



Court File No. **VLC-S-S-244937**

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between

BRIAN WALKER

Plaintiff

and

**SIKA CANADA INC., SIKA CORPORATION, SIKA, A.G.,
GCP APPLIED TECHNOLOGIES, INC., SAINT-GOBAIN
CANADA INC., SAINT-GOBAIN NORTH AMERICA,
COMPAGNIE DE SAINT-GOBAIN, S.A., CHRYSO, INC.,
CINVEN INC., CINVEN LTD., MASTER BUILDERS
SOLUTIONS CANADA, INC., MASTER BUILDERS
SOLUTIONS ADMIXTURES US, LLC, MASTER
BUILDERS SOLUTIONS DEUTSCHLAND GMBH,
ADJUVANTS EUCLID CANADA INC., THE EUCLID
CHEMICAL COMPANY, RPM INTERNATIONAL INC.,
MAPEI INC., and MAPEI S.P.A.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

NATURE OF THE ACTION

1. Concrete admixtures are any additive or admixture sold for use in cement, mortar, concrete, or shotcrete ("**Concrete Admixtures**"). Concrete Admixtures are added to concrete to make it stronger, waterproof, more resistant to corrosion and decay, and cheaper to use. Concrete Admixtures are found in almost all concrete in Canada.

2. This action arises from a conspiracy between the Defendants and their co-conspirators to fix, raise, maintain, or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere of Concrete Admixtures sold in Canada, including British Columbia, and elsewhere, starting at least as early as January 1, 2014, and continuing to the present (the “**Class Period**”).

3. The Defendants manufacture, market, sell, and distribute Concrete Admixtures throughout the world, including in Canada and British Columbia.

4. During the Class Period, the Defendants and their co-conspirators unlawfully agreed to fix the prices of Concrete Admixtures around the world, including in Canada. The Defendants accelerated these price increases during the pandemic, far beyond the pace of cost increases.

5. The unlawful conduct alleged in this Notice of Civil Claim caused the prices of concrete to increase substantially since the first quarter of 2020 and significantly raised the price of construction in Canada.

6. As a direct result of the unlawful conduct alleged herein, the Plaintiff and other members of the Proposed Class (as defined in paragraph 8 below) paid artificially inflated prices for Concrete Admixtures and concrete products containing Concrete Admixtures marketed, sold, and/or distributed during the Class Period and have thereby suffered losses and damages.

THE PLAINTIFF AND THE CLASS

7. The Plaintiff is a resident of Langley, British Columbia, who purchased concrete products containing Concrete Admixtures and Concrete Admixtures in British Columbia between October 2021 to October 2022 from Rempel Bros. Concrete.

8. The Plaintiff seeks to represent a class consisting of:

All persons and entities in Canada, other than those resident in Québec, who purchased, either for resale or for their own consumption, between January 1, 2014, and the present:

- i. Concrete Admixture from a Defendant (the “**Direct Purchasers**”);
- ii. from a non-defendant, Concrete Admixture manufactured by a Defendant or concrete products containing Concrete Admixture manufactured by a Defendant (the “**Indirect Purchasers**”);
- iii. Concrete Admixture from a non-defendant manufacturer of Concrete Admixture (the “**Umbrella Direct Purchasers**”); or
- iv. from a non-defendant, one or more concrete products containing Concrete Admixture manufactured by a non-defendant (the “**Umbrella Indirect Purchasers**”);

(collectively, the “**Proposed Class**”).

The Proposed Class excludes the Defendants, their parent companies, subsidiaries, and affiliates, and any of their officers, directors, management, employees, subsidiaries, affiliates or agents.

THE DEFENDANTS

9. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the Defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

10. The Defendants and their co-conspirators agreed, combined, and conspired to inflate, fix, raise, maintain, or artificially stabilize prices of Concrete Admixtures sold in Canada, including in British Columbia.

11. The Defendants and their co-conspirators are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including unnamed co-conspirators.

12. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into

agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

Sika

13. The Defendant Sika Canada Inc. is a corporation incorporated under the laws of Canada, domiciled at 601 Avenue Delmar Pointe-Clair, QC, H9R 4A9. During the Class Period, Sika Canada Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

14. The Defendant Sika Corporation is a corporation incorporated under the laws of New Jersey, domiciled at 201 Polito Ave., Lyndhurst, New Jersey, 07071, United States. During the Class Period, Sika Corporation, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

15. The Defendant Sika AG is a corporation incorporated under the laws of Switzerland, domiciled at Zugerstrasse 50 Baar, Zug, 6341 Switzerland. During the Class Period, Sika AG, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

16. The Defendant GCP Applied Technologies, Inc. is a corporation incorporated under the laws of the state of Georgia, domiciled at 2325 Lakeview Parkway, Suite 450, Alpharetta, Georgia, 30009, United States. During the Class Period, GCP Applied Technologies, Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

17. The businesses of each of Sika Canada Inc., Sika Corporation, Sika AG and GCP Applied Technologies, Inc. (collectively, “**Sika**”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

18. Each member of Sika is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Sika, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

Saint-Gobain

19. The Defendant Saint-Gobain Canada Inc. is a corporation incorporated under the laws of Canada, domiciled at 40 King Street West, Suite 5800, Toronto, ONC M5H 3S1. During the Class Period, Saint-Gobain Canada Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

20. The Defendant Saint-Gobain North America is a corporation incorporated under the laws of Pennsylvania, domiciled at 20 Moores Rd., Malvern, Pennsylvania, 19355, United States. During the Class Period, Saint-Gobain North America, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

21. The Defendant Compagnie de Saint-Gobain, SA is a corporation incorporated under the laws of France, domiciled at 12 Place de l'Iris, Courbevoie, 92400, France. During the Class Period, Compagnie de Saint-Gobain, SA, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

22. The Defendant Chryso, Inc. is a corporation incorporated under the laws of the state of Texas, domiciled at 1611 Highway 276, Rockwell, Texas, 75032, United States. During the Class Period, Chryso, Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

23. The businesses of each of Saint-Gobain Canada Inc., Saint-Gobain North America, Compagnie de Saint-Gobain, SA and Chryso, Inc. (collectively, "**Saint-Gobain**")

are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

24. Each member of Saint-Gobain is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Saint-Gobain, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

Cinven

25. The Defendant Cinven, Inc. is a corporation incorporated under the laws of New York, domiciled at 12 East 49th Street, New York, New York, 10017, United States. During the Class Period, Cinven, Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

26. The Defendant Cinven Ltd. is a corporation incorporated under the laws of the United Kingdom, domiciled at 21 St. James's Square, London, SW1Y 4JZ, United Kingdom. During the Class Period, Cinven Ltd., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

27. The businesses of each of Cinven, Inc. and Cinven Ltd. (collectively, "**Cinven**") are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

28. Each member of Cinven is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Cinven, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

Master Builders

29. The Defendant Master Builders Solutions Canada, Inc. is a corporation incorporated under the laws of Canada, domiciled at 1800 Clark Boulevard, Brampton,

ONC, L6T 4M7. During the Class Period, Master Builders Solutions Canada, Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

30. The Defendant Master Builders Solutions Admixtures US, LLC is a corporation incorporated under the laws of Ohio, domiciled at 23700 Chagrin Blvd., Beachwood, Ohio, 44122, United States. During the Class Period, Master Builders Solutions Canada, Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

31. The Defendant Master Builders Solutions Deutschland GMBH is a corporation incorporated under the laws of Germany, domiciled at Glücksteinallee 43-45, 68163 Mannheim, Germany. During the Class Period, Master Builders Solutions Deutschland GMBH, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

32. The businesses of each of Master Builders Solutions Canada, Inc., Master Builders Solutions Admixtures US, LLC and Master Builders Solutions Deutschland GMBH (collectively, "**Master Builders**") are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

33. Each member of Master Builders is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Master Builders, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

Euclid

34. The Defendant Adjuvants Euclid Canada Inc. is a corporation incorporated under the laws of Ontario, domiciled at 595 Canarctic Dr., North York, ON, M3J 2P9. During the

Class Period, Adjuvants Euclid Canada Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

35. The Defendant The Euclid Chemical Company is a corporation incorporated under the laws of Ohio, domiciled at 19215 Redwood Rd., Cleveland, Ohio, 44110, United States. During the Class Period, The Euclid Chemical Company, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

36. The Defendant RPM International Inc. is a corporation incorporated under the laws of Ohio, domiciled at 2628 Pearl Road, Medina, Ohio 44256, United States. During the Class Period, RPM International Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

37. The businesses of each of Adjuvants Euclid Canada Inc., The Euclid Company and RPM International Inc. (collectively, "**Euclid**") are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

38. Each member of Euclid is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Euclid, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

Mapei

39. The Defendant Mapei Inc. is a corporation incorporated under the laws of Canada, domiciled at 2900 Avenue Francis-Hughes, Laval, QC, H7L 3J5. During the Class Period, Mapei Inc., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

40. The Defendant Mapei S.p.A. is a corporation incorporated under the laws of Italy, domiciled at Via Cafiero, 22, 20158, Milano, Italy. During the Class Period, Mapei S.p.A., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, including British Columbia and elsewhere.

41. The businesses of each of Mapei Inc. and Mapei S.p.A. (collectively, "**Mapei**") are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Concrete Admixtures.

42. Each member of Mapei is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Mapei, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

THE CONCRETE ADMIXTURES INDUSTRY

43. The structure and other characteristics of the Concrete Admixtures industry is conducive to the conspiracy alleged in this Notice of Civil Claim.

44. Most construction projects require cement, mortar (cement, water and sand), and/or concrete (cement, water, sand and gravel). These products are ubiquitous in all forms of construction projects, ranging from pavement, floors, bricks, walls, roofs, foundations, and pipes, among other things.

45. Various chemicals are added to cement, mortar and concrete to improve their performance and facilitate their use in construction, either during the mixing of cement or after cement is mixed. These added chemicals are referred to in this claim as Concrete Admixtures.

46. Concrete Admixtures have a wide variety of uses, including:

- (a) making it possible to use concrete for specific types of structures;
- (b) allowing concrete to perform its functions better;

- (c) making construction simpler and cheaper;
- (d) preventing the degradation of concrete;
- (e) reducing long-term maintenance costs; and
- (f) improving the appearance of concrete.

47. There are no close substitutes for Concrete Admixtures. Concrete Admixtures are an essential part of construction projects.

48. There are barriers to entry into the Concrete Admixtures market, which were known to the Defendants. New entrants to the Concrete Admixtures market would face costly and lengthy start-up costs.

49. By virtue of their market shares, the Defendants and their co-conspirators are the dominant manufacturers and suppliers of Concrete Admixtures in Canada, including in British Columbia, and the world.

50. The barriers to entry, coupled with the Defendants' high market share and the commodity-like nature of Concrete Admixtures, meant that the Defendants conduct had the intended effect of increasing the price of all Concrete Admixtures sold directly or indirectly into Canada, including those manufactured by non-cartel members, to supra-competitive levels to the Proposed Class.

TRADE ASSOCIATIONS

51. The Defendants are members of or involved with the following trade associations:

- (a) **Atlantic Canada:** Sika (directly and through GCP) and Euclid are members of Concrete Atlantic;
- (b) **Belgium:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of the *fédération des importateurs et producteurs d'adjuvants pour béton*;

- (c) **France:** Sika (directly and through GCP), Saint-Gobain (through Chryso), Master Builders, and Mapei are members of the Syndicat National des Adjuvants pour Bétons et Mortiers;
- (d) **Italy:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of Associazione Italiana Produttori Additivi e Prodotti per Cemento e Calcestruzzo;
- (e) **Netherlands:** Sika and Master Builders are members of Vereniging Van fabrikanten en leveranciers van Hulpstoffen voor mortel en beton;
- (f) **Norway:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of the Norwegian Committee for Concrete Admixtures;
- (g) **Poland:** Sika, Master Builders, and Mapei are members of Stowarzyszenie Producentów Chemii Budowlanej;
- (h) **Spain:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of Asociación Nacional de Fabricantes de Aditivos para Hormigón y Mortero;
- (i) **Sweden:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of the Swedish Association for Concrete Admixtures;
- (j) **Switzerland:** Sika, Master Builders, and Mapei are members of Fachverband Schweizerischer Hersteller von Betonzusatzmitteln;
- (k) **Turkey:** Sika, Saint-Gobain (through Chryso), Master Builders, and Mapei are members of the Concrete and Mortar Admixtures Manufacturers Association, also known as the Association of Cement and Mortar Admixture Chemical Additives Producers (“**KÜB**”), which is a member of the Construction Materials Manufacturers’ Federation, also known as the Building Materials Manufacturers’ Federation (“**YÜF**”);

- (l) **United Kingdom:** Sika (directly and through GCP, Saint-Gobain (through Chryso), and Master Builders are members of the Cement Admixtures Association; and
 - (m) **United States:** Sika (directly and through GCP), Saint-Gobain (through Chryso), Master Builders, and Euclid are super sponsors of the National Ready Mixed Concrete Association;
- (collectively, the “**Trade Associations**”).

52. Each of the Trade Associations held regular meetings attended by the Defendants’ employees. The Defendants’ employees also serve as directors, officers, and committee members of the Trade Associations and others, including the European Federation of Concrete Admixtures Associations, and so attended regular board and committee meetings together. These meetings gave the Defendants ample opportunities to share anti-competitive information, and agree upon, coordinate, and enforce the conspiracy described below.

THE CONSPIRACY

53. The acts alleged under this heading are, collectively, the “**Conspiracy Acts**”.

54. During the Class Period, the Defendants conspired and/or agreed with each other to fix, maintain, increase or control the price for the supply of Concrete Admixtures and/or to enhance unreasonably the prices of Concrete Admixtures and/or to lessen unduly competition in the sale of Concrete Admixtures in Canada, including British Columbia and elsewhere.

55. Since 2014, the Defendants have significantly increased the prices charged for Concrete Admixtures and products containing Concrete Admixtures. The price increases were significantly more than increases warranted by ordinary market forces and were the result of anticompetitive agreements.

56. The Defendants have repeatedly confirmed that price increases exceeded any relevant cost increases, including those for raw materials.

57. The Defendants have consolidated their market share and dominance and furthered the aims of the conspiracy through mergers and takeovers.

58. The conspiracy was intended to, and did, affect the price and production or supply of Concrete Admixtures and concrete containing Concrete Additives sold in Canada, including British Columbia.

59. The Defendants intended to agree to and perform the Conspiracy Acts and knew or ought to have known that the likely effect of the Conspiracy Acts would be to fix, maintain, increase or control the price for the supply of Concrete Admixtures as well as fix, maintain, control, prevent or lessen the production or supply of Concrete Admixtures in the North American market. Further, the Defendants intended that such price effects would be passed through to the concrete market and would affect purchasers of concrete including Concrete Additives.

60. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the Plaintiff (the "**Communications**").

61. As a result of the Communications, the Defendants and their co-conspirators unlawfully conspired and agreed to:

- (a) unreasonably enhance the prices of Concrete Admixtures in Canada, including in British Columbia, and elsewhere;
- (b) fix, maintain, increase, or control the prices of Concrete Admixtures in Canada, including in British Columbia, and elsewhere;
- (c) monitor and enforce adherence to an agreed-upon pricing scheme for Concrete Admixtures; and
- (d) lessen unduly competition in the sale of Concrete Admixtures in Canada, including in British Columbia, and elsewhere.

62. In furtherance of the conspiracy, during the Class Period, the Defendants and their co-conspirators, and/or their servants and agents:

- (a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Concrete Admixtures in Canada, including in British Columbia, and elsewhere;
- (b) communicated secretly, in person, by telephone, and by email, text and other forms of electronic communications, to discuss and fix prices of Concrete Admixtures;
- (c) made formal agreements with respect to the prices of Concrete Admixtures;
- (d) exchanged information regarding the prices of Concrete Admixtures for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- (e) allocated sales, territories, customers or markets for supply of Concrete Admixtures;
- (f) fixed, maintained, controlled, prevented or lessened the supply of Concrete Admixtures;
- (g) rigged bids for the sale of Concrete Admixtures to OEMs and their subsidiaries; and
- (h) disciplined any conspirator which failed to comply with the conspiracy.

63. During the Class Period and continuing to the present, the Defendants and their co-conspirators and their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Proposed Class.

64. The Defendants and their co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and other persons in British Columbia who purchased Concrete Admixtures and purchased

products containing Concrete Admixtures by requiring them to pay excessive prices for Concrete Admixtures.

65. The Canadian subsidiaries of the foreign defendants and the foreign co-conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.

66. In furtherance of the conspiracy, the Defendants and their co-conspirators intended to, and in fact did, allocate sales, territories, customers or markets for the production or supply of Concrete Admixtures by limiting their respective affiliates' ability to sell Concrete Admixtures into the North American market.

67. The Conspiracy Acts alleged in this claim to have been done by each Defendant and each co-conspirator were authorized, ordered, and done by each Defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

68. Relying on the higher price umbrella set by the Defendants, the non-conspirator Concrete Admixtures manufacturers were able to, and did, maximize their profits by charging higher prices for Concrete Admixtures than they would have in a competitive market. The non-conspirator Concrete Admixtures manufacturers' conduct in charging higher prices was a direct response to the higher prices for Concrete Admixtures caused by the Defendants' conspiratorial conduct and exercise of collective market power. But for the conspiracy, the Defendants would have charged lower, competitive prices for Concrete Admixtures, and the non-cartel Concrete Admixtures manufacturers would have needed to follow those lower prices or risk losing market share.

69. The Defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Concrete Admixtures would be sold from the price that otherwise would be charged on a competitive basis. The defendants and their unnamed co-conspirators knew or should

have known that their unlawful scheme and conspiracy would injure purchasers of Concrete Admixtures and concrete containing Concrete Admixtures in Canada (including British Columbia) and elsewhere. The Defendants' conduct inflated the price paid by Class Members for Concrete Admixtures.

70. During the Class Period, members of the Proposed Class who directly and indirectly purchased Concrete Admixtures from the Defendants suffered damages measured as the difference between the actual prices paid by them and the "but for" prices that they would have obtained had there been a competitive market for Concrete Admixtures. The Defendants were aware and intended that the alleged conspiracy would cause the Proposed Class to pay supra-competitive prices for Concrete Admixtures.

71. During the Class Period, the Direct and Indirect Umbrella Purchasers who purchased Concrete Admixtures from non-conspirator manufacturers suffered damages measured as the difference between the actual prices paid by them and the "but for" prices that they would have obtained in a competitive market. The Defendants were aware and intended that the alleged conspiracy would result in Umbrella Purchasers paying supra-competitive prices for Concrete Admixtures during the Class Period.

Global Investigations

72. In October 2023, the competition regulators of the European Union, the United Kingdom, and Turkey conducted unannounced inspections on the Defendants' European premises on the basis of suspected price-fixing and cartel behaviour. The competition regulators of the European Union have also been in contact with the U.S. Department of Justice, Antitrust Division.

73. Sika, Saint-Gobain, and Cinven have confirmed that they were targeted by these raids.

74. On November 23, 2023, the Competition Board of the Turkish Competition Authority rendered a decision to open a formal investigation into allegations that 17

organizations – including Sika, Saint-Gobain (through Chryso), Master Builders, Mapei KÜB, and YÜF – for:

agreeing on price increases and pricing strategies, exchanging competitively sensitive information, bid rigging, making no poaching agreement and agreement to fix wages, resale price maintenance, restricting online sales and/or restricting customers/regions.

Damages

75. As a result of the Conspiracy Acts:

- (a) the prices of Concrete Admixtures and products containing Concrete Admixtures have been, directly or indirectly, enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
- (b) competition in the sale of Concrete Admixtures has been unduly restrained.

76. During the Class Period, the Plaintiff and the Proposed Class purchased Concrete Admixtures and purchased concrete products containing Concrete Admixtures. By reason of the alleged violations of the *Competition Act*, RSC 1985, c 19 (2nd Suppl.) (the "**Competition Act**") and the common law, the Plaintiff and the Proposed Class paid more for those Concrete Admixtures and products containing Concrete Admixtures than they would have paid in the absence of the illegal conspiracy and, as a result, the Plaintiff and the Proposed Class have suffered damages (the "**Overcharge**").

77. The Plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices of Concrete Admixtures and products containing Concrete Admixtures actually paid by the Proposed Class and the prices which would have been paid in the absence of the unlawful conspiracy. The Defendants and their co-conspirators are jointly and severally liable for the entire Overcharge.

PART 2: RELIEF SOUGHT

78. The Plaintiff, on his own behalf, and on behalf of the Proposed Class, claims against the Defendants and their co-conspirators:

- (a) a declaration that the Defendants and their co-conspirators, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Concrete Admixtures during the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;
- (b) a declaration that the Defendants and their co-conspirators, and each of them, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the manufacture or production of Concrete Admixtures or to enhance unreasonably the price thereof;
- (c) an order certifying this action as a class proceeding against the Defendants and appointing the Plaintiff as representative plaintiff in respect of the Proposed Class;
- (d) general damages for conspiracy and unlawful interference with economic interests in the amount of the Overcharge;
- (e) a declaration that the Defendants account for and make restitution to the Plaintiff and the Proposed Class in an amount equal to the Overcharge;
- (f) judgment in the amount of the Overcharge;
- (g) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (h) punitive damages;
- (i) an injunction enjoining the Defendants and their co-conspirators from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Concrete Admixtures;

- (j) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (k) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128;
- (l) disgorgement of the revenues generated by the Defendants from their unlawful misconduct; and
- (m) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

79. The plaintiff pleads and relies upon the *Class Proceedings Act*, RSBC, 1996 c. 50, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "**CJPTA**").

CAUSES OF ACTION

Breach of the Competition Act

80. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act* as they involved unlawful agreements between competitors to fix prices, allocate markets and control supply of Concrete Additives, caused injury to the Plaintiff and the Proposed Class and render the Defendants and their co-conspirators jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign Defendants and their foreign co-conspirators are jointly and severally liable to the Plaintiff and the Proposed Class pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act* by implementing directives, instructions, intimations of policy or other communications from a foreign Defendant.

81. Further or alternatively, the Conspiracy Acts are in breach of section 47 of Part VI of the *Competition Act* by agreeing to rig and/or rigging bids for the supply of Concrete Additives, caused injury to the Plaintiff and the Proposed Class and render the

Defendants and their co-conspirators jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

Civil Conspiracy

82. Further, or alternatively, the Conspiracy Acts were unlawful acts directed towards the Plaintiff and the Proposed Class, which unlawful acts the Defendants and their co-conspirators knew in the circumstances would likely cause injury to the Plaintiff and the Proposed Class and, as such, the Defendants and their co-conspirators are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the Plaintiff and the Proposed Class, and the Defendants and their co-conspirators are jointly and severally liable for the tort of conspiracy to injure.

83. The Plaintiff and the Proposed Class suffered damages as a result of the Defendants' conspiracy.

Unjust Enrichment and Waiver of Tort

84. Further, and in the alternative, the Plaintiff and the Proposed Class are entitled to claim and recover based on equitable and restitutionary principles.

85. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiff and the Proposed Class have suffered a corresponding deprivation in the amount of such Overcharge.

86. Since the Overcharge that was received by the Defendants from the Plaintiff and the Proposed Class resulted from the Defendants' and their co-conspirators wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of it. In particular, any contracts upon which the Defendants purport to rely to receive the Overcharge are void because they are (1) prohibited by statute, entered into with the object of doing an act prohibited by statute, and/or require performance of an act prohibited by statute, (2) in contravention of common law principles, and/or (3) in contravention of public policy, in that they are, amongst other things, in restraint of trade.

87. The Defendants are required to make restitution to the Plaintiff and the Proposed Class for the Overcharge because, among other reasons:

- (a) the Defendants were unjustly enriched by receipt of the Overcharge;
- (b) the Proposed Class suffered a deprivation by paying the Overcharge;
- (c) the Defendants and their co-conspirators engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
- (d) the Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
- (e) justice and good conscience require restitution;
- (f) the integrity of the marketplace would be undermined if the court did not order restitution; and
- (g) there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.

88. The Plaintiff pleads that equity and good conscience requires the Defendants to make restitution to the Plaintiff and the Proposed Class of the Overcharge, or alternatively to disgorge the Overcharge to the Plaintiff and the Proposed Class.

89. Further, or alternatively, the Plaintiff waives the tort and elects to pursue restitutionary remedies against the Defendants as set out above.

90. The Plaintiff seeks disgorgement of the revenues generated by the Defendants and their co-conspirators from their unlawful conspiracy and/or unlawful means misconduct.

91. It would be unconscionable for the Defendants to retain the unlawful overcharge obtained as a result of the Conspiracy Acts and/or unlawful means misconduct.

92. All amounts payable to the Proposed Class on account of disgorgement should be calculated on an aggregate basis pursuant to section 29 of the *Class Proceedings Act*, or otherwise.

Fraudulent Concealment

93. The Defendants and their co-conspirators actively, intentionally, and fraudulently concealed the existence of the conspiracy from the public, including the Plaintiff and the Proposed Class. The Defendants and their co-conspirators represented to purchasers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiff and the Proposed Class. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

94. The Defendants' anti-competitive conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

95. Because the Defendants' agreements, understandings and conspiracies were kept secret, the Plaintiff and the Proposed Class were unaware of the Defendants' unlawful conduct and they did not know that they were paying supra-competitive prices for Concrete Admixtures or concrete products containing Concrete Admixtures.

Punitive Damages

96. The Plaintiff asserts that the Defendants' and their co-conspirators conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiff's rights and the rights of the Proposed Class, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.

JURISDICTION

97. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Proposed Class plead and rely upon the *CJPTA* in respect of the Defendants. Without limiting the foregoing, a real and substantial

connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

CFM LAWYERS LLP
#400 – 856 Homer Street
Vancouver, BC V6B 2W5


Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: July 24, 2024



Signature of lawyer
for plaintiff

Michelle L. Segal

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiff and Proposed Class plead and rely upon the *CJPTA* in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss. 10 (f)-(i) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia and Canada;
- (g) concerns a tort committed in British Columbia and Canada;
- (h) concerns a business carried on in British Columbia and Canada
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy between the Defendants and their co-conspirators to fix, raise, maintain, or stabilize the price of Concrete Admixtures sold to purchasers in North America and worldwide. During the Class Period, the Defendants and their co-conspirators participated in illegal and secretive meetings and made agreements relating to the prices of Concrete Admixtures. The Plaintiff and the Proposed Class suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, RSBC 1996, c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28