

**IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION**

STATE OF OHIO, ex rel. Michael DeWine :
ATTORNEY GENERAL OF OHIO, :
150 East Gay St., 23rd Floor :
Columbus, Ohio 43215 :

Plaintiff, :

v. :

CARGILL INCORPORATED :
15407 McGinty Rd. West :
Wayzata, MN 55391 :

and :

CARGILL DEICING TECHNOLOGY :
24950 Country Club Blvd., Suite 450 :
North Olmsted, OH 44070 :

and :

MORTON SALT, INC. :
AKA MORTON SALT COMPANY :
123 N. Wacker Dr. :
Chicago, IL 60606 :

and :

MORTON INTERNATIONAL, LLC :
100 Independence Mall West :
Philadelphia, PA 19106 :

Defendants. :

CASE NO:

JUDGE:

**COMPLAINT WITH JURY
DEMAND ENDORSED HEREON**

1. The State of Ohio, acting on the relation of its Attorney General Michael DeWine, brings this civil law enforcement action to enforce Ohio's antitrust law (Ohio Revised Code §§ 1331.01, *et seq.*, commonly known as the Valentine Act) seeking injunctive relief, equitable relief and statutory forfeiture against Defendants Morton and Cargill's *per se* unlawful conspiracy to allocate customers, divide markets and restrain competition in the marketing and sale of rock salt in the State of Ohio, as well as Defendant Cargill's unlawful maintenance of its monopoly in the rock salt market in the northern and central counties in the State of Ohio.

2. In a scheme to thwart the competitive bidding process for rock salt, Defendants unlawfully conspired to corrupt the market by allocating customers among themselves without competing, and by using artificially high price quotes and other artifices to feign competition among themselves, thereby raising rock salt prices above competitive levels and depriving public rock salt purchasers in Ohio of the benefits of competition.

3. Further, Cargill has maintained its monopoly position in the rock salt market in the northern and central counties in Ohio through illegal and exclusionary conduct with the purpose and effect of suppressing and excluding competition, raising prices and garnering millions in revenues each year for Cargill.

I. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under Ohio Revised Code § 1331.11 to restrain and enjoin Defendants' violations of Ohio Revised Code §§ 1331.01, 1331.02 and 1331.04 and to declare void, pursuant to Revised Code §1331.06, Defendants' agreements in furtherance of such violations. Further, this Court has jurisdiction, under Ohio Revised Code § 1331.03, to order forfeiture for each day such violations were committed.

5. This Court has personal jurisdiction over the Defendants because the Defendants regularly transact business in the State of Ohio, Defendants contract to supply goods and services within the State of Ohio, and Defendants' unlawful conduct has caused and will continue to cause tortious injury in the State of Ohio.

6. Defendants carried out activities that gave rise to the claims for relief in Tuscarawas County and the claims for relief in this action arose, in part, in Tuscarawas County. Therefore, venue in this Court is proper pursuant to Rule 3(B), Ohio Rules of Civil Procedure.

II. THE PARTIES

7. The Attorney General brings this action in his sovereign capacity as the chief law enforcement officer of the State of Ohio.

8. Pursuant to Ohio Revised Code 1331.11, the Ohio Attorney General is authorized to institute and prosecute actions on behalf of the State to enforce the provisions and remedies of Ohio's antitrust laws, codified in Ohio Revised Code Chapter 1331. Pursuant to Ohio Revised Code § 109.81, the Ohio Attorney General is authorized to do all things necessary to properly conduct any antitrust case and to seek equitable relief as provided in Revised Code §§ 109.81 and 1331.11.

9. Defendant Morton International, LLC ("Morton International") is a foreign corporation formed in the State of Indiana, with the corporation's principal office located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106. Morton International operates Defendant Morton Salt, Inc. ("Morton Salt"), which is a foreign corporation organized and existing under the laws of Delaware and maintains its corporate headquarters at 123 North Wacker Drive, Chicago, Illinois 60606. Morton transacts business throughout the United

States, including Ohio. (Morton International and Morton Salt are collectively hereafter referred to as “Morton”).

10. Defendant Cargill, Inc. is a foreign corporation organized and existing under the laws of the state of Delaware with its principal place of business at 15615 McGinty Road West, Wayzata, Minnesota 55391. Cargill has five major business segments, including Industrial, of which Cargill Salt is a division. Cargill transacts business throughout the United States, including Ohio. Cargill Deicing Technology, a part of Cargill Salt, is headquartered at 24950 Country Club Road, Suite 450, North Olmsted, Ohio 44070. (Cargill, Inc. and Cargill Deicing Technology are hereafter collectively referred to as “Cargill”).

III. ROCK SALT MARKET IN OHIO

11. The chemical compound sodium chloride is more commonly known as salt.

12. Salt that comes in large chunks or crystals is called rock salt, as opposed to table salt, which has much smaller crystals. Rock salt works by lowering the freezing point of water. Rock salt is used, *inter alia*, as one of the most popular methods of deicing roadways because of its ease of use, effectiveness and relatively low cost compared to alternative deicing methods.

13. Rock salt is a relatively homogeneous product, such that rock salt supplied by one vendor is nearly identical to rock salt supplied by another vendor. One Cargill executive described rock salt as a “fungible commodity” and stated that “from a customer’s standpoint, it’s highway spec salt, regardless of where it comes from, so there is no ... need to segregate sourcing.”

14. Public entities have a strong interest in the speed and effectiveness with which snow and ice are removed from their roadways in order to ensure the safety of their citizens and

the uninterrupted operation of their economic activities. There are no reasonably comparable cost-effective alternatives for rock salt available to public entities having need of large-scale snow and ice removal. Thus, most governmental and other public purchasers of rock salt (“Public Purchasers”) do not consider other forms of deicing materials to be substitutes for rock salt and typically will not switch to such products, even in the face of price increases. Public entities’ demand for rock salt is, in other words, relatively inelastic.

15. Rock salt sold to Public Purchasers is a relevant product market.

16. There are two rock salt mines located in the State of Ohio. Both are owned by the State of Ohio. One is currently leased to Morton and the other is currently leased to Cargill.

17. Morton entered into a long term lease agreement with the State of Ohio as of January 1, 1959, whereby Morton leased a tract of land along Lake Erie near the city of Fairport Harbor, Ohio (the “Fairport Harbor Mine”) for the purpose of mining and extracting salt and making it available for commercial sale. The term of the 1959 lease is ninety-nine years. At all relevant times herein, Morton has mined and extracted rock salt from the Fairport Harbor Mine and has sold rock salt to the State of Ohio and other Ohio Public Purchasers.

18. In addition to the Fairport Harbor Mine, Morton operates salt mines in Louisiana (Weeks Island), Ontario, Canada (Ojibway) and elsewhere.

19. A long term lease agreement was executed between International Salt Company and the State of Ohio on July 1, 1957, whereby a tract of land along Lake Erie near the City of Cleveland, Ohio (the “Cleveland Mine”) was leased for the purpose of mining and extracting salt and making it available for commercial sale. The term of the 1957 lease is ninety-nine years.

20. In 1996, Cargill purchased the leasehold rights of International Salt Company’s successor in interest and took over operation of the Cleveland Mine. At all relevant times herein,

Cargill has mined and extracted rock salt from the Cleveland Mine and has sold rock salt to the State of Ohio and other Ohio Public Purchasers.

21. In addition to the Cleveland Mine, Cargill operates salt mines in New York (Lansing) and Louisiana (Avery Island).

22. In connection with the 1996 acquisition of the Cleveland Mine, Cargill was required by state and federal authorities to supply a limited amount of Ohio-mined rock salt to competitor American Rock Salt for a period of four years. Thereafter, and continuing to the present, Morton and Cargill have been the only two companies that supply Ohio-mined rock salt and make it available for commercial sale.

23. The vast majority of Public Purchasers purchase rock salt through a competitive bidding process prescribed by state and local statutes and ordinances.

24. In 1983, the Ohio General Assembly enacted statutory provisions that give, under certain circumstances, a preference to products that are produced or mined in the United States, the State of Ohio, and/or in states that share a geographic border with the State of Ohio and are sold to the State and its agencies (the "Preference Statute").

25. At least as early as 1996, the Ohio Department of Transportation ("ODOT") implemented processes for selecting winning bidders of rock salt based on its interpretation of statutes and regulations related to the Preference Statute codified, in part, in Ohio Revised Code §§ 125.09, 125.11, 5513.02, and 5513.07, and Ohio Administrative Code §§ 123:5-1-06 and 123:5-1-07.

26. Pursuant to the selection process ODOT had implemented, if there was one bidder offering Ohio-mined salt or border state salt, then that bidder received a five percent preference,

meaning that that bidder won the bid as long as it was not more than five percent higher than the next lowest bid.

27. Pursuant to the selection process ODOT had implemented for the majority of the time period relevant to this Complaint, if there were at least two bidders offering Ohio-mined salt, then the low bidder offering Ohio-mined salt won the bid regardless of how much lower the bid(s) of companies bidding non-Ohio-mined salt were. This was commonly referred to as a “Lockout.”

28. Since 1997, Cargill and Morton have been the only two companies that mine rock salt in the State of Ohio and make it available for commercial sale. Thus, they were the only two companies that could possibly have benefited from ODOT’s Lockout interpretation of the Preference Statute.

29. ODOT typically sends out invitations to bid annually, sometime between April and September. While ODOT sends out a single invitation to bid covering the entire State of Ohio, bid amounts, quantities and prices are separately specified or bid for each of the eighty-eight counties in Ohio.

30. Pursuant to Ohio Revised Code § 5513.01(B), political subdivisions, the Ohio Turnpike Commission and public colleges and universities throughout the State of Ohio can participate in the ODOT cooperative purchasing program (the “ODOT Contract”). Such public entities can agree to be included in the ODOT Contract and purchase rock salt on the same terms and price as awarded under the ODOT Contract for the county in which the public entity is located. Many public entities throughout Ohio do participate in the ODOT Contract. Other individual public entities and purchasing cooperatives submit their own invitations to bid and purchase rock salt separately from the ODOT Contract (“Individual Public Contracts”).

31. ODOT is by far the largest purchaser of rock salt in the State of Ohio. ODOT and Public Purchasers participating in the ODOT Contract awarded contracts totaling more than 1.4 million tons of salt costing taxpayers more than \$77 million in 2010 alone. Significant quantities of rock salt are also purchased by Public Purchasers through Individual Public Contracts, with over 930,000 tons of rock salt contracts being awarded in 2010 by such means.

32. Public Purchasers in Ohio are typically supplied with rock salt from two different geographic regions. First, Public Purchasers in the southern region of Ohio (the "South Market") are, for logistical reasons, typically supplied with salt from Louisiana and New York. When either Morton or Cargill bid non-Ohio-mined salt to the southern portion of the State on the ODOT Contract, the Lockout interpretation did not apply. For this reason, Morton and Cargill's competitors were sometimes able to infiltrate the southern counties.

33. The South Market is comprised of counties supplied with non-Ohio rock salt, and consists of the area of Ohio bounded on the south, east and west by the southern-, eastern- and western-most borders of the state, and generally on the north by the following counties: Darke, Shelby, Clark, Fayette, Pickaway, Fairfield, Perry, Morgan, Noble and Belmont.

34. ODOT and other Public Purchasers buying rock salt through the ODOT Contract in the northern and central regions of Ohio (the "North Market") are typically supplied with Ohio-mined salt from Defendants' salt mines along Lake Erie. Public Purchasers purchasing rock salt through Individual Public Contracts in the North Market are typically supplied with Ohio-mined salt and salt from other regional mines.

35. The North Market is comprised of counties supplied with rock salt from the Great Lakes region, and consists of the area of Ohio bounded on the north, east and west by the northern-, eastern- and western-most borders of the state, and generally on the south by the

following counties: Mercer, Auglaize, Champaign, Madison, Franklin, Licking, Muskingum, Guernsey, Harrison and Jefferson.

36. At all relevant times herein, the Lockout served as a barrier to entry for competitors seeking to sell rock salt to Public Purchasers, including ODOT, on the ODOT Contract in the North Market.

37. At all relevant times herein, the Lockout contributed to the limited number of competitors seeking to sell rock salt to Public Purchasers in the North Market.

38. At all relevant times herein, the Preference Statute contributed to the limited number of competitors seeking to sell rock salt to Public Purchasers in the State of Ohio.

39. Cargill and Morton have, since at least 2000, dominated the rock salt supply to Public Purchasers in the State of Ohio. On the ODOT Contract they had a combined market share of between 79 percent and 100 percent in each year from 2000 through 2010.

40. Cargill and Morton have, since at least 2000, completely dominated the rock salt supply to Public Purchasers in the North Market. Regional salt suppliers with mines in New York, Michigan and Ontario have seldom been able to penetrate the North Market. Morton and Cargill's combined market share of the North Market on the ODOT Contract was 100 percent in 2000, 93 percent in 2001, 99 percent in 2002, and 100 percent each year thereafter up to and including 2010.

41. Ohio counties that use the largest volume of salt are those located in northern Ohio's snowbelt, which is a part of the North Market.

42. During the 1990s, several firms had competed regularly in the rock salt market in the State of Ohio. Morton supplied rock salt to Ohio Public Purchasers from the Fairport Harbor Mine. Akzo Nobel Salt, Inc., from whom Cargill later acquired the Cleveland Mine, supplied

rock salt to Ohio Public Purchasers from that mine. Cargill submitted bids and supplied salt to Ohio Public Purchasers from its Louisiana mine. Other regional salt companies also submitted bids in Ohio.

43. In 1997, Cargill finalized the purchase of the Cleveland Mine from Akzo Nobel. This acquisition, together with subsequent years of Cargill's exclusionary practices, its misuse of the Preference Statute and its misuse of the Lockout led to Cargill's monopoly power and maintenance of that power in the North Market. Cargill's collusion with Morton led to the dominance of the two firms, not just in the Lockout counties in the North Market, but throughout the entire State of Ohio and caused Ohio Public Purchasers to pay supracompetitive prices for rock salt.

IV. DEFENDANTS' COLLUSIVE CONDUCT

Dividing Up the Market

44. Beginning at least as early as 2000, the exact dates being unknown to the State, and continuing thereafter, Defendants entered into a combination of capital, skill and acts among themselves amounting to an unlawful trust, which had the purpose and effect of allocating among the Defendants the accounts of their public rock salt customers, raising the prices paid by those Public Purchasers and suppressing competition between Defendants in the sale of rock salt in the State of Ohio.

45. In establishing this anticompetitive combination to allocate customers, Defendants Morton and Cargill predetermined and agreed on which Defendant would win particular bids submitted in the State of Ohio, thereby allocating customers between themselves.

46. Pursuant to this anticompetitive combination, Morton was predetermined to win certain customers in the State of Ohio, often close to Morton's mine and established distribution

network, in exchange for Morton agreeing to refrain from competing with Cargill for a substantial portion of its customers in the remainder of the State of Ohio. A Cargill executive described this bidding strategy by saying that Cargill should “[b]id high on the rest of the points close to Morton’s mine and those in Toledo.”

47. Defendants allocated customers by using a common scheme of designating accounts in a two-tier system as accounts the company planned to win versus accounts the company did not plan to win. Cargill referred to these categories as “primary accounts” and “secondary accounts”. For purposes of this Complaint, these categories shall be referred to as “Primary Accounts” and “Secondary Accounts” regardless of the Defendant to which the account pertains. Pursuant to Defendants’ conspiracy, each individual Defendant’s Primary Accounts were predetermined to be won; each individual Defendant’s Secondary Accounts were predetermined to be lost.

48. Cargill viewed situations where it won a Secondary Account as “accidental.”

49. Morton’s practice was to bid “more aggressively” on Primary Accounts, and to bid higher on Secondary Accounts, regardless of how lucrative those Secondary Accounts appeared to be.

50. Defendants rarely, if ever, both designated the same account as Primary or Secondary.

Sham Bidding

51. Defendants’ common scheme included submitting purposefully losing sham bids on their Secondary Accounts, or accounts they were supposed to lose, thus allowing the predetermined winner to extract supra-competitive prices from Public Purchasers of rock salt in the State of Ohio. A Cargill 2007-08 bid strategy document details the company’s commitment

to assisting its rival, Morton, in extracting increased prices on one of Morton's Primary (incumbent) Individual Public Contract accounts, the Tuscarawas County Co-op: "Bid it high so Morton can get what they did last year and maybe some more."

52. Defendants' sham bidding practices in Ohio were sharply divergent from their bidding practices elsewhere. As would be expected in a competitive market, Morton's 2007 and 2008 bids in western Pennsylvania increased in price as the delivery location moved farther from Morton's mine, regardless of whether the bids were winning or losing bids. In contrast, Morton's losing bids (on Secondary Accounts) in eastern Ohio on the ODOT Contract were approximately \$10 per ton higher than winning bids (on Primary Accounts) that were the same or similar distance from Morton's mine. Thus, Morton submitted these sham bids not because they were competing to win the contracts, but rather to effectuate the Lockout to protect Cargill and to create the appearance of competition.

53. In 2009, Morton won Columbiana County on the ODOT Contract with a winning bid of \$60.49 per ton. Cargill bid a much higher price of \$86.01 per ton. Yet just five days later, Cargill behaved very differently just over the border from Columbiana County, Ohio (and farther from Cargill's Cleveland Mine) by bidding Beaver County, Pennsylvania at \$58.92 per ton, winning the contract.

54. Again in 2009, Morton won Mahoning County on the ODOT Contract with a winning bid of \$58.02 per ton. Cargill bid a much higher price of \$85.08 per ton. Yet just five days later, Cargill behaved very differently just over the border from Mahoning County (and farther from Cargill's Cleveland Mine) by bidding Lawrence County, Pennsylvania at \$54.78 per ton, winning the contract.

55. A Morton executive stated that Morton bids “more aggressively” on incumbent accounts or accounts they typically win. In discussing the ODOT Cuyahoga County contract, on which Morton submits a bid each year, the same executive confirmed that “we did not expect to get it.”

56. Defendants’ common scheme included submitting supra-competitive bids on their Primary Accounts, or those accounts they were predetermined to win in the State of Ohio.

57. Defendants’ submission of purposefully losing bids on accounts they were predetermined to lose in the State of Ohio had the purpose and effect of feigning the appearance of competition and concealing the existence of their unlawful conspiracy from Public Purchasers of rock salt.

58. The majority of Defendants’ purposefully losing bids in the State of Ohio were accompanied by non-collusion affidavits which contained Defendants’ false affirmations under oath that no collusion had occurred in the preparation of such bids. Each and every such false affirmation had the purpose and effect of concealing the existence of Defendants’ unlawful conspiracy from Public Purchasers of rock salt.

Coordinated Efforts to Exclude Competitors by Misusing Ohio’s Competitive Bidding Statutes

59. At all relevant times herein, Defendants employed a bidding strategy designed with the purpose and effect of categorically excluding all competitors from submitting successful bids on the ODOT contract.

60. Defendants’ purposefully losing bids on accounts they were predetermined to lose had the further purpose and effect of triggering the Lockout provision with regard to their sales of rock salt to ODOT and all Public Purchasers in the North Market that procured rock salt via the ODOT Contract.

61. Defendants, being the only two entities with salt mines in Ohio, were consciously committed to triggering the Lockout by *both* bidding Ohio-mined salt in all counties in the North Market for the purpose of restricting competition and excluding competitors from the market. Morton and Cargill each continually and consistently bid entities on the ODOT Contract that they were pre-determined to lose with the purpose and effect of triggering the Lockout provision, thereby excluding the possibility that any of Defendants' competitors could be the successful bidder for ODOT or any of the public entities in the state that procured rock salt via the ODOT Contract.

62. In some years, Morton submitted bids – some of which were sham bids – specifying such a quantity of Ohio salt that Morton likely would not have had the capacity in its Fairport Harbor Mine to supply all of the salt it bid had it won the contracts. Morton submitted such bids in adherence with the Defendants' common scheme for the purpose and effect of feigning competition and triggering the Lockout to exclude all rock salt suppliers except Cargill from the North Market.

63. The Preference Statute, together with ODOT's Lockout interpretation, helped create an environment conducive to the formation and execution of Morton and Cargill's unlawful agreement to allocate markets and exclude other competitors in the North Market so long as each Defendant bid in each county in each year. For this reason, Defendants' common scheme included the coordination of efforts to preserve the Lockout. Morton and Cargill executives frequently discussed the Preference Statute, and discussions included Morton's compilation of a "data sheet outlining important economic aspects of their salt facilities in Ohio with emphasis on Rock Salt Mine. This data includes: total employees, total payroll, total taxes, tons produced, tons sold in [the] State of Ohio." The information that was compiled and

discussed by Defendants included documents showing market prices. The discussion further focused on the fact that “Cargill Salt needs to put together data similar to what Morton has done.”

64. Morton’s adherence to the common scheme was further demonstrated when, in 2003, a Morton executive wrote in relation to the ODOT bid opening: “after a cursory examination it appears OH DOT purchasing prevailed over DAS. Furthermore the ‘Buy Ohio’ rule that states ‘when two ohio [sic] purchasers bid – others are rejected’ was strictly adhered to.” A Morton executive reflected the company’s commitment to being prepared to act on any deviation by ODOT that would threaten its supra-competitive profits resulting from its conspiracy by commenting: “[l]ooks like we can shelve the TRO for another year? I’ll advise all when a more in depth analysis is completed.”

65. Defendants wanted to keep the Preference Statute issue out of the limelight to conceal their conduct and protect the legislation that facilitated their conduct. In response to news in 2009 that proposed legislation making changes to the Preference Statute had been abandoned and “the status quo on Buy Ohio” would remain in effect, a Cargill executive stated “A good development. But I hope ‘Buy Ohio’ doesn’t become a spotlighted item that Strickland and other pols will demagog [sic] around...”

Excessively High Incumbency Rates

66. At all relevant times herein, Defendants’ incumbency rates in Ohio were extremely high – much higher than is typically seen in markets where vendors are competing, and much higher than in previous years. In the years 1997 through 1999, the percentage of Ohio counties with incumbent winning vendors ranged from 32 percent to 43 percent for the ODOT Contract. In 2000, however, the incumbency rates sharply increased and remained extremely

high thereafter. Statewide, the incumbency rate on the ODOT Contract jumped to over 85 percent. In the North Market, the incumbency rate on the ODOT Contract jumped to nearly 90 percent. Overall, the incumbency rates for rock salt vendors on the ODOT contract in each year from 2000 to 2010 ranged from 63 to 93 percent.

67. On Individual Public Contracts, Morton and Cargill adhered to their agreement by holding their bidding positions relative to each other between 77 and 94 percent of the time from 2002 to 2011. In other words, during that time period Morton very rarely bid lower than Cargill on an account in the State of Ohio where it had bid higher than Cargill the year before, and vice versa.

68. Defendants' incumbency rates in the North Market were much higher than is typically seen in markets where vendors are competing. The incumbency rates for rock salt vendors on the ODOT Contract in each year from 2000 to 2010 in the Ohio North Market ranged from 85 to 100 percent. In that time period, Defendants' incumbency rates in the North Market averaged over 94 percent.

69. On Individual Public Contracts in the North Market, Morton and Cargill adhered to their agreement by holding their bidding positions relative to each other between 79 and 95 percent of the time from 2002 to 2011. In other words, during that time period Morton very rarely bid lower than Cargill on an account in the North Market where it had bid higher than Cargill the year before, and vice versa.

70. In the very few instances where Cargill and Morton did not retain their incumbent accounts during the relevant period in the North Market, the changes occurred either by design or by mistake. For example, Morton was the winning bidder in Ashtabula and Geauga Counties on the ODOT Contract from 2002 to 2004. In 2005, Cargill was the successful bidder in Ashtabula

County and Geauga County on the ODOT Contract. Instead of simply supplying the counties that it had won, Cargill engaged in discussions with Morton to allow Morton to supply its traditionally incumbent Ashtabula and Geauga Counties.

71. On August 22, 2005 (only six days after Ashtabula and Geauga Counties were awarded to Cargill at the August 16, 2005 bid opening), Morton personnel documented the agreement Morton had negotiated with Cargill and the method to be used to conceal it. In a document created on that date and titled “CARGILL PURCHASES AT FAIRPORT”, Morton personnel stated: “Morton will ship ex Fairport/Satellites using Cargill scale tickets” together with a selling price for the salt. By using Cargill scale tickets to deliver Morton salt, Defendants could divert suspicion and conceal the fact that Morton would be supplying salt to its traditionally incumbent counties even though Cargill had – perhaps inadvertently – won the bid.

72. Morton personnel further memorialized Morton’s agreement to bear the expense of secretly providing salt to a county that it did not win, saying: “[s]cale tickets compatibility – Morton expense” and “[l]ate deliver/Product penalties – Morton expense” as would be the case if Morton had won Ashtabula and Geauga Counties, Morton’s traditionally incumbent counties. In each subsequent year from 2006 through 2011, Ashtabula and Geauga Counties were retained by Morton, the traditional incumbent winning bidder on the two counties.

The 2008 Bidding Season

73. In 2008, after an unusually harsh winter the prior year that left rock salt supplies unusually low, Cargill and Morton uniformly departed from their usual practice of submitting sham bids. They did so by refraining from submitting competing bids against each other in the entire State of Ohio. Every county in the state that received a rock salt bid received only one

such bid during the 2008 bidding season, with the exception of Adams County that received bids from Morton and International Salt Company.

74. Among the counties that Morton and Cargill bid in 2008, only in Wood County did the incumbent fail to retain the account.

75. This sharp contrast in behavior – simultaneously “no bidding” all their respective Secondary Accounts on the same day after years of submitting sham bids in those counties – cannot reasonably have occurred without a communicated agreement between the Defendants to effectuate this strategy.

76. Public Purchasers in the State of Ohio paid sharply higher prices for rock salt during the 2008 bidding season.

Defendants’ Actions Contrary to Their Own Self-Interest

77. Throughout the relevant period, Defendants engaged in actions that were contrary to their respective independent economic self-interests in the absence of a collusive arrangement between them.

78. Defendants’ agreement not to compete in 2008 on their respective Primary Accounts is illustrated by the bids submitted that were contrary to their economic self-interest. For example, on the ODOT Contract Cargill bid \$41.57 per ton in Cuyahoga County, where Cargill’s mine is located, and \$58.50 in Fayette County, over 150 miles away from its mine. Cargill refrained from bidding in Lake and Geauga Counties, two counties that are contiguous to Cuyahoga County, where Cargill’s mine is located, and Morton incumbent counties. Morton won Lake and Geauga Counties at \$64.24 and \$66.20, respectively. Thus, if Cargill would have competed it could have supplied salt to counties contiguous to its mine location at a higher price than the price at which it provided salt over 150 miles away from its mine.

79. Morton's 2008 bids on the ODOT Contract in the State of Ohio ranged from \$66.24 to \$103.50, illustrating that Morton was not concerned with Cargill making any move to take its incumbent counties.

80. Moreover, in July 2008, Cargill documented the fact that its strategy on predetermined Secondary Accounts was to refrain from competing with Morton. In a document that identified certain Public Purchasers as "secondary business," Cargill personnel were instructed to submit a sham bid on the Maple Heights Co-op: "bid it high, let Morton to have it..." Refraining from competing against Morton, thereby allowing it to have a large customer located in the county where Cargill's mine is located (with low transportation costs to deliver the salt), is contrary to the manner in which Cargill should behave in the absence of a conspiracy. Without a conspiracy, it would have been illogical for Cargill to have issued an intentionally losing bid designed to benefit Morton, its competitor.

81. Cargill's strategy on predetermined Primary Accounts was to retain the business while increasing prices on already high-margin profitable business. For example, in July 2008, Cargill personnel documented its strategy with respect to Ohio municipalities Berea, Mansfield, Euclid, Westlake, City of Toledo, Canton and North Olmsted: "We got all these cities last year; we should keep them all this year because they are a good tonnage at very good margins. Bid with price increase!!!" In the absence of a conspiracy that gave Cargill the confidence that it would not be undercut by its competitor, this brazen business strategy would have been contrary to Cargill's independent economic self-interest.

82. In order to preserve their customer allocation agreement, both Cargill and Morton often bid higher prices to provide rock salt to counties on the ODOT Contract that required relatively greater amounts of rock salt and were located a lesser distance from their stockpiles

than they bid for counties with similar or smaller quantity requirements that were located a greater distance from their stockpiles.

83. For example, in each year from 2000 to 2011 (excluding the anomalous 2008 bid year), Cargill submitted a lower bid for Guernsey County than it did for Tuscarawas County, despite the fact that Guernsey County's quantity requirements were similar to or smaller than Tuscarawas County's, that Guernsey County is located farther away from Cargill's mine than Tuscarawas County, and that Cargill would have to drive through Tuscarawas County in order to deliver salt to Guernsey County.

84. As a further example, in each year from 2003 to 2009 (excluding the anomalous 2008 bid year), Morton submitted a lower bid for Tuscarawas County than it did for Stark County, despite the fact that Tuscarawas County's quantity requirements were smaller than Stark County's and despite the fact that Tuscarawas County is located farther away from Morton's mine than Stark County.

85. In another example, in each year from 2003 to 2007, Cargill submitted a lower bid for Allen County than it did for Hancock County, despite the fact that Allen County's quantity requirements were similar to or smaller than Hancock County's and despite the fact that Allen County is located farther away from Cargill's stockpile than Hancock County.

86. A firm that bids higher with reductions in transportation costs and increases in volume behaves contrary to the manner in which an independent, profit-maximizing firm would behave, in the absence of a conspiracy.

87. At all relevant times herein, Morton and Cargill each routinely bid significantly higher on their Secondary Accounts in the State of Ohio than their competitor, for whom the accounts were Primary. This was a material departure from prior practice in the market.

88. In prior practice, Defendants and other rock salt vendors bidding in the State of Ohio usually bid public entity accounts within 10 percent of each other, which equated to a \$3.00-\$4.00 per ton spread.

89. Beginning around 2000, however, when Defendants had succeeded in excluding all other competitors from the North Market, Defendants began bidding public entity accounts with a markedly higher spread – with the losing bidder often bidding in excess of 20 percent higher than the winning bidder on accounts designated as Secondary for the losing bidder.

90. For example, in 1999 there were only 5 counties in Ohio in which the spread between Morton's bid and Cargill's bid on the ODOT Contract was 20 percent or greater. By contrast, in 2001 there were 14 such counties. By 2007, that number had grown to 51 counties.

91. In 2006, Cargill bid more than 20 percent above Morton's bids in Ashtabula, Trumbull, Mahoning and Jefferson Counties – all counties designated as Secondary Accounts for Cargill. Meanwhile, Morton bid between 36 and 41 percent higher than Cargill's bids in adjacent Portage, Stark and Carroll Counties – all counties designated as Secondary Accounts for Morton. In that year, the profit per ton that Cargill sought in these Morton incumbent counties (Ashtabula, Trumbull, Mahoning and Jefferson) were \$20.21, \$26.48, \$24.39 and \$24.20, respectively. The profit per ton that Cargill sought in its own immediately adjacent incumbent counties (Portage, Stark and Carroll) was strikingly lower: \$15.23, \$16.22 and \$15.46, respectively.

92. A firm that requires dramatically higher profit margins for the non-incumbent accounts on which it bids than on its nearby incumbent accounts behaves contrary to the manner in which an independent, profit-maximizing firm would behave, in the absence of a conspiracy.

Opportunity to Conspire

93. Throughout the relevant period, Defendants had the opportunity to conspire through their common membership and participation in an industry trade association known as The Salt Institute.

94. Throughout the relevant period, Defendants had the opportunity to conspire through the regular and frequent communications that took place between Morton and Cargill employees.

95. For example, in the three-year period from March 2006 to March 2009, one Morton executive – Lisa Zumbach, Vice President of Ice Control Sales and Marketing – documented at least fifty-eight direct communications in the form of telephone calls, letters and e-mail communications between herself and Cargill employees on the subject of rock salt.

96. Morton's Zumbach received a voicemail message on January 27, 2007 from a Cargill executive, Jim Reimer on the subject of limiting the supply of rock salt for the benefit of both companies. Zumbach memorialized that message as follows: "suspend shipments for month of Feb and resume when upper Mississippi opens up – March; asked me to call if have questions; try to minimize costs for everyone; he will advise his local team."

V. CARGILL'S UNLAWFUL MAINTENANCE OF ITS MONOPOLY

97. Cargill possesses monopoly power in the North Market for rock salt in Ohio.

98. At least as early as 2000, given its mine capacity, production volume and market share in Ohio, Cargill has been, by far, the dominant rock salt firm in the North Market.

99. Each year from 1999 to 2010, Cargill alone supplied between 68 percent and 88 percent of the total rock salt to Public Purchasers in the North Market on the ODOT Contract.

Over this same period, Cargill had an average market share of approximately 74 percent on ODOT Contracts in this region.

100. At all relevant times herein, Cargill has had a much greater production capacity in its Ohio mine than Morton, and likely could have supplied the quantities of rock salt it bid in the North Market throughout the relevant time period.

101. In spite of its own ample capacity, Cargill needed Morton, the only other supplier of Ohio-mined salt, to bid against Cargill each year on the ODOT Contracts specifying Ohio-mined salt in order to trigger the Lockout. Thus, in exchange for its agreement to bid each county in the North Market to effectuate the Lockout and completely exclude other competitors from that market, Cargill allowed Morton to maintain a smaller, but stable, rock salt market share each year in the North Market. All the while, Cargill was able to maintain its very large and stable market share in the North Market as well as to maintain monopoly power and control and increase prices.

102. In addition to colluding with Morton, Cargill took additional affirmative and purposeful actions to misuse the Preference Statute for the purpose of maintaining its monopoly position in the North Market.

103. In seeking to qualify under the Preference Statute, a vendor must provide a county-by-county breakdown of its bids identifying the mine location from which the salt will be provided and attest to its accuracy. In over one hundred instances, Cargill attested in its bid to ODOT that it was providing rock salt mined in Ohio when Cargill actually provided and delivered salt mined outside of Ohio. In many such instances, Cargill won the bid solely because of the application of Preference Statute to the detriment of other lower bidders and to public entities in the State of Ohio.

104. In some circumstances in which Cargill attested to providing Ohio-mined salt when it was in reality providing salt that was not mined in Ohio, it did so for the purpose of obtaining a five percent preference and a competitive advantage over its competitors. In most instances in the North Market when Cargill was inaccurately attesting to providing Ohio-mined salt, however, it did so to effectuate the Lockout, thereby completely excluding all other salt suppliers except Morton from consideration in the bid process.

105. Cargill specified that it would supply Louisiana salt in its 2006 ODOT bid for its incumbent account in Greene County. However, American Rock Salt won Greene County from Cargill that year by bidding salt from New York, which at that time was considered a border state entitled to the 5 percent preference. The following year, in order to regain Greene County and maintain its monopoly position, Cargill provided ODOT with false information. For the 2007 ODOT bid, Cargill specified Ohio-mined salt for Greene County, neutralizing American Rock Salt's advantage. Cargill took back Greene County, and, contrary to the representations made in its bid, supplied the County with salt from Louisiana.

106. In most instances in the North Market when Cargill was inaccurately attesting to providing Ohio-mined salt, it did so to achieve the purpose and effect of concealing the existence of Defendants' unlawful conspiracy from Public Purchasers of rock salt.

107. Cargill's conduct not only completely excluded other rock salt vendors besides Morton from being considered on the ODOT Contract in the North Market, it had a chilling effect on the other vendors' ability to compete for Individual Public Contracts in the North Market. Excluding competitors from consideration on the ODOT contract significantly and substantially decreased the volume of salt they would have been able to supply in the North Market. Such exclusion and diminished overall sales volume potential in the North Market

increased the transaction costs of these rival rock salt vendors, making it less profitable for those rival vendors to supply customers in the North Market that were not a part of the ODOT Contract.

108. In an effort to further exclude competitors from penetrating the Ohio rock salt market and manipulate its advantages under the Preference Statute, Cargill undertook additional actions. In 2007, Cargill considered approaching another competitor, NAMSCO, with a boat freight arbitraging opportunity. According to an internal Cargill memo, this salt swap would have created efficiencies for both Cargill and NAMSCO as it would have reduced the number of ships that needed to be loaded and converted long barge hauls to shorter hauls. Further, the swap would eliminate issues Cargill was having with its terminal fill up needs. Instead, in a further effort to exclude competitors from the Ohio rock salt market and maintain its monopoly, Cargill indicated it would not consider the swap if there was any chance it would allow NAMSCO, its competitor, to penetrate the Ohio rock salt market – despite the efficiencies it would create. The internal Cargill memo states “[a] deal would *most definitely not* include delivering Cleveland salt into NAMSCO’s ports on southern Lake Erie, since Jeff tells me this would qualify NAMSCO to bid ‘domestic’ salt for OH DOT.” (Emphasis added).

VI. COUNT ONE – PER SE ILLEGAL MARKET ALLOCATION (MORTON AND CARGILL)

109. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-108 of this Complaint as if fully rewritten herein.

110. Beginning at least as early as 2000 and continuing thereafter, the exact dates being unknown to the State, Defendants entered and acted pursuant to a combination and conspiracy that constitutes an unreasonable restraint of trade and commerce in the State of Ohio, which combination and conspiracy is unlawful *per se* pursuant to Ohio Revised Code §§

1331.01, 1331.02, 1331.04, and the common law of Ohio. Such combination and conspiracy is void pursuant to Ohio Revised Code § 1331.06, in that Defendants acted in combination for the purposes of creating and carrying out restrictions in trade to increase the price and reduce competition among themselves in the sale of rock salt to Public Purchasers across the State of Ohio, and entered into agreements by which they agreed not to compete and/or agreed to restrictions on the terms of competition so as to directly or indirectly preclude free and unrestricted competition among themselves in violation of Revised Code § 1331.01.

111. The Defendants' unlawful restraint of trade consists of an agreement and concerted course of conduct among them, the substantial terms of which have been to restrain competition between Defendants by allocating customers between themselves across the State of Ohio.

112. Defendants' agreement, conspiracy and concert of action has had the effect of depriving Public Purchasers of rock salt in Ohio of competitive choices among rock salt providers, and of competitive pricing for the rock salt they purchase, and has raised and stabilized bid and quote prices for rock salt, all in restraint of trade and commerce in the State of Ohio.

113. To carry out the unlawful purposes of their combination and conspiracy, and in the pursuance thereof, the Defendants acting through their employees and agents among other things:

- (A) Entered into agreements that, by their terms, allocated customers between themselves.
- (B) Refrained from competing with each other and effectuated their customer allocation by designating customers as Primary and Secondary, whereas Primary

Accounts were designated to be winning bids and Secondary Accounts were designated for their co-conspirator to win.

- (C) Submitted supra-competitive bids and quotes to Primary Accounts.
- (D) Submitted losing or sham bids and quotes to Secondary Accounts that they were not designated to win with the purpose and effect of precluding competitors from being viable alternatives and creating the appearance of competition among co-conspirators.

114. Defendants' agreement constitutes a horizontal combination and conspiracy for the purpose and with the effect of creating and carrying out restrictions in trade and commerce in the rock salt market by allocating customers and precluding free and unrestricted competition as between them and to prevent and deny Public Purchasers of rock salt in Ohio the benefits of price competition in the sale of rock salt, which combination and conspiracy is unlawful *per se* pursuant to Ohio Revised Code §§ 1331.01, 1331.02, 1331.04 and the common law of Ohio and is void pursuant to Ohio Revised Code § 1331.06.

115. Defendants, unless restrained and enjoined by this Court, may continue their unlawful combination and conspiracy to restrain trade in the sale of rock salt.

VII. COUNT TWO – MONOPOLY MAINTENANCE (CARGILL)

116. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-115 of this Complaint as if fully rewritten herein.

117. Defendant Cargill unlawfully maintained its monopoly of the North Market by engaging in exclusionary practices designed to perpetuate and strengthen its monopoly position.

118. Defendant Cargill, unless restrained and enjoined by this Court, may continue the unlawful maintenance of its monopoly in the sale of rock salt in the North Market.

VIII. REQUEST FOR RELIEF

119. WHEREFORE, the Attorney General respectfully requests that:

(a) The Court adjudge and decree that Defendants' combination and agreement to allocate customers and restrain free and unrestricted competition constitutes a conspiracy against trade in violation of Ohio Revised Code §§ 1331.01, 1331.02, 1331.04, and under the common law of the state of Ohio, which conspiracy is unlawful *per se*, and Defendants' agreements are void pursuant to Ohio Revised Code Section 1331.06;

(b) The Court adjudge and decree that Defendant Cargill unlawfully maintained its monopoly of the rock salt market in Ohio in violation of the Valentine Act;

(c) The Court issue an order requiring each Defendant, pursuant to Ohio Revised Code Section 1331.03, to forfeit to the State the sum of \$500 per day for each day from 2000 through all such times the restrictions in trade or commerce were in effect;

(d) The Court issue an order requiring Defendants to pay all of Plaintiff's costs, including attorneys' fees, investigative costs, and expert costs;

(e) The Court permanently restrain and enjoin the Defendants, and their officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf from, in any manner, directly or indirectly, entering into, continuing, maintaining or renewing any agreements to allocate customers to preclude free and unrestricted competition as between them in the State of Ohio, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

(f) The Court permanently restrain and enjoin Defendant Cargill from engaging in exclusionary practices designed to perpetuate and strengthen its monopoly position.

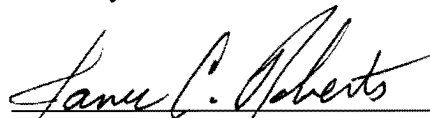
(g) The Court issue an order requiring Morton and Cargill to disgorge their ill-gotten gains received as a result of their unlawful conduct.

(h) The Court award the Plaintiff such other relief as this Court may deem just and proper to redress Defendants' conduct, restore competitive conditions, prevent recurrence and to dissipate the anticompetitive effects of Defendants' violations.

Respectfully Submitted,

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JURY TRIAL DEMAND

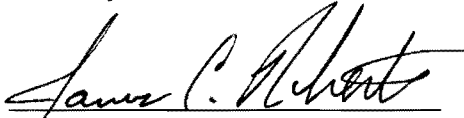
Plaintiff State of Ohio hereby demands a trial by jury, pursuant to Rule 38(B) of the Ohio Rules of Civil Procedure of all issues triable of right by jury.

Dated: 3/21, 2012

Respectfully Submitted,

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