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IN THE  
**District Court of the United States**  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
*Plaintiff,*

*v.*

THE INTERNATIONAL NICKEL COMPANY OF  
CANADA, LIMITED, THE INTERNATIONAL  
NICKEL COMPANY, INC., ROBERT C.  
STANLEY, JOHN F. THOMPSON, and PAUL  
D. MERICA,

*Defendants.*

Civil No.  
36-31

**COMPLAINT**

*To the Honorable the Judges of the  
District Court of the United States  
for the Southern District of New York:*

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

**I**

**JURISDICTION AND VENUE**

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sher-

man Act, in order to prevent and restrain continuing violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. Each of the corporate defendants has an office at 67 Wall St., Borough of Manhattan, City, County and State of New York. Each of said corporate defendants transacts business and is found within the Southern District of New York.

## II

### DEFENDANTS

#### Corporate Defendants

3. The International Nickel Company of Canada, Limited (hereinafter referred to as "Inco, Ltd.") a corporation organized and existing under the laws of the Dominion of Canada, with executive offices and principal place of business at 67 Wall St., New York, New York, is made a defendant herein. Inco, Ltd.'s principal executive officers, including the Chairman and President, the Executive Vice-President (and one other Vice-President,) the Treasurer, the Secretary and the Comptroller, maintain their offices and a permanent organization at 67 Wall Street, Borough of Manhattan, New York City, and are at that location actively and continuously engaged in transacting the business of Inco, Ltd. The Board of Directors and Executive Committee of Inco, Ltd. hold frequent meetings at said address, and the main files and accounts of Inco, Ltd. are there maintained and kept.

4. The International Nickel Company, Inc. (hereinafter referred to as "Inco, Delaware"), a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business at 67 Wall St., New York, New York, is made a defendant herein. From

1928 to 1936, the entire capital stock of Inco, Delaware was held by Inco, Ltd. In or about 1936, Inco, Ltd. transferred all of said capital stock of Inco, Delaware to Anglo-Canadian Mining and Refining Company, a Canadian corporation and wholly-owned subsidiary of Inco, Ltd.

### Individual Defendants

5. Robert C. Stanley, a resident of Staten Island, New York, is made a defendant herein. From 1918 to 1921 he was Vice-President and a director, and from 1922 to 1928 President and a director, of The International Nickel Co., the predecessor of defendant Inco, Ltd. From 1928 to 1937 he was President and a director, and since 1937 he has been and now is President and Chairman of the Board of Directors, of defendant Inco, Ltd. Since 1928 he also has been and now is President and a director of defendant Inco, Delaware.

6. John F. Thompson, a resident of New Canaan, Connecticut, is made a defendant herein. From 1931 to 1937 he was Vice-President and a director, and since 1937 he has been and now is Executive Vice-President, of defendant Inco, Ltd. In 1928 he was Secretary, Treasurer and a director, from 1930 to 1935 he was Vice-President and a director, and since 1935 he has been and now is Executive Vice-President and a director, of Inco, Delaware.

7. Paul D. Merica, a resident of Millwood, New York, is made a defendant herein. Since 1934 he has been and now is a director, and since 1937 he has been and now is Vice-President, of Inco, Ltd. Since 1932 he has been and now is a director, and since 1936 he has been and now is Vice-President, of Inco, Delaware.

8. Each of the individual defendants has participated and now participates in the direction and management of the defendant corporations employing him or of which he is

an officer or director, and particularly in those corporate affairs, policies, and acts described in this complaint. Each of the individual defendants has authorized, ordered, or done some or all of the acts done by his corporation constituting the offenses hereinafter complained of.

### III

#### DEFINITION OF TERMS

9. "Commercial nickel", as used herein, shall mean: (a) unwrought metallic nickel in the usual commercial forms including, but without limitation to, shot, ingots, cathodes, bricks, cubes, and powder; and (b) nickel contained in nickel oxide.

10. "Nickel products", as used herein, shall mean: (a) rolled metallic nickel in the usual commercial forms including, but without limitation to, sheets, strips, bars and rods; and (b) alloys of nickel, the nickel content of which is above sixty (60) per centum.

11. "Nickel-bearing materials", as used herein, shall mean nickel ores, concentrates, mattes and speisses.

### IV

#### TRADE AND COMMERCE

##### A. The Commodities

12. Nickel is a grayish-white elemental metal which is used commercially both in its pure state and in combination with other metals. It is one of the most important non-ferrous metals and is characterized by excellent durability and corrosion resistance. When alloyed with other metals such as copper, iron and steel, it contributes qualities of high strength, toughness and resistance to corrosion.

13. Nickel does not occur in nature as a pure metal but is found in combination with other elements in mineral formations of various types. The ores that are worked primarily as sources of nickel fall generally into four classes namely: (a) sulphides, represented especially by the ores of the Sudbury region of Canada in which the nickel is found in combination with a high percentage of copper and some precious metals; (b) silicates or oxidized ores, found principally in New Caledonia; (c) arsenical ores, which are found in Canada and elsewhere; and (d) nickeliferous iron ores, such as those of Cuba.

14. Although the character of the nickel-bearing mineral deposits varies widely according to the location of the respective deposits, there are three basic steps in the production of refined nickel for commercial use. These are (a) mining, (b) smelting and (c) refining. After the ore has been mined and concentrated, it is smelted in blast or reverberatory furnaces to produce a "matte" containing a high percentage of nickel together with other elements. The matte so produced is then refined to produce metallic nickel, the method of refining varying with the nature of the basic ores and matte.

15. Nickel products are produced by rolling metallic nickel into various forms, such as sheets, bars, rods and strips, suitable for industrial consumption and fabrication, or by combining metallic nickel with other elements to form high-nickel alloys. Some high-nickel alloys are also refined and produced directly from nickel-copper matte smelted from Canadian ores, a notable example of this latter type of nickel product being the nickel-copper alloy commonly called "monel metal" which is produced by subsidiaries of Inco, Ltd.

16. While deposits of nickel bearing minerals have been found in a number of countries, for many years the ores of Canada and New Caledonia have furnished most of the

world's supply of nickel. In or about 1900, approximately two-thirds of the world's supply of nickel and nickel-bearing materials were of New Caledonian origin and about one-third was of Canadian origin. Since that time, however, the relative positions of these two sources of supply have changed materially. World production of nickel in 1939 was approximately 134,000 short tons and in 1943 approximately 172,000 short tons. Of this production, Canada furnished approximately 113,053 short tons in 1939 and approximately 143,882 short tons in 1943. Production from New Caledonian nickel-bearing materials in the same years was approximately 11,700 short tons and 5,800 short tons respectively.

17. The United States is the world's largest consumer of commercial nickel and nickel products and the world's largest manufacturer of industrial products containing nickel. Production of nickel in this country, however, has been relatively insignificant. Small amounts of nickel in the form of nickel salts have been recovered here as by-products in the electrolytic refining of copper and some secondary nickel has been recovered from scrap. The amounts so recovered have been of negligible volume as compared to consumption of nickel in various forms with the results that the United States imports almost all of its requirements of nickel and nickel-bearing materials and has been and is dependent upon foreign sources of supply.

### B. Uses

18. Nickel is the metal most extensively used for alloying steels. Commercial nickel, nickel products and various alloys containing nickel are utilized in many industrial fields and have widely diversified applications in building materials; automotive, aircraft and railway equipment; heavy machinery; farm implements; machine tools; gun forgings; armor and deck plates; marine and chemical equipment; restaurant and kitchen fixtures; electrical resistance materials; stainless steel; and coinage.

19. Among the major industrial purchasers of commercial nickel and nickel products are steel mills, steel foundries, iron foundries, brass and copper mills, brass and bronze foundries, aluminum foundries, alloy manufacturers, electroplaters' supply houses, storage battery manufacturers and the chemical industries.

### C. Defendants' Place in the Industry

20. Inco, Ltd. is the largest producer of nickel in the world and, together with its wholly-owned subsidiaries, controls and completely dominates the foreign and interstate commerce of the United States in commercial nickel, nickel products and nickel-bearing materials. The combined assets of Inco, Ltd. and its wholly-owned subsidiaries exceed two hundred and ninety million dollars (\$290,000,000.). For many years, Inco, Ltd. and its wholly-owned subsidiaries have produced, shipped and sold more than ninety (90) per centum of the commercial nickel, nickel products and nickel-bearing materials consumed in the United States and have also produced, shipped and sold a major part of the commercial nickel, nickel products and nickel-bearing materials consumed in other markets of the world.

21. Directly or through its subsidiaries, Inco, Ltd. has acquired and now owns the principal known deposits of nickel-bearing materials in Canada and has smelters and refineries in Canada. Inco, Delaware has a foundry at Bayonne, New Jersey and a rolling mill and refinery at Huntington, West Virginia. The Mond Nickel Company, Ltd., a wholly owned subsidiary of Inco, Ltd., has a nickel refinery at Clydach, Wales and a refinery for by-product precious metals at Acton, England.

22. Nickel-Bearing materials produced by Inco, Ltd. in Canada and commercial nickel produced by Inco, Ltd. and its wholly-owned subsidiary The Mond Nickel Company, Ltd., in Canada and England respectively, are shipped and



sold in foreign and interstate commerce into and in the United States. Inco, Delaware sells and ships in trade and commerce among the states of the United States commercial nickel received from Inco, Ltd. and The Mond Nickel Company, Ltd. and nickel products produced by Inco, Delaware at Huntington, West Virginia.

## V

### OFFENSES CHARGED

23. For many years up to and including the date of the filing of this complaint, the defendant corporations and their predecessors and the individual defendants continuously have been engaged in a combination and conspiracy to restrain and monopolize the trade and commerce among the several states of the United States and with foreign nations in commercial nickel, nickel products and nickel-bearing materials, and have attempted to monopolize and have monopolized said trade and commerce, all in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act. Defendants are continuing and threaten to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted. The aforesaid combination and conspiracy, attempt to monopolize and monopolization, and the acts, acquisitions, contracts, agreements and understandings which formed a part of and were used in effectuation thereof, will be hereinafter more fully set forth and described.

#### A. Background and Development of Inco, Ltd.

24. At or about the beginning of the Twentieth Century, the interstate and foreign commerce of the United States in nickel and nickel-bearing materials was participated in by Canadian Copper Company, Orford Copper Company, and

American Nickel Works. Canadian Copper Company, a corporation organized in 1886 under the laws of the State of Ohio, was engaged in mining and smelting nickel bearing ores in Canada and, pending the development of commercially satisfactory refining processes, had entered into contractual arrangements for the sale of nickel-bearing materials to Orford Copper Company. Canadian Copper Company also refined some nickel and sold it to manufacturers in the United States. Orford Copper Company, a corporation organized in 1887 under the laws of the State of New Jersey, was engaged in refining nickel at its refinery located at Constable Hook near Bayonne, New Jersey, from nickel-bearing materials supplied by Canadian Copper Company and also from nickel-bearing materials of New Caledonian origin. American Nickel Works, a corporation organized under the laws of the State of Pennsylvania in 1902, was the successor to and acquired the assets of Joseph Wharton & Company which had facilities for smelting and refining nickel at Camden, New Jersey, and had a financial interest in nickel-bearing lands in Canada. Earlier, this company had engaged in smelting and refining nickel from ores mined at Lancaster Gap, Pennsylvania, but in or about 1893 mining operations at Lancaster Gap had been suspended.

25. On or about March 30, 1902, International Nickel Company, a holding company and corporate predecessor of Inco, Ltd., was organized under the laws of the State of New Jersey for the purpose, among others, of restraining and monopolizing the trade and commerce of the United States in commercial nickel and nickel-bearing materials by acquiring control of companies engaged in mining, smelting and refining of nickel-bearing materials and selling commercial nickel, and by acquiring and owning mineral lands and operating mines, smelters and refineries. The authorized capital of the new corporation was thirty-six million dollars (\$36,000,000). Of this authorized capital, stocks and bonds with a face value of approximately twenty-seven million

seven hundred thousand dollars (\$27,700,000.) were issued as the consideration for the acquisitions hereinbelow set forth in paragraph 26.

26. Following its organization, International Nickel Company acquired 99.6% of the capital stock of Canadian Copper Company, 100% of the capital stock of Orford Copper Company, and 100% of the capital stock of American Nickel Works. It also acquired 99% of the capital stock of The Vermillion Mining Company, a corporation possessing nickel-bearing lands in Canada; 98.7% of the capital stock of Anglo-American Iron Company, a corporation engaged in mining in Canada; and controlling interests in two foreign corporations owning nickel-bearing lands in New Caledonia. All the remaining capital stock of Canadian Copper Company, Vermillion Mining Company, Anglo-American Iron Company, and the two foreign companies owning nickel-bearing lands in New Caledonia was ultimately acquired by International Nickel Company. The combined assets of the companies so acquired by International Nickel Company were approximately thirty million dollars (\$30,000,000.).

27. The foregoing acquisitions of nickel mining, smelting and refining companies by International Nickel Company had the effect, as intended by International Nickel Company, of combining under one management all the principal companies then engaged in the foreign and interstate trade and commerce of the United States in nickel-bearing materials and commercial nickel.

28. By a series of intercorporate transactions during the period from 1902 to 1928, the assets of the respective corporations, control of which had been acquired by International Nickel Company as above described in paragraph 26, were amalgamated and transferred to The International Nickel Company, corporate successor of International Nickel Company, and to Inco, Ltd. which was organized in 1916 as a wholly-owned subsidiary of The International Nickel Com-

pany. Thus, by 1928 the corporate existence of American Nickel Works, Orford Copper Company, Canadian Copper Company, Vermillion Mining Company and Anglo-American Iron Company had been terminated and all assets and operations of these companies in Canada and the United States had been concentrated in Inco, Ltd. and The International Nickel Company respectively.

#### **B. The Acquisition of The Mond Nickel Company, Ltd. and Organization of Inco, Delaware**

29. In or about 1922, The Mond Nickel Company, Ltd. (hereinafter referred to as "Mond"), an English corporation, purchased a plant at Hyde, Pennsylvania and organized American Nickel Company, later known as American Mond Nickel Company, under the laws of the State of Pennsylvania. The company so formed engaged in the production of nickel products and acted as agent for Mond in the sale and distribution, in the United States, of nickel products and of commercial nickel shipped in foreign commerce from England to the United States.

30. In or about 1928, more than eighty (80) per centum of all nickel in the form of commercial nickel and nickel products shipped and sold in the United States was sold by The International Nickel Company, between ten (10) per centum and fifteen (15) per centum by American Mond Nickel Company, a wholly-owned subsidiary of Mond, and approximately five (5) per centum by United States Nickel Company, a subsidiary of the French company Hauts Fourneaux de Noumea.

31. In or about 1928 The International Nickel Company and its directors and officers, including the individual defendant Robert C. Stanley, together with Inco, Ltd., entered into negotiations with officials of Mond for the purpose of acquiring control of the nickel producing and selling facilities of Mond and its subsidiaries in the United States, Canada and in foreign countries.

32. During the course of such negotiations, and as a part of and in furtherance of the program to acquire control of Mond and its subsidiaries, a plan of reorganization was adopted by The International Nickel Company and defendant Inco, Ltd. whereby stockholders of The International Nickel Company exchanged their stock for shares in Inco, Ltd. and became stockholders of the latter. The name of The International Nickel Company was changed to Nickel Holdings Corporation and its corporate existence subsequently terminated upon the completion of the exchange of stock.

33. The above-mentioned exchange of stock was accomplished with the intent and effect of transferring control of all facilities, properties and subsidiaries of The International Nickel Company to Inco, Ltd. and of enabling the latter as a foreign corporation to acquire control over the nickel producing and selling facilities of Mond and its subsidiaries in the United States and elsewhere.

34. As a further part of the aforesaid plan of reorganization, in or about October 1928, defendant Inco, Delaware was incorporated under laws of the State of Delaware, as a wholly-owned subsidiary of Inco, Ltd., for the purpose of conducting all operations formerly conducted by The International Nickel Company in the United States. The plant for the production of nickel products at Huntington, West Virginia and the plant at Bayonne, New Jersey were transferred to Inco, Delaware together with all stock of certain subsidiary companies formerly controlled by The International Nickel Company. Inco, Delaware thereafter sold and fabricated commercial nickel and nickel products within the United States on behalf of Inco, Ltd., and participated in carrying out the combination and conspiracy, attempt to monopolize and monopolization herein alleged.

35. On or about January 1, 1929 defendants Inco, Ltd. and Inco, Delaware entered into an agreement for the sale

by Inco, Ltd. to Inco, Delaware of commercial nickel and nickel-bearing materials and for the sale by Inco, Delaware to Inco, Ltd. of nickel products. By the terms of said agreement Inco, Ltd. agreed not to sell commercial nickel or nickel-bearing materials to any manufacturer, middleman or customer in the United States except to or through Inco, Delaware. Inco, Delaware in turn agreed not to sell nickel products to any manufacturer, middleman or customer in Canada other than Inco, Ltd. The latter obligation on the part of Inco, Delaware was subsequently removed by amendment to this agreement in or about 1931, but the restriction upon sales by Inco, Ltd. has continued and is still in effect.

36. The corporate reorganization above described in paragraphs 32 and 34 having been effectuated, on December 20, 1928 an agreement was entered into between defendants Inco, Ltd. and the holders of shares in Mond providing for the acquisition of the stock of the latter company by Inco, Ltd. in return for stock of Inco, Ltd. This agreement was consummated in 1929 and Inco, Ltd. thereby acquired control of all assets and subsidiaries of Mond, including mines and smelters in Canada, refineries in Great Britain and American Mond Nickel Company in the United States, the stock of the latter company being transferred to Inco, Ltd. by Mond on or about April 30, 1929.

37. On or about June 30, 1929, an agreement was entered into between Inco, Ltd. and Mond, of which Inco, Ltd. had become the sole director and manager, for the transfer to Inco, Ltd. of all Mond's assets located in the continent of America in return for a cash consideration. Inco, Ltd. thereby acquired complete possession of all nickel mining, smelting and refining facilities together with all facilities for the processing, production and sale of commercial nickel and nickel products formerly owned and operated by Mond in Canada and in the United States.

38. On or about October 1, 1929, Inco, Ltd. transferred the capital stock of American Mond Nickel Company to Inco, Delaware. Thereafter, all activities of American Mond Nickel Company were terminated and its plant at Hyde, Pennsylvania was dismantled.

39. As a result of the acts and things hereinabove described in paragraphs 25 through 38, defendants Inco, Ltd. and Inco, Delaware restrained and monopolized the interstate and foreign commerce of the United States in commercial nickel, nickel products and nickel-bearing materials. Competition in the importation of commercial nickel, nickel products and nickel-bearing materials into the United States and in their production, distribution and sale in the United States was eliminated, and defendants Inco, Ltd. and Inco, Delaware became the suppliers of more than ninety (90) per centum of the requirements of the United States for these commodities.

### **C. International Agreements to Eliminate Foreign Competition**

40. Inco, Ltd., its officers, directors, agents, affiliates and wholly-owned subsidiaries, including the individual defendants and defendant Inco, Delaware, from 1928 to the present time have adopted a policy and have utilized various devices with reference to foreign competition designed to curtail and suppress, and having the effect of curtailing and suppressing, shipments of commercial nickel, nickel products and nickel-bearing materials from foreign countries to the United States, and have thereby protected, strengthened and maintained the aforesaid combination and conspiracy, attempt to monopolize and monopolization by Inco, Ltd. and its subsidiaries. Inco, Ltd., its officers, directors, agents, affiliates and wholly-owned subsidiaries, have from time to time entered into agreements and understandings with nickel producing companies of foreign countries to limit world production, fix prices, and allocate and restrict sales in world markets, with the intent and effect, among other things, of suppressing competition in

the importation of commercial nickel, nickel products and nickel-bearing materials into the United States, and in the distribution and sale of these commodities in the United States. Said agreements and understandings by Inco, Ltd., its officers, directors, agents, affiliates and wholly-owned subsidiaries will hereinbelow be described in greater detail.

41. By 1931, Inco, Ltd, together with its wholly-owned subsidiaries had become the dominant producer, distributor and seller of commercial nickel, nickel products and nickel-bearing materials in the world and supplied a major portion of the world's requirements of nickel in various forms. A large part of the remaining world supply of nickel was at this time produced by two French Companies namely: Societe Anonyme Le Nickel (hereinafter referred to as "Le Nickel") and Societe Anonyme Caledonia Charbonnagos Minerais et Metaux de la Nouvelle Caledonie (hereinafter referred to as "Caledonia").

42. In or about the year 1931, Le Nickel and Caledonia caused to be organized under French law a new corporation called Caledonickel to acquire from them respectively full beneficial use of all their nickel producing properties for a period of 25 years beginning July 1, 1931. The corporate existence of both Caledonia and Le Nickel continued, each holding a 50% stock interest in Caledonickel. On or about July 1, 1931, Caledonickel took over all the assets and business of Caledonia and Le Nickel and thereafter conducted all operations theretofore conducted by said two corporations.

43. On or about October 23, 1931, Inco, Ltd. and its wholly-owned subsidiary Mond came to an understanding with Le Nickel, Caledonia and Caledonickel for the elimination of competition in the distribution and sale of commercial nickel, nickel products and nickel-bearing materials in all of the markets of the world. By this understanding Inco, Ltd. and its subsidiaries and affiliates were allocated the



United States and Canada (including Newfoundland) as their exclusive territory, and the remaining markets of the world were to be shared on the basis of agreed quotas and prices.

44. The above understanding was carried out by various contracts, arrangements and understandings including (a) the "Main Agreement" of October 23, 1931, which fixed quotas and established the procedure for price agreement between the parties, and (b) the "Agreement re (i) Disposal of Interest in Properties, (ii) Sales in North America" which embodied the allocation of the United States and Canada (including Newfoundland) to Inco, Ltd. and its subsidiaries as exclusive territory. These two contracts will be more fully described in Paragraphs 45 through 47.

45. The Main Agreement, entered into by and between Caledonickel, Inco, Ltd. and Mond, provided for the fixing of prices and quotas for sales by the respective parties of commercial nickel, nickel products and nickel-bearing materials in all countries of the world except Canada (including Newfoundland) and the United States and its territories and dependencies. Quotas were based on nickel content of materials and products (with the exception of nickel salts and monel metal) sold or delivered within the contract territory and were specified as follows:

Up to 5,000 tons—all Caledonickel

5,000 to 15,000 tons—Inco, Ltd. and Mond in equal parts

Above 15,000 tons—15% to Caledonickel, 85% to Inco, Ltd. and Mond in equal proportions

It was provided that all the parties would sell their products at uniform prices to be agreed upon from time to time, subject to such variations as might be agreed upon in respect of particular countries. Prices were to be set by unanimous agreement between the parties or, in the event of disagreement, by any two of the parties. By the latter provision,

Inco, Ltd. and Mond were empowered to control the price structure provided for by the contract. The term of the contract was from January 1, 1932 until December 13, 1943.

46. The Main Agreement was entered into by Inco, Ltd. and Mond in reliance upon the provisions and warranties of a second agreement coterminous with the Main Agreement and entitled "Agreement re (i) Disposal of Interest in Properties, (ii) Sales in North America." This agreement, designed to suppress possible competition from other companies and to prevent importation and sale of commercial nickel, nickel products and nickel-bearing materials into and in the United States, was executed between Inco, Ltd., Mond, Le Nickel, Caledonia and Caledonickel simultaneously with the Main Agreement and contained the following provisions:

(a) That if at any time during the life of the "Main Agreement," any nickel mines, plant equipment or other properties and assets used or useful in connection with the mining, production or manufacture of nickel, nickel products or nickel-bearing materials should be sold, leased or otherwise disposed of by Le Nickel, Caledonia or Caledonickel, said companies would promptly serve written notice thereof upon Inco and Mond giving full details relating to such disposal, and that unless all such properties so sold, leased or otherwise disposed of should have ceased to be used or useful in connection with the mining or production or manufacture of commercial nickel, nickel products or nickel-bearing materials, Inco and Mond or either of them might forthwith or at any time thereafter in their election terminate the "Main Agreement" by written notice served upon Caledonickel.

(b) That Le Nickel, Caledonia and Caledonickel warranted that Le Nickel and Caledonia and their respective subsidiaries and affiliates were not engaged in selling commercial nickel, nickel products and nickel-bearing materials in Canada (including Newfoundland) or in the

United States, its territories and dependencies, and that neither they nor Caledonickel had any desire or intention of doing business in said places nor any facilities for so doing; and

(c) That sales or deliveries of commercial nickel, nickel products or nickel-bearing materials by Caledonia, Le Nickel or Caledonickel or their respective subsidiary or affiliated companies into or to Canada (including Newfoundland) or the United States or its territories or dependencies, might cause the termination of the "Main Agreement" and the termination of all benefits accruing to said companies thereunder.

47. The contract provision designed to prevent the French companies from shipping, selling or delivering commercial nickel, nickel products or nickel-bearing materials in or into the United States read as follows:

"Nothing contained in the Main Agreement or herein or in any other Agreement between the parties hereto or any of them shall in any way restrict or hinder any of the parties hereto or any of their subsidiary or affiliated companies from selling leasing or otherwise disposing of any of their nickel-bearing materials or other products in North America on such terms and conditions as they may desire. If at any time during the period of the Main Agreement any nickel-bearing materials of Caledonickel and or Le Nickel and or Caledonia and or their respective subsidiary or affiliated companies should be sold by them or any of them and delivered upon such sale or subsequent thereto in connection with such sale or otherwise in North America by them or any of them Caledonickel Le Nickel or Caledonia (as the case may be) shall promptly serve written notice thereof upon Inco and Mond and if any such sales and or deliveries are in the opinion of the parties to the Main Agreement or a majority of them of sizeable amounts and or of any considerable frequency the parties hereto recognize that a new situation will have been created and

thereupon the Main Agreement shall ipso facto become terminated."

By this clause, Inco and Mond, constituting a majority of the parties to the Main Agreement, were empowered to terminate both agreements in the event the French companies, or any of them sold and delivered commercial nickel, nickel products or nickel-bearing materials into or in the United States.

48. For the purpose of further limiting and controlling world production, sale and distribution of commercial nickel, on or about February 21, 1933, Inco, Ltd. caused Mond to enter into a contract with a German corporation known as Norddeutsche Affinerie (hereinafter referred to as NDA), which was engaged in the refining of nickel. By the terms of said contract NDA appointed Mond as the exclusive distributor of NDA's nickel in Germany, Austria, Hungary, Czechoslovakia, Holland, Poland and Switzerland, and in return Mond undertook to market a certain quota of NDA's nickel. The quota allotted to NDA was based upon the combined sales of Inco, Ltd., Mond and Caledonickel under the provisions of the Main Agreement hereinabove referred to in paragraph 45, and the price to be received by NDA for nickel was the average price realized by the parties to the Main Agreement less a selling commission. It was also provided that NDA was not to contract to refine nickel from ores mined by a corporation known as Burma Corporation unless said contract covered the entire output by Burma Corporation of ore for refining, and unless all nickel so refined was to be marketed through Mond.

49. In or about 1933, I. G. Farbenindustrie, A.G. (hereinafter referred to as "I.G."), a corporation or association organized and existing under the laws of Germany, had developed or acquired certain processes suitable for the commercial production of nickel and processes useful in connection with the utilization of nickel powder, and was about to

engage in the production, sale and distribution of commercial nickel and nickel products.

50. For the purposes (a) of limiting and controlling world production, sale and distribution of commercial nickel and nickel products, (b) of preventing the development and exploitation of competitive nickel-bearing lands or enterprises producing nickel-bearing materials, and (c) of establishing interlocking interests with I.G. designed and tending to prevent exportations of commercial nickel and nickel products to the United States for sale therein in competition with Inco, Ltd. and its subsidiaries and affiliates, in or about 1934 Inco, Ltd. and Mond came to an understanding with I.G. for the elimination of competition in the distribution and sale of commercial nickel, nickel products and nickel-bearing materials in all of the markets of the world. By this understanding Inco, Ltd. and its subsidiaries and affiliates were allocated the United States and Canada (including Newfoundland) as their exclusive territory, and I.G. was to share in the remaining markets of the world on the basis of agreed quotas and prices.

51. The above understanding was carried out by two contracts which Inco, Ltd. caused Mond to enter into with I.G. on or about April 28, 1934, and which were designated respectively as the "Main Agreement" (hereinafter referred to as the "I.G. Main Agreement") and the "Patent Agreement." These two contracts will be more fully described in Paragraphs 52 through 58.

52. The I.G. Main Agreement and Patent Agreement recited the existence of the contracts between Inco, Ltd., Mond, Caledonickel and NDA hereinabove referred to and described in paragraphs 44 through 48, and provided that the two agreements with I.G. were intended to secure to Inco, Ltd. and Mond the following benefits:

a. That the maintenance of the respective price levels for commercial nickel and nickel products under the

agreements between Inco, Ltd., Mond, Caledonickel and NDA, should not be adversely affected by any activities of I.G., its controlled companies or licensees, under the refining processes owned or controlled by I.G.

b. That activities of I.G., its controlled companies or licensees, should not disturb the status quo in the nickel mining or nickel ore supply situation throughout the world by encouraging the development, exploitation or working of nickel enterprises, nickel properties, or nickel ore supplies other than those of Inco, Ltd., Mond or their subsidiaries and affiliates, and should not have the effect of bringing onto the world market amounts of commercial nickel, nickel products or nickel-bearing materials except from Inco, Ltd., Mond or their subsidiaries and affiliates.

c. That the nickel content of the total quantity of commercial nickel and nickel products resulting from the operation of I.G.'s refining processes by any persons other than Inco, Ltd., Mond and their subsidiaries and affiliates and coming onto the market in each year should be limited to the quota allotted to I.G. by the I.G. Main Agreement.

The benefits intended to accrue to I.G. from the contract were stated to be as follows:

a. Continuity of a reliable supply of nickel-bearing materials.

b. Assurance of a market for nickel and a stable price.

53. By the terms of the I.G. Main Agreement, Inco, Ltd.'s subsidiary Mond was to supply I.G. with nickel-bearing materials sufficient to enable I.G. and its controlled companies to produce commercial nickel in the amounts stipulated by the contract as I.G.'s quota. The quota amount of commercial nickel produced by I.G., with a limited exception for retention by I.G. for its own consumption or for

sale in fabricated forms, was to be offered for sale through distributing organizations utilized by Inco, Ltd., Mond or their affiliated companies, and sold at prices fixed by Inco, Ltd., Mond and Caledonickel under the agreement hereinabove described in paragraph 45. I.G. agreed not to buy nickel ores elsewhere than from Inco, Ltd. and Mond or their affiliates, with the exception of material having a nickel content of a maximum of 50 tons in any year desired for purposes other than production of commercial nickel and nickel products, and also agreed not to investigate, finance or acquire any interest in any nickel enterprise or property.

54. By the terms of the Patent Agreement, I.G. agreed that, during the term of the agreement, it would not, without written consent of Mond, license or permit any person, firm or corporation other than Inco, Ltd. or Mond or subsidiaries and affiliates of the latter, to operate I.G.'s refining processes for the purpose of, or in connection with, the treatment of nickel-bearing materials for the production of commercial nickel, nickel alloys or any other products, the production and sale of which would be likely adversely and substantially to affect the enjoyment by Inco, Ltd. and Mond of the benefits intended to be secured to them by these contracts as above set forth in paragraph 52. I.G. further agreed to protect such refining processes throughout the world by taking out and enforcing letters Patent thereon, or to permit and assist Mond to do so in any case where I.G. was unwilling to take out or maintain in force a patent thereon in any country.

55. With respect to I.G. processes comprehending the use of nickel powder, I.G. agreed that it would upon request grant Inco, Ltd. or Mond an exclusive license or licenses, with the right to sub-license, for the United States, its territories and dependencies, Canada (including Newfoundland), United Kingdom and Ireland, and a non-exclusive license or licenses for the rest of the world. The licenses granted for the United States, its territories and dependencies were to be

non-exclusive if request therefor were not made within two years from the date of the Patent Agreement, and those for Canada (including Newfoundland), United Kingdom and Ireland could be converted into non-exclusive licenses if within 2 years I.G. were not satisfied that the processes were being satisfactorily developed in said countries.

56. The Patent Agreement further recited three pre-existing commitments relating to the use of I.G.'s refining processes in other fields of production. One of such commitments was to Standard Oil Company for use of these processes in producing specified products and their substitutes in the hydrocarbon field; a second was to Aluminum Company of America for use of the processes in the production of magnesium and its alloys; and the third was to three French companies for use of the processes in the production of magnesium and its alloys. By the terms of the Patent Agreement, I.G. was permitted to fulfill such obligations but agreed that in the event I.G. might have reason to suppose that either of the two American companies, or the French companies, or any of their assignees or licensees intended to operate the refining processes for any purpose which might result in the production of commercial nickel, nickel alloys or any other products the production or sale of which might adversely and substantially affect the enjoyment by Inco, Ltd. and Mond of the benefits intended to accrue to them as hereinabove described in paragraph 52, I.G. would use its best efforts to induce such companies, their assignees or licensees to purchase their requirements of commercial nickel, nickel alloys or other products as aforesaid from I.G. or Mond in lieu of engaging in their production. Similarly, in the event of contemplated use by any person or company of any of I.G.'s processes relating to the use of nickel powder, I.G. agreed to endeavor to persuade such person or company to purchase its requirements of nickel-bearing materials, commercial nickel or nickel alloys from I.G. or Mond.

57. The I.G. Main Agreement specifically provided that no commercial nickel, nickel products or nickel-bearing ma-



terials should be sold by I.G. or its subsidiaries and affiliates in or for export to or for delivery in the United States, its territories and dependencies or Canada (including Newfoundland). Sub-paragraph (e) of paragraph 11 of this contract read as follows:

“Notwithstanding anything contained in this Agreement, I.G. and/or its controlled companies shall not sell any nickel bearing materials or commercial nickel or nickel alloys other than nickel alloys in any fabricated form in or for delivery in the United States of America, its territories and dependencies or Canada (including Newfoundland) or other than through the Distributors.”

58. The term of both the I.G. Main Agreement and the Patent Agreement was from January 1, 1934 to December 31, 1943. By letter to I. G. dated April 28, 1934, signed by defendant Robert C. Stanley and attested by defendant Paul D. Merica, Inco, Ltd. guaranteed full and complete performance by Mond of each and every obligation of Mond under both the aforesaid contracts.

59. In or about 1937, I.G. proposed to erect an additional refinery for production of nickel in Germany and desired to have the I.G. Main Agreement modified in various particulars, especially with regard to the quota assigned to I.G. Negotiations for this purpose were conducted between I.G. and Mond resulting in an agreement with respect thereto which was ratified by Inco, Ltd. and incorporated in a contract between Mond and I.G. executed on or about May 14, 1937 as a modification of the I.G. Main Agreement. Said contract, entitled “Supplemental Agreement,” among other things provided for an increased quota for I.G., permitted I.G. to stockpile stated amounts of nickel-bearing materials, required Mond to cooperate with the German authorities in developing the use of nickel in Germany, established a new basis for the resale price of nickel produced by I.G. and imposed further limitations upon the right of I.G. to export

nickel from Germany. The provisions of the I.G. Main Agreement, except as modified by the Supplemental Agreement, remained in full force and effect and the latter was declared to be co-terminous with the I.G. Main Agreement. Inco, Ltd. by letter to I.G. extended to the Supplemental Agreement its guarantee of performance by Mond of the I.G. Main Agreement and Patent Agreement.

60. On or about June 16, 1937, a corporate reorganization of Le Nickel was effected pursuant to which exploitation of the nickel producing and other nickel interests theretofore managed by Caledonickel, together with all commercial operations connected therewith, were transferred to and assumed by Le Nickel and certain of its subsidiaries, and Caledonickel and Caledonia were dissolved. Thereafter, by agreement with Inco, Ltd. and Mond, Le Nickel assumed all benefits and obligations under the understanding and contracts hereinabove referred to and described in paragraphs 43 through 47.

61. The aforesaid agreements and understandings of Inco, Ltd. and its wholly-owned subsidiary Mond with foreign producers were designed to curtail and suppress and have had the effect of curtailing and suppressing the importation of commercial nickel, nickel products and nickel-bearing materials into the United States and the sale thereof in interstate commerce, in competition with Inco, Ltd. and Inco, Delaware; and have thereby materially aided in preserving, protecting, furthering and maintaining the aforesaid combination and conspiracy to restrain and monopolize, attempt to monopolize and monopolization of the foreign and interstate commerce of the United States in commercial nickel, nickel products and nickel-bearing materials, in violation of Sections 1 and 2 of the Sherman Act.

**EFFECTS OF THE VIOLATIONS OF LAW**

62. By reason of the combination and conspiracy, attempt to monopolize and monopolization hereinabove alleged, and the various acts, acquisitions, contracts, agreements and understandings described above, the defendants: (a) have monopolized and now hold a monopoly of the business of importing commercial nickel and nickel-bearing materials into the United States; (b) have monopolized and now hold a monopoly of the manufacture of nickel products in the United States; (c) have monopolized and now hold a monopoly of the distribution and sale of commercial nickel and nickel products in trade and commerce among the several States; (d) have restrained and suppressed competition in the importation of commercial nickel, nickel products and nickel-bearing materials into the United States, and in the distribution and sale of these commodities among the several States; and (e) have for many years possessed and exercised the power to fix arbitrary prices for commercial nickel distributed and sold in trade and commerce among the several States, and by virtue of the aforesaid monopolization and monopolies possess the power to fix and will continue to fix such prices. Defendants Inco, Ltd. and Inco, Delaware and their wholly-owned subsidiaries import and sell in foreign and interstate commerce more than ninety (90) per centum of the commercial nickel, nickel products and nickel-bearing materials consumed in the United States.

63. Defendants for many years have furthered and extended their monopolization and monopolies by extending and maintaining their participation in and control of the business of importing commercial nickel and nickel-bearing materials into the United States and of manufacturing, distributing and selling commercial nickel and nickel products in the United States. Since new enterprises desiring to engage in the nickel industry would be subject to the great hazard necessarily involved in venturing into a business so

completely monopolized by the defendant corporations, the monopolization by the defendants and the dominant position acquired by them has had and will continue to have the effect of excluding others from competition with defendants in the production and sale in foreign and interstate commerce of nickel-bearing materials, commercial nickel and nickel products.

## VII

### PRAYER

WHEREFORE, plaintiff prays:

(1) That the aforesaid combination and conspiracy, attempt to monopolize and monopolization be adjudged and decreed to be unlawful, and that the agreement, understandings, acquisitions and practices alleged in this complaint be adjudged and decreed to be in violation of the Sherman Act.

(2) That the Court adjudge and decree that the defendants have combined and conspired in restraint of and to monopolize, have attempted to monopolize and have monopolized the aforesaid foreign and interstate trade and commerce of the United States in violation of Sections 1 and 2 of the Sherman Act.

(3) That defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined from combining and conspiring to restrain or monopolize, attempting to monopolize or monopolizing trade and commerce among the several States of the United States or with foreign nations with respect to commercial nickel, nickel products or nickel-bearing materials, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the aforesaid violations of the Sherman Act.

(4) That defendants and each of them and their officers, directors, agents, representatives, successors, assignees, and

all persons acting or claiming to act on behalf of them be perpetually enjoined from entering into any contract, agreement, understanding or arrangement in any way restraining, or intended to restrain, any foreign producer or seller of commercial nickel, nickel products or nickel-bearing materials from exporting to or selling in the United States, its territories or possessions any of such commodities.

(5) That Inco, Ltd. and Inco, Delaware be required to take such steps with respect to their respective properties and assets as may be necessary to terminate and dissipate the effects of the aforesaid restraints and monopolization and prevent further violations of the Sherman Act, under such terms and conditions and according to such a plan or program as may be approved by and subject to the supervision of the Court.

(6) That Inco, Ltd. and Inco, Delaware be effectively divorced and separated and the aforesaid exclusive dealing contract between them be cancelled in such manner and to such an extent that effective competition may be created and maintained in the future in the sale of commercial nickel and in the manufacture and sale of nickel products; and that Inco, Ltd. and its subsidiaries be required to make such divestitures and conveyances of their stockholdings and properties as shall be necessary to accomplish such effective divorcement and complete separation of Inco, Ltd. and Inco, Delaware, under such terms and conditions and according to such a plan or program as may be approved by and subject to the supervision of the Court.

(7) That in order to preserve and protect competition in the production, distribution and sale of commercial nickel, nickel products and nickel-bearing materials, each individual defendant herein be perpetually enjoined from simultaneously holding office or directorates in more than one of the corporate defendants herein, or their successors or assignees, and from simultaneously holding or controlling, directly or indirectly, any of the capital stock of more than one of the corporate defendants herein, or their successors or assignees;

and that each corporate defendant and any successor or successors of such corporate defendant be perpetually enjoined from holding, directly or indirectly, through subsidiary corporations, agents, representatives, assignees or otherwise, any of the capital stock of the other corporate defendant, or of any successor or successors of such other corporate defendant.

(8) That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper.

(9) That the plaintiff recover the costs of this suit.

(10) That pursuant to Section 5 of the Sherman Act an order be made and entered herein requiring such of the defendants as are not within this district to be brought before the Court in this proceeding as parties defendant and directing the marshalls of the Districts in which they severally reside to serve summons upon them.

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Manuel M. Gorman  
Special Assistant to the Attorney General

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Tom C. Clark  
Attorney General

.....  
Wendell Berge  
Assistant Attorney General

.....  
Herbert A. Berman  
Special Assistant to the Attorney General

.....  
John F. X. McGohey  
United States Attorney

Department of Justice, Antitrust Division,  
30 Broad Street, New York 4, New York