the market for fertilizer in the County are Nutrite Corp. and Agway, Inc.

V. VIOLATIONS

16. Since 1980, McCain has followed a practice of allocating to Thomas between 20 and 40% of the total volume of its contracts to purchase potatoes, thereby delegating to

Thomas authority to grant contracts to growers on McCain's behalf. McCain continues to follow this practice.

17. McCain has also followed a parallel practice of refusing to grant first-time contracts to growers, while allowing Thomas to do so.

18. Thomas grants potato contracts allocated to it by McCain only to growers who purchase equipment or fertilizer from Thomas.

19. The conduct described in paragraphs 16 through 18 above has had the effect of imposing the following conditions, among others, on growers:

a. For many growers already holding McCain contracts any increase in the volume of potatoes under contract has been made conditional upon a purchase of fertilizer or equipment from Thomas;

b. For growers who at various times have been otherwise unable to secure contracts from McCain, the grant of a McCain contract has been made conditional upon purchases of fertilizer or equipment from Thomas; and

c. For growers who at various times have been subjected to cuts in the volume of potatoes under contract to McCain, the ability to offset or avoid the effect of such a cut has been made conditional upon the purchase of fertilizer or equipment from Thomas.

20. The conduct described in paragraphs 16 through 19 above has been and is coordinated and operated by officers and employees of the parent company as well as of McCain and Thomas.

21. The primary purpose of the conduct described in paragraphs 16 through 20 above has been and is to promote Thomas' sales of fertilizer and equipment by giving Thomas an advantage over its competitors in both markets.

22. McCain possesses and possessed sufficient economic power as a purchaser of potatoes to permit defendants to effectively coerce growers to purchase fertilizer or equipment from Thomas.

23. In addition to the conduct described in paragraphs 16 through 22 above, defendants have engaged in coercive practices which have, in fact, forced growers to purchase fertilizer or equipment from Thomas, including, but not limited to, the following coercive practices:

(a) Employees of McCain and Thomas have communicated the nature and purpose of the conduct described in paragraphs 16 through 22 above to growers throughout the County by actions and words with the result that the nature and purpose of the described conduct have become well-known to growers.

(b) Employees of McCain have refused contracts to growers and at the same time indicated to them that Thomas had contracts available.

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(c) Employees of McCain have inquired of growers seeking to obtain contracts whether they purchased fertilizer or equipment from Thomas, and on receiving negative answers, have refused them contracts.

(d) Employees of McCain have indicated to growers that an important criterion in whether a contract would be granted to a particular grower was whether or not he purchased fertilizer or equipment from Thomas.

(e) Employees of Thomas have informed growers that unless they bought fertilizer or equipment from Thomas, they would lose their contracts with McCain.

(f) Defendants have cooperated by arranging for McCain to cut growers' contract volume, and for Thomas to immediately contact such growers to inform them that they could avoid the impact of the cut by purchasing fertilizer or equipment from Thomas.

24. Defendants' conduct as described in paragraphs 16 through 23 above has had the following effects, among others:

(a) Many growers, who would otherwise have made their purchases of fertilizer or equipment elsewhere or not at all, have made purchases from Thomas solely in order to obtain a contract with McCain, or in order to increase the volume of their contracts with McCain, or in order to ensure against any decrease in the volume of their contracts with McCain.

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(b) Thomas' ability to reward growers purchasing its fertilizer or equipment with McCain contracts has given it an advantage over its competitors in both markets which bears no relation to the prices it charges or the quality of its products and service.

(c) Many growers who have been persuaded to purchase fertilizer or equipment from Thomas by the availability of potato contracts have paid a penalty in terms of price, quality or service, or in that they were persuaded to purchase an item which they did not need at the time of the purchase.

(d) Thomas' competitors in the markets for fertilizer and equipment have suffered damage to their businesses.

25. Thomas has sold a substantial volume of fertilizer and equipment as a result of the conduct described in paragraphs 16 through 23 above.

COUNT ONE

26. Defendants' conduct with respect to fertilizer sales as described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

COUNT TWO

27. Defendants' conduct with respect to equipment sales described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

VI. PRAYER

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

- A. Declare that defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).
- B. Permanently enjoin defendants, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from entering into any contract, conspiracy or combination in restraint of trade; and
 - (ii) from engaging in any unfair method of competition.
- C. Permanently enjoin McCain and its parent corporation, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from permitting Thomas to grant potato contracts to growers on McCain's behalf, and from

allocating expected contract volume for any given crop year to Thomas for that purpose;

- (ii) from discriminating among growers, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas, or on the basis of a grower's role in testifying on behalf of any party to this action; and
- (iii) from indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas.

- D. Permanently enjoin Thomas, its agents, officers, employees, assigns or other persons acting for it or under its control
 - (i) from granting contracts to purchase potatoes for processing at McCain facilities to growers;
 - (ii) from communicating the names of Thomas' customers to McCain; and
 - (iii) from indicating to any grower in any manner that it can assist him in selling potatoes to McCain, or that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's

willingness to purchase equipment or fertilizer from Thomas.

- E. Order McCain to mail to each grower with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his last known residence or post box address, by certified mail, return receipt requested, a notice to effect that pursuant to an order of this Court McCain has ceased to allocate potato contracts to Thomas; that Thomas will in future play no role whatever in granting potato contracts to growers; that in future, McCain will grant potato contracts to growers solely on the basis of the quality of their product, and other legitimate commercial considerations; and that decisions to grant or not to grant potato contracts to growers will in no way be influenced by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas;
- F. Order McCain to file with the Court a report of the mailings described in subpart E above, attaching completed return receipts, within one month of the date of the Court's decree;
- G. Order defendants to supply, to all those employees who in their capacities as such have any contact with

growers, including newly hired or transferred employees on a continuing basis, copies of the notice described in subpart E above, together with copies of the Court's decree in this action, and a written directive to all such employees requiring them to comply fully with the terms of the notice and of the decree;

- H. Order defendants to file with the Court sworn affidavits signed respectively by defendants' chief executive officers, stating in detail the manner in which defendants have complied with the requirements set forth in subpart G above, and listing by name those employees to whom copies of the notice and decree have been supplied in accordance therewith;
- I. Order defendants to file with the Court notarized statements signed by each employee listed in the affidavits described in subpart H above stating that he or she has read the notice and decree with which he or she has been supplied and fully understands their purport;
- J. Order defendants to file annually with the Court sworn affidavits in the form described in subpart H above in relation to newly hired or transferred employees, together with notarized statements in the form described in subpart I above signed by each such employee;

- K. Assess against the defendants collectively a civil penalty pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) for each course of conduct constituting an antitrust violation;
- L. Assess against the defendants the costs of this suit and of the investigation of defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986);
- M. Grant such other relief as the Court deems just and proper.

DATED:

JAMES E. TIERNEY
Attorney General

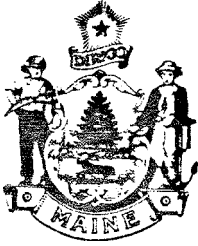
JAMES T. KILBRETH
Deputy Attorney General

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division

FRANCIS E. ACKERMAN
Assistant Attorney General

State House Station #6
Augusta, Maine 04333
Telephone: (207) 289-3661

NEWS RELEASE



James E. Tierney
Attorney General

State of Maine
Department of the Attorney General
Augusta, Maine 04333

For Release: December 11, 1987
Contact: Stephen L. Wessler or
Francis E. Ackerman
Asst. Attorneys General
207/289-3661

AUGUSTA--Attorney General James E. Tierney today announced that his office and McCain Foods Limited had reached a settlement of the State's antitrust suit that would prohibit Thomas Equipment, Ltd. from providing growers with contracts for processing potatoes at McCain Foods, Inc.

The Attorney General's office sued McCain Foods Limited and two subsidiaries, McCain Foods, Inc. and Thomas Equipment Ltd. in September for violations of state antitrust laws. Specifically, the conduct which the Attorney General alleged to be illegal forced potato growers to purchase farm equipment or fertilizer from Thomas Equipment Ltd. as a condition of obtaining a contract for the sale of potatoes for processing by McCain Foods, Inc.

Today's settlement, which was approved by Superior Court Justice Donald Alexander, subjects McCain Foods, Inc. and

NEWS RELEASE

Thomas Equipment Ltd. to a permanent injunction prohibiting the companies from future violations of the antitrust laws with respect to the tying of equipment and fertilizer sales to the granting of contracts for potatoes for processing. In addition, McCain and Thomas were ordered to provide notice of the terms of the court's order both to their employees and to potato growers in Aroostook County. The defendants, in agreeing to the court-ordered settlement, did not admit any liability. The defendants were ordered to pay the Department \$10,630 for the costs of the Department's investigation.

Attorney General Tierney stated: "Today's court-approved settlement provides potato growers in Aroostook County with the assurance that their ability to obtain a potato contract from McCain Foods, Inc. will not be affected by where they purchase farm equipment, fertilizer or other products or services. I want to stress that nothing in today's settlement alters my belief that McCain's has been and will continue to be a vital contributing force in the economy of Aroostook County."

McCain Foods hit with antitrust suit

State also names two subsidiaries

By John Hale
State House Bureau

AUGUSTA — Attorney General James E. Tierney on Monday filed an antitrust lawsuit against McCain Foods Ltd. of New Brunswick and two subsidiaries, charging that McCain has dealt unfairly with Maine potato farmers.

The lawsuit charged McCain with forcing Aroostook County potato farmers to buy fertilizer and farm equipment from a McCain subsidiary, Thomas Equipment Ltd., if they wished to obtain contracts to grow potatoes for McCain's frozen french fry plants.

The state seeks payment of a civil penalty by McCain for "each course of conduct constituting an antitrust violation," plus payment of costs of the lawsuit and investigation.

Stephen Wessler, assistant attorney general and chief of the Attorney General's Consumer and Antitrust Division, said it was up to a judge to decide how many "courses of conduct" were involved in the antitrust case, and if the state was successful, the state would then recommend specific fines.

Wessler said the maximum fine possible was \$50,000 for each antitrust violation, and that it was possible a judge could decide there was only one violation.

Wessler said he didn't know when the case would be heard in court. "This is a case that will certainly take some time to litigate," he said.

The Attorney General's Office charged McCain with delegating the authority to grant potato-growing contracts to Thomas Equipment, and then only granting such contracts to farmers who bought fertilizer and equipment from Thomas.

The state also charged that Thomas and McCain employees pressured farmers into purchases they might have made elsewhere or not at all in exchange for not reducing the size of their contracts with McCain.

McCain purchased the former J.R. Simplot potato-processing plant in Presque Isle last February and controls more than 80 percent of the market for processed potatoes. McCain is the largest buyer of potatoes in Aroostook County, according to the state's complaint.

McCain also has a processing plant in Easton. The company's only major competition for potatoes grown for processing comes from Interstate Food Processing Corp. of Fort Fairfield.

McCain's economic clout in the county, coupled with its alleged coercion of farmers to buy fertilizer and equipment from Thomas, hurt the farmers and the competitors of Thomas for sales of fertilizer and equipment, the state charged.

Thomas's Aroostook County competitors in the sale of farm equipment were independent dealers selling equipment made by Lockwood Corp. of Gering, Neb., while its competitors in fertilizer sales were Nutrite Corp. and Agway Inc., the suit said.

The suit said that contracts to grow potatoes for processing were more desirable to farmers than contracts to grow potatoes for the fresh market, because the processing industry was more stable than the fresh market, where extreme fluctuations in price had caused some growers to go out of business.

The lawsuit was filed Monday morning at Kennebec County Superior Court after an investigation by the Attorney General's Office that lasted several months.

Ian Robinson, president of McCain Foods Inc. of Easton, the American food-processing subsidiary of the international food-processing conglomerate, released a prepared statement responding to the allegations.

See ANTITRUST on Page 3

U.S. copter

White House says Iranians laying mines

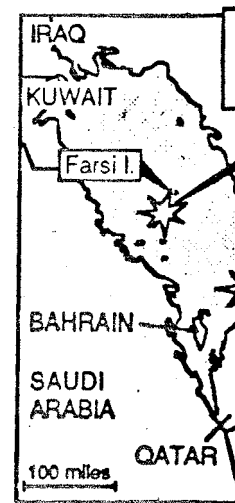
WASHINGTON (AP) — A U.S. military helicopter attacked an Iranian ship in the Persian Gulf on Monday after discovering it laying underwater mines, the White House and Pentagon said.

The Pentagon said the stern of the Iranian ship Iran Ajr was set on fire. The fire was extinguished but the ship was left "dead in the water," said Fred Hoffman, the Pentagon's spokesman.

The White House said the United States acted "in accordance with existing rules of engagement."

Marlin Fitzwater, the White House spokesman, said U.S. forces "took defensive action" when the Iranian ship was discovered laying mines in international waters 50 miles north-east of Bahrain.

The attack was outside an area



where a British tanker earlier Monday by Iran.

The incident was the can military action since Aug. 8, when a Na cat fighter fired two n Iranian jet that was "hostile." Both missile episode was the closest

Reagan warns I on gulf cease-fire

UNITED NATIONS (AP) — President Reagan confronted Iran at the United Nations on Monday with a demand that it "clearly and unequivocally" accept a cease-fire in its Persian Gulf war with Iraq or face a worldwide arms embargo spearheaded by the United States.

Reagan set a new deadline of 24 hours for Tehran to accept the cease-fire resolution approved unanimously July 20 by the U.N. Security Council.

Referring to the speech Iranian President Ali Khamenei was scheduled to deliver Tuesday morning to the 42nd U.N. General Assembly session, the president said: "I take this opportunity to call upon him clearly and unequivocally to state whether Iran accepts 598 (the resolution) or not."

"If the answer is positive, it would be a welcome step and major breakthrough. If it is negative, the council has no choice but rapidly to adopt enforcement measures."

Reagan urged the Soviet Union to join the U.S.-led effort to end the

war, which enters its Wednesday, and to stop "the false accusation that the United States — a war itself — is the sown in the gulf. Such stater helpful."

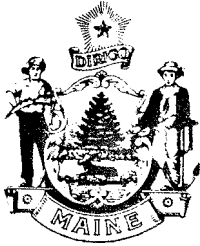
The president said the Navy buildup in the gulf shipments of strategic i the economies of the fre to prevent the dominat ion by any hostile pov "When the tension di will our presence," he

Before taking the ro gan met privately with tary-General Javier Cuellar, who returned t last Wednesday after i talks in Iran and Iraq o fire resolution.

A senior administrat who spoke on condition ity, said the president t secretary-general that h cal about Iran's intenti gard to the Iran-Iraq w.

See REAGAN on 1

NEWS RELEASE



James E. Tierney
Attorney General

State of Maine
Department of the Attorney General
Augusta, Maine 04333

For Release: 9:00 a.m.
Sept. 21, 1987
Contact: Stephen L. Wessler
289-3661

Attorney General James E. Tierney today announced that his office had filed an antitrust suit against McCain Foods Ltd. and two subsidiaries. The civil antitrust suit, filed in Kennebec County Superior Court, alleges that McCain's has conditioned the purchase of potatoes from growers upon the purchase by those growers of fertilizer or farm equipment. Specifically, the Complaint alleged that McCain's potato processing division (McCain Foods Inc.) had delegated to its farm equipment and fertilizer subsidiary (Thomas Equipment Ltd.) the authority to grant contracts for the purchase of potatoes from growers. As a result of this practice, growers can obtain potato contracts from Thomas Equipment Ltd. only if they purchase equipment or fertilizer. In addition, the Complaint alleged that employees of McCain's engaged in practices to pressure growers to purchase fertilizer or equipment from Thomas Equipment Ltd.

NEWS RELEASE

The Attorney General's Complaint stated that McCain's conduct forced growers to purchase equipment and fertilizer from Thomas Equipment Ltd. when those growers would have purchased such fertilizer or equipment elsewhere. In addition, the Complaint alleged that the practices of McCain's injured the business of other equipment and fertilizer dealers in Aroostook County.

The Attorney General is seeking an injunction prohibiting McCain's from conditioning or tying the purchase of potatoes upon the sale of fertilizer or equipment. The Complaint also seeks imposition of a civil penalty and recovery of investigative costs.

Attorney General Tierney stated, "McCain's has been and will continue to be a vital part of the economy of Aroostook County. My view of McCain's valuable economic role is not affected by our different views as to the legality of the practices described in the Civil Complaint. Today's lawsuit has been brought in order to ensure a continued competitive market for fertilizer and farm equipment in Aroostook County."

NEWS RELEASE



State of Maine
Department of the Attorney General
Augusta, Maine 04333

James E. Tierney
Attorney General

For Release: 9:00 a.m.
Sept. 21, 1987
Contact: Stephen L. Wessler
289-3661

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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
McCAIN FOODS, LTD., a)
Canadian corporation with)
a registered office in)
Bangor, Maine;)
)
McCAIN FOODS, INC., a Maine)
corporation with a registered)
office in Bangor, Maine;)
)
THOMAS EQUIPMENT, LTD., a)
Canadian corporation with)
a registered office in)
Presque Isle, Maine,)
)
Defendants)

COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1986) and 10 M.R.S.A. §§ 1101-1107 (1979 & Supp. 1986).

II. PARTIES

2. Plaintiff, STATE OF MAINE, sues in its sovereign capacity. By statute, the State, through the Department of the Attorney General, is charged with the enforcement of antitrust

laws, including 5 M.R.S.A. § 207 (1979) and 10 M.R.S.A. § 1101 (1979).

3. Defendant McCAIN FOODS, LTD. (hereinafter referred to as the "parent corporation") is a Canadian corporation with principal offices in Florenceville, New Brunswick, Canada, and a registered office in Bangor, Maine. The parent corporation is a multinational conglomerate whose primary business is the processing and sale of food products worldwide. The parent corporation plays a role in coordinating relationships between and among its various subsidiaries, including those actively engaged in business in Maine.

4. Defendant McCAIN FOODS, INC. (hereinafter referred to as "McCain") is a Maine corporation with principal offices in Easton, Maine, and a registered office in Bangor, Maine. McCain, a wholly-owned subsidiary of the parent corporation, operates two manufacturing facilities, in Easton and Presque Isle, Maine. The two facilities are engaged primarily in the production of processed potato products.

5. Defendant THOMAS EQUIPMENT, LTD. (hereinafter referred to as "Thomas") is a Canadian corporation with principal offices in Centreville, New Brunswick, Canada, and a registered office in Presque Isle, Maine. Thomas, a wholly-owned subsidiary of the parent corporation, manufactures agricultural machinery and fertilizer in Canada, and sells both products in Maine.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 (Supp. 1986), 5 M.R.S.A. § 209 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 14 M.R.S.A. § 6051(13) (1980).

7. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209 (Supp. 1986) and 14 M.R.S.A. § 501 (1980).

IV. NATURE OF TRADE AND COMMERCE

A. Processing of Potatoes

8. McCain processes potatoes for the production of frozen french fries at its manufacturing facilities in Easton and Presque Isle, Maine. McCain has owned the Easton facility since 1975 and the Presque Isle facility since February, 1987.

9. McCain purchases over 20 percent of potatoes grown in the County, and is the largest purchaser of potatoes in the County.

10. McCain purchases potatoes from growers located throughout Aroostook County, Maine (hereinafter referred to as the "County"). Over 70 percent of McCain's purchases of potatoes for processing are made pursuant to contracts entered into with growers each spring for delivery over the period running from the fall harvest through June of the succeeding year, at prices negotiated in advance with the Agricultural Bargaining Council, a growers' collective bargaining organization constituted pursuant to 13 M.R.S.A. §§ 1953-1965

(1981 & Supp. 1986). McCain makes the balance of its purchases of potatoes for processing from growers on the so-called "spot" market. McCain processes over 80 percent of potatoes processed in the County; prior to its acquisition of the Presque Isle facility, McCain processed over 60 percent of potatoes processed in the County.

11. For a number of reasons, including, but not limited to, the following, processed potato contracts with McCain are in significant demand by growers:

(a) The fresh market, on which potatoes are sold as table stock, has a history of volatility: extreme fluctuations in price in recent years have caused many growers to suffer heavy losses, and have caused some growers to go out of business. In contrast, the processing market has a history of relative stability: processing contract prices have tended to hold steady at levels which allow growers to realize a reasonable return on their investments.

(b) The availability of potato contracts on the fresh market is limited.

(c) Creditors encourage growers to seek processing contracts.

(d) Growers who succeed in obtaining processing contracts in any given year are encouraged by processors, including McCain, to invest in special storage facilities, thereby rendering them to a greater degree dependent upon the stable prices and contractual security of the processing market.

(e) Processing contracts hold a special attraction for growers because they permit a greater degree of assurance in planning for the future.

B. Equipment and Fertilizer.

12. Growers in the County use a variety of agricultural machines and machine components designed for use in potato production operations, including but not limited to harvesters, windrowers, loaders, bin-pilers, bulk bodies and chain (hereinafter referred to collectively as "equipment").

13. The market for equipment in the County is in large part divided between two manufacturers, Thomas and Lockwood Corporation, of Gering, Nebraska. Thomas sells on its own account; Lockwood machines are sold by several independent dealers.

14. Growers in the County use a variety of fertilizers of different grades and qualities for various purposes in connection with their farming operations.

15. Thomas sells fertilizer under the brand name McCain Fertilizer; Thomas' fertilizer division is known as McCain Fertilizer. Thomas' major competitors in the market for fertilizer in the County are Nutrite Corp. and Agway, Inc.

V. VIOLATIONS

16. Since 1980, McCain has followed a practice of allocating to Thomas between 20 and 40% of the total volume of its contracts to purchase potatoes, thereby delegating to

Thomas authority to grant contracts to growers on McCain's behalf. McCain continues to follow this practice.

17. McCain has also followed a parallel practice of refusing to grant first-time contracts to growers, while allowing Thomas to do so.

18. Thomas grants potato contracts allocated to it by McCain only to growers who purchase equipment or fertilizer from Thomas.

19. The conduct described in paragraphs 16 through 18 above has had the effect of imposing the following conditions, among others, on growers:

a. For many growers already holding McCain contracts any increase in the volume of potatoes under contract has been made conditional upon a purchase of fertilizer or equipment from Thomas;

b. For growers who at various times have been otherwise unable to secure contracts from McCain, the grant of a McCain contract has been made conditional upon purchases of fertilizer or equipment from Thomas; and

c. For growers who at various times have been subjected to cuts in the volume of potatoes under contract to McCain, the ability to offset or avoid the effect of such a cut has been made conditional upon the purchase of fertilizer or equipment from Thomas.

20. The conduct described in paragraphs 16 through 19 above has been and is coordinated and operated by officers and employees of the parent company as well as of McCain and Thomas.

21. The primary purpose of the conduct described in paragraphs 16 through 20 above has been and is to promote Thomas' sales of fertilizer and equipment by giving Thomas an advantage over its competitors in both markets.

22. McCain possesses and possessed sufficient economic power as a purchaser of potatoes to permit defendants to effectively coerce growers to purchase fertilizer or equipment from Thomas.

23. In addition to the conduct described in paragraphs 16 through 22 above, defendants have engaged in coercive practices which have, in fact, forced growers to purchase fertilizer or equipment from Thomas, including, but not limited to, the following coercive practices:

(a) Employees of McCain and Thomas have communicated the nature and purpose of the conduct described in paragraphs 16 through 22 above to growers throughout the County by actions and words with the result that the nature and purpose of the described conduct have become well-known to growers.

(b) Employees of McCain have refused contracts to growers and at the same time indicated to them that Thomas had contracts available.

(c) Employees of McCain have inquired of growers seeking to obtain contracts whether they purchased fertilizer or equipment from Thomas, and on receiving negative answers, have refused them contracts.

(d) Employees of McCain have indicated to growers that an important criterion in whether a contract would be granted to a particular grower was whether or not he purchased fertilizer or equipment from Thomas.

(e) Employees of Thomas have informed growers that unless they bought fertilizer or equipment from Thomas, they would lose their contracts with McCain.

(f) Defendants have cooperated by arranging for McCain to cut growers' contract volume, and for Thomas to immediately contact such growers to inform them that they could avoid the impact of the cut by purchasing fertilizer or equipment from Thomas.

24. Defendants' conduct as described in paragraphs 16 through 23 above has had the following effects, among others:

(a) Many growers, who would otherwise have made their purchases of fertilizer or equipment elsewhere or not at all, have made purchases from Thomas solely in order to obtain a contract with McCain, or in order to increase the volume of their contracts with McCain, or in order to ensure against any decrease in the volume of their contracts with McCain.

(b) Thomas' ability to reward growers purchasing its fertilizer or equipment with McCain contracts has given it an advantage over its competitors in both markets which bears no relation to the prices it charges or the quality of its products and service.

(c) Many growers who have been persuaded to purchase fertilizer or equipment from Thomas by the availability of potato contracts have paid a penalty in terms of price, quality or service, or in that they were persuaded to purchase an item which they did not need at the time of the purchase.

(d) Thomas' competitors in the markets for fertilizer and equipment have suffered damage to their businesses.

25. Thomas has sold a substantial volume of fertilizer and equipment as a result of the conduct described in paragraphs 16 through 23 above.

COUNT ONE

26. Defendants' conduct with respect to fertilizer sales as described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

COUNT TWO

27. Defendants' conduct with respect to equipment sales described in paragraphs 16 through 25 above constitutes coercive reciprocal dealing, and as such, represents a contract, conspiracy or combination in 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).

VI. PRAYER

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

- A. Declare that defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).
- B. Permanently enjoin defendants, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from entering into any contract, conspiracy or combination in restraint of trade; and
 - (ii) from engaging in any unfair method of competition.
- C. Permanently enjoin McCain and its parent corporation, their agents, officers, employees, assigns or other persons acting for them or under their control
 - (i) from permitting Thomas to grant potato contracts to growers on McCain's behalf, and from

allocating expected contract volume for any given crop year to Thomas for that purpose;

- (ii) from discriminating among growers, in the context of their purchases of potatoes for processing, on the basis of a grower's willingness to purchase equipment or fertilizer from Thomas, or on the basis of a grower's role in testifying on behalf of any party to this action; and
- (iii) from indicating to any grower in any manner that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's willingness to purchase equipment or fertilizer from Thomas.

D. Permanently enjoin Thomas, its agents, officers, employees, assigns or other persons acting for it or under its control

- (i) from granting contracts to purchase potatoes for processing at McCain facilities to growers;
- (ii) from communicating the names of Thomas' customers to McCain; and
- (iii) from indicating to any grower in any manner that it can assist him in selling potatoes to McCain, or that McCain's willingness to contract for the purchase of potatoes is influenced by a grower's

willingness to purchase equipment or fertilizer from Thomas.

- E. Order McCain to mail to each grower with whom it has entered a contract for the purchase of potatoes at any time during the past six years, at his last known residence or post box address, by certified mail, return receipt requested, a notice to effect that pursuant to an order of this Court McCain has ceased to allocate potato contracts to Thomas; that Thomas will in future play no role whatever in granting potato contracts to growers; that in future, McCain will grant potato contracts to growers solely on the basis of the quality of their product, and other legitimate commercial considerations; and that decisions to grant or not to grant potato contracts to growers will in no way be influenced by whether or not a grower has at any time in the past or will in the future make purchases of equipment or fertilizer from Thomas;
- F. Order McCain to file with the Court a report of the mailings described in subpart E above, attaching completed return receipts, within one month of the date of the Court's decree;
- G. Order defendants to supply, to all those employees who in their capacities as such have any contact with

growers, including newly hired or transferred employees on a continuing basis, copies of the notice described in subpart E above, together with copies of the Court's decree in this action, and a written directive to all such employees requiring them to comply fully with the terms of the notice and of the decree;

- H. Order defendants to file with the Court sworn affidavits signed respectively by defendants' chief executive officers, stating in detail the manner in which defendants have complied with the requirements set forth in subpart G above, and listing by name those employees to whom copies of the notice and decree have been supplied in accordance therewith;
- I. Order defendants to file with the Court notarized statements signed by each employee listed in the affidavits described in subpart H above stating that he or she has read the notice and decree with which he or she has been supplied and fully understands their purport;
- J. Order defendants to file annually with the Court sworn affidavits in the form described in subpart H above in relation to newly hired or transferred employees, together with notarized statements in the form described in subpart I above signed by each such employee;

- K. Assess against the defendants collectively a civil penalty pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) for each course of conduct constituting an antitrust violation;
- L. Assess against the defendants the costs of this suit and of the investigation of defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986);
- M. Grant such other relief as the Court deems just and proper.

DATED:

JAMES E. TIERNEY
Attorney General

JAMES T. KILBRETH
Deputy Attorney General

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division

FRANCIS E. ACKERMAN
Assistant Attorney General

State House Station #6
Augusta, Maine 04333
Telephone: (207) 289-3661