



Court File No. T-41-24

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

B E T W E E N:

(Court Seal)

THE FLAT GUYS

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 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

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you must prepare a Statement of Defence in Form 171B prescribed by the [Federal Court Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court.

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.


TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Court Rules](#).

Copies of the [Federal Court Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date January 8, 2024 Issued by Vanessa George
Local Registrar

Address of local office: Federal Court
180 Queen St. W.
Toronto ON M5V 1Z4

TO: SIKA CANADA INC.


AND TO: SIKA CORPORATION
201 Polito Ave.
Lyndhurst, New Jersey 07071
United States of America

AND TO: SIKA A.G.
Zugerstrasse 50
Baar, Zug 6341
Switzerland

AND TO: GCP APPLIED TECHNOLOGIES, INC.
2325 Lakeview Parkway, Suite 450
Alpharetta, Georgia 30009
United States of America

AND TO: SAINT-GOBAIN CANADA INC.
40 King Street West, Suite 5800
Toronto, ON M5H 3S1

AND TO: SAINT-GOBAIN NORTH AMERICA
20 Moores Rd.
Malvern, Pennsylvania 19355
United States of America

AND TO: COMPAGNIE DE SAINT-GOBAIN S.A.
12 Place de l'Iris
Courbevoie 92400
France

AND TO: CHRYSO, INC.
12 East 49th Street
New York, New York 10017
United States of America

AND TO: CINVEN LTD.
21 St. James's Square
London SW1Y 4JZ
United Kingdom

AND TO: MASTER BUILDERS SOLUTIONS CANADA, INC.
1800 Clark Boulevard
Brampton, ON L6T 4M7

AND TO: MASTER BUILDERS SOLUTIONS ADMIXTURES US, LLC
23700 Chagrin Blvd.
Beachwood, Ohio 44122
United States of America

AND TO: MASTER BUILDERS SOLUTIONS DEUTSCHLAND GMBH
Glücksteinallee 43-45
Mannheim 68163
Germany

AND TO: ADJUVANTS EUCLID CANADA INC.
595 Canarctic Dr.
North York, ON M3J 2P9

AND TO: THE EUCLID CHEMICAL COMPANY
19215 Redwood Rd.
Cleveland, Ohio 44110
United States of America

AND TO: RPM INTERNATIONAL INC.
2628 Pearl Road
Medina, Ohio 44256
United States of America

AND TO: MAPEI INC.
2900 Avenue Francis-Hughes
Laval, QC H7L 3J5

AND TO: MAPEI S.P.A.
Via Cafiero, 22
Milano 20158
Italy

CLAIM

I. OVERVIEW

1. Admixtures are chemicals added to concrete to make it stronger, waterproof, more resistant to corrosion and decay, and cheaper to use. They are found in almost all concrete in Canada, and many types of construction projects would be impossible without them.
2. The defendants are the dominant manufacturers of concrete admixtures throughout the world, including in Canada.
3. Since at least January 1, 2014, the defendants have unlawfully agreed to raise 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. As a result, prices for concrete have increased by more than 50% since the first quarter of 2020.
4. This has significantly raised the price of construction in Canada. Homes, schools, hospitals, roads, bridges, and all other forms of public and private infrastructure are more expensive to build today because of the defendants' misconduct.
5. 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.

II. DEFINED TERMS

6. In this Statement of Claim, the following terms have the following meanings:

- (a) “**Class**” means all persons in Canada, other than those resident in Québec, who purchased:
 - (i) One or more Concrete Admixtures from one or more of the defendants (“**Direct Purchasers**”);
 - (ii) One or more Concrete Admixtures manufactured by entities other than the defendants (“**Umbrella Purchasers**”); or
 - (iii) One or more products that included Concrete Admixtures manufactured by the defendants (“**Indirect Purchasers**”).

Between January 1, 2014 and the date on which certification of this action as a class proceeding has been finally determined; and

- (b) “**Concrete Admixture**” means any additive or admixture sold for use in cement, mortar, concrete, or shotcrete.

III. RELIEF SOUGHT

7. The plaintiff, on behalf of the Class, claims:

- (a) An order certifying this action as a class proceeding and appointing it as the representative plaintiff for the Class;
- (b) A declaration that the defendants engaged in a conspiracy in breach of sections 45 and 46 of the *Competition Act*;

- (c) Damages against the defendants, jointly and severally, for breach of sections 45-46 of the *Competition Act*, pursuant to section 36 of the *Competition Act*;
- (d) Investigative costs and the full indemnity costs of this proceeding pursuant to section 36 of the *Competition Act*;
- (e) In the alternative, the costs of this proceeding on a substantial indemnity basis, plus applicable taxes;
- (f) Pre-judgment interest and post-judgment interest; and
- (g) Such further and other relief as this court may deem just.

IV. FACTS

A. The Defendants

(i) *Sika*

- 8. “Sika” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:
 - (a) Sika Canada Inc. is a corporation incorporated under the laws of Canada, domiciled at 601 Avenue Delmar Pointe-Clair, QC, H9R 4A9. Sika Canada Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
 - (b) Sika Corporation is a corporation incorporated under the laws of New Jersey, domiciled at 201 Polito Ave., Lyndhurst, New Jersey, 07071, United States. Sika

Corporation manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

(c) Sika AG is a corporation incorporated under the laws of Switzerland, domiciled at Zugerstrasse 50 Baar, Zug, 6341 Switzerland. Sika AG manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

(d) GCP Applied Technologies, Inc. is a corporation incorporated under the laws of Georgia, domiciled at 2325 Lakeview Parkway, Suite 450, Alpharetta, Georgia, 30009, United States. GCP Applied Technologies, Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

9. 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 all of their actions are sought against them jointly and severally.

(ii) Saint-Gobain

10. “**Saint-Gobain**” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:

- (a) Saint-Gobain Canada Inc. is a corporation incorporated under the laws of Canada, domiciled at 40 King Street West, Suite 5800, Toronto, ON, M5H 3S1. Saint-Gobain Canada Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

- (b) Saint-Gobain North America is a corporation incorporated under the laws of Pennsylvania, domiciled at 20 Moores Rd., Malvern, Pennsylvania, 19355, United States. Saint-Gobain North America manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

- (c) Compagnie de Saint-Gobain, SA is a corporation incorporated under the laws of France, domiciled at 12 Place de l'Iris, Courbevoie, 92400, France. Compagnie de Saint-Gobain, SA manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

- (d) Chryso, Inc. is a corporation incorporated under the laws of Texas, domiciled at 1611 Highway 276, Rockwall, Texas, 75032, United States. Chryso, Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

11. 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 all of their actions are sought against them jointly and severally.

(iii) Cinven

12. “**Cinven**” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:
 - (a) 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. Cinven, Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
 - (b) 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. Cinven Ltd. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
13. 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 all of their actions are sought against them jointly and severally.

(iv) Master Builders

14. “**Master Builders**” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:

- (a) Master Builders Solutions Canada, Inc. is a corporation incorporated under the laws of Canada, domiciled at 1800 Clark Boulevard, Brampton, ON, L6T 4M7. Master Builders Solutions Canada, Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
- (b) 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. Master Builders Solutions Admixtures US, LLC manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
- (c) Master Builders Solutions Deutschland GMBH is a corporation incorporated under the laws of Germany, domiciled at Glücksteinallee 43-45, 68163 Mannheim, Germany. Master Builders Solutions Deutschland GMBH manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

15. 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 all of their actions are sought against them jointly and severally.

(v) *Euclid*

16. “**Euclid**” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:
 - (a) Adjuvants Euclid Canada Inc. is a corporation incorporated under the laws of Ontario, domiciled at 595 Canarctic Dr., North York, ON, M3J 2P9. Adjuvants Euclid Canada Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
 - (b) The Euclid Chemical Company is a corporation incorporated under the laws of Ohio, domiciled at 19215 Redwood Rd., Cleveland, Ohio, 44110, United States. The Euclid Chemical Company manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.
 - (c) RPM International Inc. is a corporation incorporated under the laws of Ohio, domiciled at 2628 Pearl Road, Medina, Ohio 44256, United States. RPM International Inc. manufactured, marketed, sold and/or distributed Concrete

Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

17. 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 all of their actions are sought against them jointly and severally.

(vi) Mapei

18. “**Mapei**” includes the following companies and all predecessors, affiliates or subsidiaries, each of whose businesses are inextricably interwoven with the businesses of the others:

- (a) Mapei Inc. is a corporation incorporated under the laws of Canada, domiciled at 2900 Avenue Francis-Hughes, Laval, QC, H7L 3J5. Mapei Inc. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

- (b) Mapei S.p.A. is a corporation incorporated under the laws of Italy, domiciled at Via Cafiero, 22, 20158, Milano, Italy. Mapei S.p.A. manufactured, marketed, sold and/or distributed Concrete Admixtures in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

19. 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 all of their actions are sought against them jointly and severally.

(vii) Unnamed Co-Conspirators

20. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit, the identities of which are presently not known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. For the purposes of this claim, the term “co-conspirator” refers to any co-conspirator identified by name above and any unnamed co-conspirator.

(viii) Joint and Several Liability

21. The defendants are jointly and severally liable for the actions of all co-conspirators and for all of the damages resulting therefrom, including umbrella damages.
22. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation’s business or affairs.

B. The Plaintiff

23. The plaintiff is an Ontario-registered sole-proprietorship based in Delhi, Ontario. Between October 2021 and November 2022, it operated as a concrete contractor with tasks including flatwork, driveways, basement floors, and garden curbs. In the course of that business, it regularly purchased concrete containing Concrete Admixtures, including those sold by the defendants.

C. **The Concrete Admixtures Industry**

24. Most construction projects require cement, mortar (cement + water + sand), or concrete (cement + water + sand + gravel). These products are ubiquitous in all forms of construction projects, ranging from pavement, floors, bricks, walls, roofs, foundations, and pipes, among other things. Without them, it would be impossible to build homes, schools, hospitals, roads, bridges, and all other forms of public and private infrastructure.
25. Various chemicals are added to cement, mortar, and concrete to improve their performance and to facilitate their use in construction. If the chemicals are added during the mixing of cement, they are usually called “additives”. If the chemicals are added after cement is mixed, during the mixing of concrete, they are usually called “admixtures”. For simplicity, this claim refers to all of these chemicals collectively as “**Concrete Admixtures**”.
26. 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.

27. The defendants and their co-conspirators are the dominant manufacturers and suppliers of Concrete Admixtures. They have consolidated their market share and dominance and furthered the aims of the conspiracy through mergers and takeovers. For example:

(a) In 2014, Saint-Gobain launched a hostile takeover of Sika by attempting to acquire the holdings of the largest shareholder. This would have given Saint-Gobain 52% of the voting rights in Sika, allowing it to raise prices for Concrete Admixtures. Other shareholders sued to prevent the transfer.

(b) The litigation was still ongoing on May 11, 2018, when Saint-Gobain and Sika came to an agreement to end the litigation and cooperate (the “**Agreement**”). Under the publicly-available terms of the Agreement, Saint-Gobain would sell some of the shares to Sika for CHF 2.08 billion and the share structure would be changed such that Saint-Gobain would not have control. But Saint-Gobain would also keep a 10.75% stake in Sika for two years. The press release issued by Sika about the Agreement notes that:

The two groups will also continue their substantial existing business relationship and seek to further expand it to areas of mutual benefit while preserving and respecting each group’s economic and legal independence.

28. The Concrete Admixture market is characterized by high financial and other barriers to entry, which were known to the defendants. These barriers to entry, coupled with the defendants’ high market share and the commodity-like nature of Concrete Admixtures, meant that the defendants intended and were able to increase 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 Class.

D. Trade Associations

29. The defendants are 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.
 - (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.
30. Each of these trade associations held regular meetings, which the defendants’ employees attended. The defendants’ employees also serve as directors, officers, and committee

members of these organizations and others, including the European Federation of Concrete Admixtures Associations, and so attended even more regular board and committee meetings together. These meetings gave the defendants ample opportunities to agree upon, coordinate, and enforce the conspiracy described below.

31. Collectively, all trade associations in which multiple defendants are members are referred to as the “**Trade Associations**”.

E. The Conspiracy

32. The defendants and their co-conspirators intended as a result of their unlawful conspiracy to inflate the price of Concrete Admixtures and to allocate the market for Concrete Admixtures. They unlawfully conspired to agree and manipulate prices for Concrete Admixtures and conceal their anti-competitive behaviour from industry participants. The defendants and their co-conspirators intended that their unlawful scheme and conspiracy would unlawfully increase the price at which Concrete Admixtures would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their co-conspirators were aware that, by unlawfully increasing the price of Concrete Admixtures, the prices of products containing Concrete Admixtures would also be artificially inflated. The defendants and their co-conspirators intended that their unlawful scheme and conspiracy would injure purchasers of Concrete Admixtures and products containing Concrete Admixtures.

(i) Price Increases

33. 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.
34. For example, the defendants have repeatedly confirmed that price increases exceeded any relevant cost increases, including those for raw materials. Sika made the following statements, amongst others:
 - (a) On an earnings call on February 21, 2020, Sika noted that raw material cost had “only a sort of a marginal impact”. In fact, due to price increases, they were “improving our material margin”.
 - (b) On an earnings call on February 20, 2021, Sika noted that it had seen “decreasing raw material costs” which, coupled with higher prices, added 50 basis points to Sika’s spread.
 - (c) On an earnings call on August 3, 2023, Sika noted that its material margin had increased by 330 basis points in the past year “as a result of our pricing discipline”.
35. Saint-Gobain made the following statements, amongst others:
 - (a) In two price releases – dated February 27, 2020; and February 25, 2021 – Saint-Gobain noted that it had increased its price-cost spreads “thanks to strong pricing discipline”.

- (b) In a presentation dated February 26, 2021, Saint-Gobain noted that it had achieved a 50 basis point increase in its “price-cost spread ... net of additional Covid costs”. Its operating margin had increased by 100 basis points since 2018.
 - (c) In a presentation dated February 25, 2022, Saint-Gobain noted that it had again increased its price-cost spread. The Americas saw the fastest price growth at 13%, and its operating margin in the Americas had increased by 530 basis points since 2018.
36. Euclid made the following statements:
- (a) On an earnings call on April 6, 2022, RPM International Inc. noted that it saw “EBIT growth” despite increases in raw material prices because of “selling price adjustments”.
 - (b) On an earnings call on January 5, 2023, it noted that its Q2 EBIT margin had increased by 240 basis points compared with the previous year.
 - (c) In a press release dated April 6, 2023, RPM International Inc. noted that it had “record fiscal 2023 third-quarter sales, which were driven by increased pricing”.
37. The high financial and other barriers to entry, which were known to the defendants, coupled with the defendants’ high collective market share, created an “umbrella” of *supra-competitive* prices causing non-cartel suppliers to raise prices of Concrete Admixtures.
38. Relying on higher prices set by the defendants and given capacity constraints, the non-cartel suppliers 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-cartel suppliers' conduct in charging higher prices was a direct response to the higher Concrete Admixture prices caused by the defendants' collusive conduct and exercise of collective market power. But for the conspiracy, the defendants would have charged lower, competitive prices, and the non-cartel suppliers would have needed to follow those lower prices or risk losing market share.

39. Umbrella Purchasers suffered damages measured as the difference between the actual prices paid by them and the "but for" prices 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.

(ii) Global Investigations

40. On October 17, 2023, the European Commission ("EC") announced that it had carried out dawn raids at the premises of European branches of the defendant corporate groups and many of the Trade Associations. National competition authorities were present, the EC had coordinated with the Competition & Markets Authority ("CMA") and the Turkish Competition Authority, and the EC was in contact with the United States Department of Justice, Antitrust Division. Their concern was that the defendants had "violated EU antitrust rules that prohibit cartels" in the market for "chemical additives for cement and chemical admixtures for concrete and mortar".
41. On the same day, the CMA announced that it had carried out dawn raids at the premises of United Kingdom branches of the defendant corporate groups. Their concern was a breach

of Chapter I of the Competition Act 1998 – dealing with horizontal agreements – “involving a number of suppliers of these chemicals and some industry bodies”.

42. On the same day, the Turkish Competition Authority (“TCA”) announced that it was investigating “price fixing and consumer allocation violations” in the Concrete Admixture industry. The TCA conducted two separate rounds of dawn raids.
43. Sika, Saint-Gobain, and Cinven have confirmed that they were targeted by these raids.
44. On November 23, 2023, the Competition Board of the TCA 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.

V. CAUSES OF ACTION

A. Breaches of Part VI of the *Competition Act*

45. The defendants are competitors in the market for Concrete Admixtures.
46. The defendants engaged in conspiracies to fix, maintain, increase, or control the price of Concrete Admixtures sold to customers in North America, Europe, and elsewhere. The defendants and their co-conspirators conspired to enhance unreasonably the prices of Concrete Admixtures and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Concrete Admixtures in North America, Europe, and elsewhere.

The conspiracies were intended to, and did, affect prices of Concrete Admixtures and products containing Concrete Admixtures sold in Canada, contrary to section 45 of the *Competition Act*.

47. The defendants and their co-conspirators carried out the conspiracies by, among other things:
- (a) participating in meetings, conversations and communications to discuss and to agree on prices charged for Concrete Admixtures, including surcharges on prices;
 - (b) agreeing to pressure competitors to prevent them from placing downward pressure on prices and to pressure them to increase the prices that they charged for Concrete Admixtures;
 - (c) agreeing on the prices to be charged and to control discounts and to otherwise fix, increase, maintain or stabilize prices for Concrete Admixtures;
 - (d) agreeing, during those meetings, conversations and communications, to allocate the supply of Concrete Admixtures sold in North America (including Canada), Europe, and elsewhere;
 - (e) agreeing, during those meetings, conversations and communications, to coordinate price adjustments in North America (including Canada), Europe, and elsewhere;
 - (f) submitting price quotations and price adjustments to customers in North America (including Canada), Europe, and elsewhere in accordance with the agreements reached;

- (g) enhancing unreasonably the price of Concrete Admixtures sold in North America (including Canada), Europe, and elsewhere;
- (h) selling Concrete Admixtures in North America (including Canada), Europe, and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Concrete Admixtures in North America, Europe, and elsewhere;
- (i) allocating the supply of Concrete Admixtures sold in North America (including Canada), Europe, and elsewhere;
- (j) accepting payment for Concrete Admixtures sold in North America (including Canada), Europe, and elsewhere are collusive and supra-competitive prices;
- (k) engaging in meetings, conversations and communications for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent “paper trails,” communicating by telephone and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening competition in the market in North America (including Canada), Europe, and elsewhere for the production, manufacture, sale or distribution of Concrete Admixtures.

48. As a result of the unlawful conduct alleged, the plaintiff and other members of the Class paid *supra*-competitive prices for Concrete Admixtures or products containing Concrete Admixtures.
49. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, section 45(1). The plaintiffs claim loss and damage under s. 36(1) of the *Competition Act* in respect of that unlawful conduct.
50. Moreover, the Canadian defendants implemented directives, instructions, intimations of policy, or other communications from their related entities identified herein, which communications were for the purpose of giving effect to a conspiracy, combination, agreement, or arrangement that, if entered into in Canada, would have breached section 45 of the *Competition Act*. The defendants therefore breached section 46(1) of the *Competition Act* and are liable to the plaintiff and the Class pursuant to s. 36 of the *Competition Act*.

B. Discoverability & Fraudulent Concealment

51. The plaintiff and the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conduct impugned herein, for the following reasons:
 - (a) The Class reasonably expected the Concrete Admixture industry to be competitive. The defendants represented that their pricing was unilateral. A reasonable person under the circumstances would not have been alerted to investigate the sources or the legitimacy of the defendants' prices.

(b) The defendants and their unnamed co-conspirators actively, intentionally, and fraudulently concealed from the Class the existence of the impugned conduct and their participation in the impugned conduct. The impugned conduct was self-concealing, in the sense that the actions of the defendants in furtherance of the impugned conduct were carried out in a manner that precluded detection.

52. Because the defendants' agreements, understandings and conspiracies were kept secret, the plaintiff and other members of the Class were unaware of the defendants' unlawful conduct and they did not know that they were paying *supra*-competitive prices for Concrete Admixtures or products containing Concrete Admixtures.

VI. OTHER

53. The plaintiff proposes that this action be tried in Toronto.

January 5, 2024



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Plaintiff

-and-

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Defendants

Court File No.

FEDERAL COURT
PROPOSED CLASS PROCEEDING

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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