

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CENTRAL ARKANSAS WATER,
individually and on behalf of all others similarly
situated,

Plaintiff

v.

FRANK A. REICHL, GENERAL CHEMICAL
CORPORATION, GENERAL CHEMICAL
PERFORMANCE PRODUCTS, LLC, GENTEK,
INC., CHEMTRADE LOGISTICS, INC., and JOHN
DOES 1-10,

Defendants.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Plaintiff, Central Arkansas Water (“Plaintiff”), brings this Class Action Complaint on behalf of itself and on behalf of a Class of direct purchasers (hereinafter referred to as “Class Members”) who purchased liquid aluminum sulfate manufactured and supplied by Defendants Frank A. Reichl, General Chemical Corporation, General Chemical Performance Product, LLC, GenTek Inc., Chemtrade Logistics Inc., and John Does 1 through 10 (hereinafter referred to as “Defendants”), and Defendants’ co-conspirators and sold from approximately 1997 to July 2010, or until the anticompetitive effects of Defendants’ conduct cease (hereinafter referred to as “Class Period”).

2. Plaintiff seeks to recover damages incurred by itself and the Class due to Defendants’ and co-conspirators’ violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by (i) engaging in a price-fixing conspiracy and colluding to circumvent competitive bidding and

independent pricing for liquid aluminum sulfate contracts during the Class Period; and (ii) conspiring to raise prices by submitting artificially inflated bids to Plaintiff and Class Members during the Class Period.

3. As a result of Defendants' anticompetitive conduct, Plaintiff and Class Members paid more for liquid aluminum sulfate than they otherwise would have paid in the absence of Defendants' unlawful conduct.

4. Plaintiff makes the allegations herein based on personal knowledge of these matters relating to itself and upon information and belief as to all other matters.

II. NATURE OF THE CASE

5. Plaintiff alleges that Defendants have engaged in an overarching conspiracy to eliminate competition by fixing prices, rigging bids, and allocating customers for liquid aluminum sulfate in the U.S. in violation of Section 1 of the Sherman Act. But for Defendants' price-fixing conspiracy, Plaintiff and Class Members would not have paid supra-competitive prices for liquid aluminum sulfate.

6. The term "Liquid Aluminum Sulfate," (hereinafter referred to as "LAS"), as used herein is a water treatment chemical. Among other users, LAS is widely used by municipalities to treat drinking and wastewater, pulp and paper companies also use LAS in their pulp and paper manufacturing processes.

7. Plaintiff and Class Members sustained damages as a result of Defendants' and co-conspirators' anticompetitive conduct as alleged herein.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action as it arises under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26. Further, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1337(a).

9. Venue is proper in this District pursuant to 15 U.S.C. §§ 15 and 22 and 28 U.S.C. § 1391(b) and (c) because during the Class Period, the Defendants transacted business in this District.

10. This Court has personal jurisdiction over each Defendant because, inter alia, each Defendant: (a) transacted business throughout the U.S., including in this district; (b) participated in the manufacturing and distribution of LAS throughout the U.S., including in this district; (c) had substantial contacts with the U.S., including in this district; and/or (d) was engaged in an illegal scheme and competition-elimination conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the U.S., including in this district.

IV. THE PARTIES

A. PLAINTIFF

11. Plaintiff, Central Arkansas Water, is a consolidated municipal water system created and existing under the Consolidated Waterworks Authorization Act, Act 982 of the 83rd General Assembly of the State of Arkansas. At all relevant times, Central Arkansas Water maintained its headquarters at 221 East Capitol Avenue, Little Rock, Arkansas 72202. Central Arkansas Water directly purchased LAS from Defendant General Chemical during the Class Period.

B. DEFENDANTS

12. Defendant Frank A. Reichl (“Reichl”) is a resident of Flanders, New Jersey. At all relevant times, Reichl actively conspired with Defendants and co-conspirators in their unlawful price-fixing and bid-rigging conspiracy. On October 27, 2015, Reichl pleaded guilty for his role in the conspiracy as described herein.

13. Upon information and belief, Defendant General Chemical Corporation was a corporation existing under the laws of Delaware, with its principal place of business at 90 East Halsey Road, Parsippany, New Jersey. Defendants General Chemical Corporation and General Chemical Performance Products, LLC, are referred to collectively herein as “General Chemical.” General Chemical maintained a distribution facility in Pine Bluff, Arkansas. As a leading manufacturer and supplier of water treatment chemicals, including LAS, General Chemical sold LAS in large quantities to Plaintiff and other direct purchasers. At all relevant times except for the period from approximately July 2005 to approximately December 2006, Reichl held high-level executive positions with General Chemical, and his active participation in the price-fixing and big-rigging conspiracy was fully authorized and/or ordered by General Chemical.

14. Upon information and belief, Defendant General Chemical Performance Products LLC, was a limited liability company existing under the laws of Delaware, with its principal place of business at 90 East Halsey Road, Parsippany, New Jersey.

15. Upon information and belief, Defendant GenTek Inc. (“GenTek”), a publicly traded company, is a corporation existing under the laws of Delaware, with its principal place of business at 90 East Halsey Road, Parsippany, New Jersey. General Chemical was a wholly owned and controlled subsidiary by GenTek from approximately 1999 to approximately October

2009. At all relevant times, as General Chemical's parent company, GenTek was fully aware of General Chemical's role and participation in its unlawful price-fixing and bid-rigging conspiracy as described herein.

16. Upon information and belief, Defendant Chemtrade Logistics Inc. ("Chemtrade"), a publicly traded company, is incorporated under the laws of Canada. Chemtrade has its principal places of business at 90 East Halsey Road, Parsippany, New Jersey and Ontario, Canada. General Chemical was absorbed into Chemtrade through an acquisition in January 2014, with the latter assuming all rights and obligations of General Chemical. As the legal successor in interest to General Chemical, Chemtrade assumes the liability of damages caused by General Chemical's participation in the conspiracy to fix prices and rig bids.

17. Upon information and belief, Defendants John Does 1 through 10 are corporations and/or entities whose true names and capacities, or otherwise, are unknown to Plaintiff. Therefore, Plaintiff sues such John Does 1 through 10 by such fictitious names. Further, upon information and belief, Plaintiff alleges that each of the fictitiously named Defendants is in some manner responsible for the events alleged herein and that Plaintiff's damages were proximately caused by such John Doe Defendants.

18. Defendants have engaged in the conduct alleged in this Complaint, and/or the Defendants' officers, agents, employees, or representatives have engaged in the alleged conduct while actively involved in the management of Defendants' business and affairs.

V. UNIDENTIFIED CO-CONSPIRATORS

19. Various other persons, firms, entities and corporations, not named as Defendants in this Complaint, have participated as co-conspirators with Defendants in the violations alleged

herein, and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

20. The true names and capacities, whether individual, corporate, associate, or representative is unknown to Plaintiff at this time. Plaintiff may amend this Complaint, as necessary, to allege the true names and capacities of additional co-conspirators as their identities become known through discovery.

21. At all relevant times, other persons, firms, and corporations, referred to herein as “co-conspirators,” the identities of which are presently unknown, willingly conspired with Defendants in their unlawful price-fixing and bid-rigging conspiracy as described herein.

22. The acts alleged herein that were done by each of the co-conspirators were fully authorized by each of those co-conspirators, or ordered, or committed by duly authorized officers, managers, agents, employees or representatives of each co-conspirator while actively engaged in the management, direction, or control of its affairs.

VI. FACTUAL ALLEGATIONS

23. LAS is a water treatment chemical that removes impurities and other substances from water. It hydrolyzes to form insoluble precipitates, which aid in removal of tiny particles that cannot be easily filtered and/or are too small to settle via gravity in a useful period of time. Essentially, it aggregates small particles into larger particles that fall to the bottom of a vessel for removal.

24. Municipalities regularly purchase and use LAS for treating and purifying wastewater and potable water.

25. Pulp and paper companies regularly purchase and use LAS for manufacturing pulp and paper.

26. Defendants have been and/or are currently engaged in the manufacturing, sale and/or marketing of various water treatment chemicals, including LAS.

A. U.S. DOJ INVESTIGATION AND GUILTY PLEA

27. On October 26, 2015, U.S. Department of Justice (“DOJ”), Antitrust Division, announced that a former executive of a water treatment chemicals manufacturer has pled guilty in New Jersey federal court to one count of violating the Sherman Act. See “Former Executive Admits Guilt in Conspiracy Affecting Water Treatment Chemicals,” available at <http://www.justice.gov/opa/pr/former-executive-admits-guilt-conspiracy-affecting-water-treatment-chemicals>

28. The DOJ charged Defendant Frank Reichl (“Reichl”), who was employed by a company identified by the DOJ as “Company 1” with one count of conspiracy to fix prices and rig bids for LAS under Section 1 of the Sherman Act by participating with co-conspirators in a combination and conspiracy to eliminate competition for the sale of LAS sold to municipalities and pulp and paper companies in the U.S. from at least 1997 through July 2010. *Id.*

29. According to the DOJ’s press release, “by agreeing not to disturb each other’s ‘historical’ business, Reichl and his co-conspirators cheated municipalities and paper companies out of competitive prices for their supplies of liquid aluminum sulfate, a key water treatment chemical.” *Id.*

30. As noted in the DOJ’s press release, for a 13-year period, Reichl and his co-conspirators met to discuss each other’s LAS business, intentionally submitted losing bids, and withdrew inadvertent winning bids. *Id.*

31. Further, Reichl and his co-conspirators also colluded regarding the prices and bids provided to their customers by submitting artificially inflated bids in order to drive up prices. *Id.*

32. As a result, by agreeing to violate and actually violating both the spirit and the letter of the competitive process, direct purchasers of LAS were overcharged by Defendants by millions of dollars. *Id.*

33. As of October 28, 2015, Reichl is the first conspirator to plead guilty to Sherman Act violations as part of a 13-year antitrust scheme involving LAS. *Id.*

34. Upon information and belief, the DOJ's investigation into the water treatment chemical industry, particularly, the LAS industry, is still ongoing.

35. Based on information, belief and research, General Chemical Corporation is the company identified by the DOJ as "Company1".

B. MARKET DEMAND FOR LIQUID ALUMINUM SULFATES

36. LAS, one of the principal water treatment chemicals, is a stable, non-toxic, non-irritating liquid. It is a coagulant widely used to remove existing contaminants from the water, so that the concentration of these contaminants is reduced and the water is acceptable by the consumer for their end-use.

37. LAS has an important role in the production of many essentials seen and used every day in the home and industry. One of the reasons that LAS has become widely accepted as a water treatment chemical is because of its chemical efficiency and stability. Compared to its alternatives, such as anhydrous or aqueous ammonia that are hazardous and requiring pressurized storage tanks as well as special handling and safety procedures, the storage and handling of LAS is significantly easier and safer.

38. Because of the efficient and safe characteristics of LAS, many municipalities as well as pulp and paper companies have been its principal and loyal customers.

39. Municipalities routinely purchase LAS to treat potable water and wastewater. Municipalities acquire the supplies of LAS through a publically-advised bidding process, and most of the municipal contracts for LAS are typically one-year in duration with options to renew for a certain period of time. The awards of such municipal contracts are typically made public.

40. Pulp and paper companies routinely purchase LAS to manufacture pulp and paper. Unlike municipalities, pulp and paper companies usually acquire their supplies of LAS through sending requests for price quotes to LAS suppliers. Upon receiving a supplier's response to a request for a price quote, the terms of a contract will be negotiated between the parties. Contracts between a pulp and paper company and a supplier generally last for one year or more, and the terms of such contracts typically remain private.

41. LAS is usually sold in large quantities. Although the bulk shipment of LAS varies from descriptions of a customer's specifications and needs, the average bulk shipment of LAS is approximately 800 to approximately 1500 tons.

42. LAS's price varies, too. From 1998 to 2011, the price of LAS per ton increased from \$7 to \$14.

43. LAS is typically shipped from its supplier to customers in stainless steel, fiberglass or rubber lined tank trucks, which conform to Department of Transportation specifications as well as the laws of the states in which they operate. LAS shipment is also available in railcars.

C. COLLUSIVE NATURE OF LIQUID ALUMINUM SULFATE INDUSTRY

44. Due to the commodity characteristics of LAS, a highly saturated market and high barriers to market entry, the LAS market is conducive to anticompetitive collusion by competitors.

45. According a report on Law360, Defendant General Chemistry was North America's largest manufacturer of inorganic coagulants used in the water treatment process, producing products such as liquid aluminum sulfate, iron salts, alkali and disinfectant sulphuric acid in 2009. See "Chemtrade Pays \$860M to Get General Chemical from PE Firm," available at <http://www.law360.com/articles/493158/chemtrade-pays-860m-to-get-general-chemical-from-pe-firm>.

46. Defendant Chemtrade's acquisition of General Chemical was transformational for Chemtrade. After absorbing General Chemical, Chemtrade has a market capitalization of close to \$700 million and provides industrial chemicals and services to customers in North America and globally.

47. Evidently, Defendants are the major water treatment chemicals manufacturers in North America, including the U.S., and altogether they control and share a majority of the market for LAS.

48. High barriers to entry exist in the LAS market with respect to technical know-how, costly establishment of plants, manufacturing expertise involved in making efficient and safe LAS, and access to distribution channels.

49. As noted in Reichl's Indictment, there were countless opportunities for Defendants to communicate and conspire with co-competitors. Defendants and their co-conspirators regularly met and discussed each other's business, entered in "not-to-compete" agreements, allocated customers and submitted artificially inflated bids. See Indictment ¶ 13, *United States v. Frank A. Reichl*, 2:15-cr-00554 (D. N. J.).

VII. CLASS ACTION ALLEGATIONS

50. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), Plaintiff brings this action on behalf of a class defined as follows:

All persons and entities in the United States who directly purchased from Defendants or a co-conspirator, Liquid Aluminum Sulfates, from 1997 to July, 2010, or until the anticompetitive effects of Defendants' conduct cease.

51. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

52. Members of the Class are so numerous that joinder is impracticable. Plaintiff believes that there are hundreds, if not thousands of Class Members. Further, the Class is readily identifiable from information and records maintained by Defendants.

53. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class were damaged by the same wrongful conduct of Defendants.

54. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of the Class.

55. Plaintiff is represented by counsel who are experienced and competent in the prosecution of class action litigation, and who have particular experience with class action litigation involving alleged violations of antitrust law.

56. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members because Defendants have acted on grounds generally applicable to the entire Class, thereby determining damages with respect to the Class as a whole is appropriate. Such generally applicable conduct is inherent in Defendants' wrongful conduct.

57. Questions of law and fact common to the Class include:

- (a) whether Defendants and their co-conspirators engaged in a contract, combination or conspiracy to fix prices, rig bids and allocate customers of LAS sold in the U.S.;
- (b) the duration and extent of the alleged contract, combination or conspiracy;
- (c) whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy as alleged herein;
- (d) the identity of the co-conspirators;
- (e) the effect of the combination or conspiracy on the prices of LAS sold in the U.S. during the Class Period;
- (f) whether Defendants engaged in fraudulent concealment;
- (g) whether the alleged combination or conspiracy violated the Sherman Act, § 1;
- (h) the nature and extent of damages and injunctive relief to which Plaintiff and the Class Members are entitled; and,
- (i) whether Plaintiff and the Class Members should be awarded attorneys' fees and costs.

58. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

59. Plaintiff knows of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

VIII. ANTITRUST INJURY

60. The effect of Defendants' and co-conspirators' anticompetitive conduct as alleged herein has been to artificially inflate the prices of LAS in the U.S. By engaging in a price-fixing and bid-rigging conspiracy, prices have been supported at artificially high levels throughout the U.S., and as a result, direct purchasers of LAS have paid supra-competitive prices.

61. According to DOJ's press release, Defendants and their co-conspirators would agree to not compete for contracts; meet and agree to fix prices, rig bids and allocate customers; discuss and agree to submit bids intended to lose and withdraw bids that were accidentally successful in order to insure that the chosen contractor won. Further, Defendants and their co-conspirators also colluded regarding the prices and bids provided to customers. They would submit artificially inflated bids in order to drive up prices so that customers would pay more. See "Former Executive Admits Guilt in Conspiracy Affecting Water Treatment Chemicals," available at <http://www.justice.gov/opa/pr/former-executive-admits-guilt-conspiracy-affecting-water-treatment-chemicals>.

62. As a result of the Defendants' anticompetitive conducts, Plaintiff and Class Members paid more for LAS than they would have and thus suffered substantial damages.

IX. FRAUDULENT CONCEALMENT

63. Throughout the Class Period, Defendants and their co-conspirators affirmatively and fraudulently concealed their unlawful conduct. Plaintiff and Class Members could not have discovered the Defendants' price-fixing and bid-rigging scheme until the DOJ's October 27, 2015 press release announcing Defendant Frank Reichl's guilty plea. See "Former Executive

Admits Guilt in Conspiracy Affecting Water Treatment Chemicals,” available at <http://www.justice.gov/opa/pr/former-executive-admits-guilt-conspiracy-affecting-water-treatment-chemicals>.

64. Accordingly, Plaintiff and Class Members could not have discovered the violations alleged herein until shortly before filing this Complaint. Defendants secretly conducted their price-fixing and bid-rigging schemes, concealed the nature of their unlawful conducts and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

65. According to the DOJ’s press release, Defendants and their co-conspirators would secretly meet to discuss each other’s businesses, agree to submit bids intended to lose, and withdraw bids that were accidentally successful in order to insure that the chosen contractor won. *Id.*

66. As a result of Defendants’ fraudulent concealment, all applicable statutes of limitations affecting the Plaintiff’s and Class Members’ claims have been tolled. Plaintiff and Class Members did not discover, nor could have discovered through reasonable diligence, that Defendants were engaged in the price-fixing and bid-rigging schemes as alleged herein. Plaintiff and Class Members could not have discovered the existence of the price-fixing and bid-rigging schemes alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by Defendants to avoid detection and affirmatively conceal such violations.

67. As a result of the Defendants’ fraudulent concealment of their wrongful conduct, Plaintiff asserts the tolling of any applicable statute of limitations affecting the cause of action brought by Plaintiff and the Class Members.

X. CLAIM FOR RELIEF
VIOLATION OF SECTION 1 OF THE SHERMAN ACT 15 U.S.C. § 1

68. Plaintiff incorporates and re-alleges, as though fully set forth herein, each of the paragraphs set forth above.

69. Defendants are per se liable under Section 1 of the Sherman Act for the injuries and damages caused by their contract, combination and conspiracy in restraint of trade as alleged herein.

70. There is no legitimate, non-pretextual, procompetitive business justification for Defendants' conspiracy that outweighs its harmful effect. Even if there was some conceivable justification, the conspiracy is broader than necessary to achieve such a purpose.

71. The aforesaid contract, combination and conspiracy between and among the Defendants and their co-conspirators was furthered and effectuated, among other ways, by the following acts:

- (a) Participating in secret communications, discussions, and meetings in the U.S. and elsewhere to discuss each other's LAS business;
- (b) Agreeing, during those conversations and meetings, to "stay away" from each other's "historical" customers by not pursuing the business of those customers;
- (c) Tracking bid and pricing histories to determine which accounts were the "historical" customers of each co-conspirator or other supplier of LAS, so as to determine whether to pursue a particular contract or to submit an intentionally losing or "throw away" bid or price quotation;
- (d) Submitting intentionally losing or "throw away" bids or price quotations to each other's "historic" LAS customers;

- (e) From time to time, in the U.S. and elsewhere, discussing and agreeing during those conversations and meetings, to set a price floor to be quoted to a customer by the intended winner to determine the amount of the intended loser's intentionally losing or "throw away" bid or price quotation;
- (f) Where a co-conspirator could not withdraw its inadvertently winning bid, bidding to lose on one of its own customers to compensate for the loss of that "historical" customer;
- (g) Instructing new employees as to how to determine whether and how to bid on or quote a price for the business of LAS customers so as to comport with the agreement not to compete between Defendants and co-conspirators.
- (h) Selling LAS to customers at collusive and non-competitive prices in the U.S.;
- (i) Defendants and their co-conspirators fixed, raised, stabilized and maintained at artificially high and supra-competitive levels the prices for LAS charged to Plaintiff and Class Members in the U.S.;
- (j) Defendants and their co-conspirators caused Plaintiff and Class Members to pay more for LAS than they would have paid in the absence of a price-fixing conspiracy;
- (k) Price competition in the sale of LAS in the U.S. was restrained, suppressed and eliminated; and
- (l) As a direct and proximate result of the unlawful combination, contract or conspiracy, Plaintiff and Class Members sustained damages to their business and property.

72. The conspiracy had its intended effect, as Defendants and their co-conspirators benefitted from their price-fixing and bid-rigging conspiracy by reaping exorbitant profits from their supra-competitive pricing of LAS.

73. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have been injured in their business and property in that they have paid more for LAS than they otherwise would have paid in the absence of Defendants' unlawful conduct. The full amount of such damages is presently unknown but will be determined after discovery and upon proof at trial.

74. Defendants' unlawful conduct as alleged herein poses a significant, continuing threat of antitrust injury for which injunctive relief is appropriate under Section 16 of the Clayton Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class Members pray for relief as set forth below:

A. Certification of the action as a Class Action pursuant to Federal Rule of Civil Procedure 23, and appointment of Plaintiff as Class Representative and its counsel of record as Class Counsel;

B. Permanent injunctive relief which enjoins Defendants from violating the antitrust laws by entering into and carrying out their illegal agreements, and requires them to take affirmative steps to dissipate the effects of the violation;

C. That acts alleged herein be adjudged and decreed to be unlawful restraints of trade in violation of the Sherman Act, 15 U.S.C. § 1;

D. A judgment for the damages sustained by Plaintiff and the Class defined herein, and for any additional damages, penalties and other monetary relief provided by applicable law, including treble damages;

E. By awarding Plaintiff and Class Members pre-judgment and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of the complaint in this action;

F. The costs of this suit, including reasonable attorney fees; and

G. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of itself and others similarly situated, hereby requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on any and all claims so triable.

DATED: October 31, 2015

Respectfully submitted,

/s/ Dianne M. Nast

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