

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JEFFERSON COUNTY, ALABAMA,	)	
Individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FRANK A. REICHL, GENERAL CHEMICAL	)	
CORPORATION, GENERAL CHEMICAL	)	
PERFORMANCE PRODUCTS, LLC,	)	
GENTEK, INC., CHEMTRADE LOGISTICS,	)	
INC., CHEMTRADE CHEMICALS	)	
CORPORATION, CHEMTRADE	)	
CHEMICALS US, LLC, CHEMTRADE	)	
SOLUTIONS, LLC, CHEMTRADE	)	
LOGISTICS INCOME FUND, GEO	)	
SPECIALTY CHEMICALS, INC, C&S	)	
CHEMICALS, INC, and JOHN DOES 1-25	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiff, Jefferson County, Alabama, a political subdivision of the State of Alabama (“Plaintiff” or “Jefferson County”), by its undersigned attorneys, brings this antitrust action individually and on behalf of a proposed class of plaintiffs consisting of all persons and entities in the United States who directly purchased Liquid Aluminum Sulfate from one or more defendants (“Defendants”) or a co-conspirator, from January 1, 1997 through at least July 31, 2010, or until the anticompetitive effects of Defendants’ conduct cease (the “Class Period”).

I. INTRODUCTION

1. Jefferson County purchases liquid aluminum sulfate (“Liquid Aluminum Sulfate”) for use in the county sewage operations and has purchased significant quantities of the chemical throughout the Class Period.

2. On October 27, 2015, Defendant Frank A. Reichl (“Reichl”), a former senior executive of General Chemical Corporation (identified in court documents as “Company 1”), pled guilty to Sherman Act violations as part of a thirteen-year antitrust conspiracy involving Liquid Aluminum Sulfate. Reichl admitted to conspiring with other suppliers to rig bids, restrict competition, and raise prices on Liquid Aluminum Sulfate supply contracts to entities like Jefferson County. *See United States of America v. Frank A. Reichl*, No. 2:15-cr-00554-JLL (D.N.J.) (“*U.S. v. Reichl*”).

3. During the Class Period, Jefferson County purchased thousands of tons of Liquid Aluminum Sulfate directly from other companies, and the prices for Liquid Aluminum Sulfate escalated significantly over the Class Period. In 2004, Jefferson County purchased Liquid Aluminum Sulfate for \$118.00 per ton. But by 2009, the price of Liquid Aluminum Sulfate had more than doubled, and Jefferson County paid \$222.00 per ton. Throughout the Class Period, Jefferson County paid other suppliers thousands of dollars for Liquid Aluminum Sulfate. Jefferson County was not the only customer that was victimized by Defendants’ conduct.

4. Illegal price-fixing and bid-rigging scheme. According to a Department of Justice (“DOJ”) Press Release announcing the Reichl guilty plea on October 27, 2015, “Reichl and his co-conspirators colluded to circumvent competitive bidding and independent pricing for liquid aluminum contracts, and conspired to raise prices by submitting artificially inflated bids to their

customers.” DOJ further noted that “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.” See <http://www.justice.gov/opa/pr/former-executive-admits-guilt-conspiracy-affecting-watertreatment-chemicals>.

5. Jefferson County and Class members paid more for Liquid Aluminum Sulfate than they otherwise would have paid in the absence of Defendants’ illegal conduct.

6. Defendants took affirmative acts to hide this conspiracy from their customers. At no time did Defendants inform Jefferson County of their scheme. This prevented Jefferson County from being aware of the price-fixing and bid-rigging conspiracy until DOJ announced its guilty plea with Defendant Reichl.

7. Defendants’ illegal conduct violated the Sherman Antitrust Act, 15 U.S.C. §1, and entitles injured Class members to treble damages on their excess payments resulting from the illegal conspiracy.

II. JURISDICTION AND VENUE

8. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages, equitable relief, costs of the suit, and reasonable attorneys’ fees against Defendants for the injuries sustained by Plaintiff and members of the Class by reason of violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337, and by Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

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

business, were found within, and/or had agents in this District, and a substantial portion of the affected interstate trade and commerce described below has been carried out in this District.

11. This Court has personal jurisdiction over each Defendant because, *inter alia*, each Defendant: (a) transacted business throughout the United States, including in this District; (b) participated in the manufacturing and/or distribution of Liquid Aluminum Sulfate throughout the United States, including in this District; (c) had substantial contacts with the United States, 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, and/or doing business throughout the United States, including in this District.

III. THE PARTIES

A. PLAINTIFF

12. Plaintiff, Jefferson County, Alabama, a political subdivision of the State of Alabama, is a governmental entity created pursuant to the provisions of the Code of Alabama and the Alabama Constitution, and as such, among its other powers and rights, can make and execute contracts necessary to carry out its designated functions under law and can sue and be sued. It has its principal place of business at 716 Richard Arrington Jr. Blvd. North, Birmingham, Alabama 35203. Jefferson County owns and operates public sanitary sewer systems that serve hundreds of thousands of citizens.

B. DEFENDANTS

13. Upon information and belief, 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.

14. Upon information and belief, Defendant General Chemical Corporation is a Delaware corporation, with its principal place of business at 90 East Halsey Road in 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. General Chemical was a leading manufacturer and supplier of water treatment chemicals, including Liquid Aluminum Sulfate, and sold it in large quantities to Plaintiff and other direct purchasers in this District and other United States locations. 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.

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

16. Upon information and belief, Defendant GenTek, Inc. (“GenTek”) is a corporation existing under the laws of Delaware, with its principal place of business at 90 East Halsey Road in Parsippany, New Jersey. General Chemical was a wholly-owned and controlled subsidiary of 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.

Upon information and belief, in October 2009, non-party American Securities LLC (“American Securities”) a New York-based private equity firm, acquired Gen-Tek.

17. Upon information and belief, Defendant Chemtrade Logistics Inc. (“Chemtrade Logistics”), formerly known as Chemtrade Logistics Income Fund, is incorporated under the laws of the Province of Ontario, Canada, and has its principal places of business at 90 East Halsey Road in Parsippany, New Jersey and at Suite 300, 155 Gordon Baker Road, Toronto, Ontario.

18. Upon information and belief, Defendant Chemtrade Logistics Income Fund (“CLIF”) is a limited purpose trust established on July 11, 2001 under the laws of the Province of Ontario, Canada, with its principal place of business at Suite 300, 155 Gordon Baker Road, Toronto, Ontario.

19. Defendants Chemtrade Logistics, Inc. and CLIF are collectively referred to herein as “Chemtrade Logistics.”

20. General Chemical was absorbed into Chemtrade Logistics through an acquisition in January 2014, with the latter assuming all rights and obligations of General Chemical.

21. Upon information and belief, Defendant Chemtrade Chemicals Corporation is a Delaware corporation and has its principal place of business at 90 East Halsey Road in Parsippany, New Jersey. Chemtrade Chemicals Corporation, is a wholly owned subsidiary of Chemtrade Logistics.

22. Upon information and belief, Defendant Chemtrade Chemicals US, LLC, is a limited liability Delaware company and has its principal place of business at 90 East Halsey Road in Parsippany, New Jersey. Chemtrade Chemicals US, LLC, is a wholly-owned subsidiary of Defendant Chemtrade Logistics.

23. Upon information and belief, General Chemical, under the ownership of Chemtrade Logistics, operates as Chemtrade Chemicals Corporation and Chemtrade Chemicals US, LLC.

24. Upon information and belief, Defendant Chemtrade Solutions, LLC, is a Delaware corporation with its principal place of business at 90 East Halsey Road in Parsippany, New Jersey. Chemtrade Solutions, LLC, is a wholly-owned subsidiary of Defendant Chemtrade Chemicals Corporation.

25. Defendants Chemtrade Logistics, Chemtrade Chemicals Corporation, Chemtrade Chemicals US, LLC, and Chemtrade Solutions, LLC, are collectively referred to herein as “Chemtrade,” unless otherwise indicated. Chemtrade manufactures and sells water treatment chemicals, including Liquid Aluminum Sulfate. 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.

26. Upon information and belief, Defendant GEO Specialty Chemicals, Inc. (“GEO Specialty”) is a privately held corporation incorporated under the laws of Ohio and has its principal place of business at 340 Mathers Road in Ambler, Pennsylvania. GEO Specialty is a manufacturer and supplier of water treatment chemicals, including Liquid Aluminum Sulfate, and throughout the Class Period it sold large quantities of Liquid Aluminum Sulfate to direct purchasers throughout the United States. GEO Specialty has water treatment chemical production facilities in Alabama, Arkansas, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.

27. Upon information and belief, Defendant C&S Chemicals, Inc. (C&S Chemicals”) is a privately held Pennsylvania corporation with its principal place of business at 4180

Providence Road in Marietta, Georgia. C&S Chemicals is a manufacturer and supplier of water treatment chemicals, including Liquid Aluminum Sulfate, and throughout the Class Period it sold large quantities of Liquid Aluminum Sulfate to direct purchasers throughout the United States. C&S Chemicals operates facilities in Florida, Georgia, South Carolina, Illinois, and Minnesota.

28. Upon information and belief, Defendants John Does 1- 25 are individuals, corporations, and/or entities whose identities are currently unknown to Plaintiff. John Does 1-25 conspired to suppress and eliminate competition in the sale and marketing of Liquid Aluminum Sulfate by participating in the conspiracy and proximately causing Plaintiff's damages. Accordingly, Plaintiff sues John Does 1-25 by such fictitious names. Defendants have been and/or are currently engaged in the manufacturing, sale, and/or marketing of various water treatment chemicals, including Liquid Aluminum Sulfate.

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

IV. UNIDENTIFIED CO-CONSPIRATORS

30. Various other individuals, corporations, and/or entities, 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.

31. The true names and capacities, whether individual, corporate, associate, or representative, are 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.

32. At all relevant times, other individuals, corporations, and/or entities, 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.

33. The acts alleged herein that were done by each of the co-conspirators were fully authorized by each of these 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.

V. AGENTS

34. The acts alleged to have been undertaken by Defendants were authorized, ordered and/or performed by their directors, officers, managers, agents, employees, and/or representatives while actively engaged in the management of Defendants’ affairs.

VI. FACTUAL ALLEGATIONS

A. The Liquid Aluminum Sulfate Industry

35. Liquid Aluminum Sulfate is a stable, non-toxic, non-irritating liquid. It is widely used to remove contaminants from water, rendering the water acceptable for consumer use. Municipalities, counties, and other government entities regularly purchase and use Liquid Aluminum Sulfate for treating and purifying wastewater and potable water. Pulp and paper companies regularly purchase and use Liquid Aluminum Sulfate for manufacturing pulp and paper. Liquid Aluminum Sulfate is also used for algae control in lakes and ponds and to fix dyes for fabrics and textiles. In 2015, sales of Liquid Aluminum Sulfate in North America exceeded \$5 billion.

36. During the Class Period, Defendants and their co-conspirators manufactured, among other things, chemicals utilized for water treatment and chemical processing. Liquid Aluminum Sulfate is one of the primary chemicals sold by Defendants and their co-conspirators.

37. Liquid Aluminum Sulfate is one of the most widely used chemicals in both the municipal and industrial markets for water and wastewater treatment. The supply of Liquid Aluminum Sulfate to municipalities, counties, and other government entities is of primary importance to manufacturers.

38. Liquid Aluminum Sulfate is typically sold ready to use and can easily be mixed with water. It is most often sold in bulk by the ton and transported by rail or truck from the manufacturing plant of the supplier that is closest to the customer. Freight is a significant price component for Liquid Aluminum Sulfate. According to the DOJ, “[o]ne factor suppliers of liquid aluminum sulfate consider in deciding whether to bid or quote on a contract is whether the business is ‘freight logical,’ that is, whether the liquid aluminum sulfate supplier can make a profit on the business taking into account the distance from the supplier’s plant to the customer and the corresponding cost of freight.” *See U.S. v. Reichl*.

39. During the Class Period, Defendants and their co-conspirators operated manufacturing facilities throughout the United States. For example, Chemtrade has water chemical production facilities in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Indiana, Michigan, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. *See* <http://www.chemtradelogistics.com/main/about-us/our-locations/locationsoverview/>.

40. Municipalities, counties, and other government entities generally acquire Liquid Aluminum Sulfate through a publicly-advertised and competitive bidding process. Jefferson

County, for example, issued several competitive bidding proposals for Liquid Aluminum Sulfate during the Class Period.

41. In the Liquid Aluminum Sulfate market, in addition to Chemtrade, the major manufacturers and suppliers include, but are not limited to: Kemira Water Solutions, Inc., GEO Specialty Chemicals, Thatcher Company, USALCO, LLC, Southern Ionics Incorporated, C&S Chemicals, Inc., Border Chemicals Company Ltd., Chameleon Specialty Chemicals, GAC Chemical Corporation, Holland Company, Inc., Eco Services Operations, LLC, Brenntag Southwest, Inc., Ashland Hercules Incorporated, Harcos Chemicals, Univar USA, Mil-Spec Industries Corp., Affinity Chemical, LLC, and Industrial Chemicals, Inc.

B. Factors Increasing the Market's Susceptibility to Conspiracy

42. The Liquid Aluminum Sulfate industry is susceptible to anticompetitive conduct for a number of reasons including: (a) the standardized, commodity nature of the product whereby competition is principally focused on price; (b) the lack of available economic substitutes; and (c) high barriers to entry.

1. Standardized Product with High Degree of Interchangeability

43. Liquid Aluminum Sulfate is a fungible, homogenous commodity product. Therefore, Liquid Aluminum Sulfate purchasers make purchase decisions based largely, if not entirely, on price.

2. Lack of Substitutes

44. There are few economic substitutes for Liquid Aluminum Sulfate and demand for Liquid Aluminum Sulfate is inelastic. This means that a change in the price of Liquid Aluminum Sulfate does not materially affect the quantity of Liquid Aluminum Sulfate that purchasers demand. The lack of available substitutes for a product facilitates collusion among possible

conspirators. That is, customers are not able to avoid artificially inflated prices resulting from the Defendants' conspiracy by switching from Liquid Aluminum Sulfate to another water treatment product.

3. Barriers to Entry

45. High barriers to entry exist in the Liquid Aluminum Sulfate market. It is very expensive to attain the technical knowledge to manufacture Liquid Aluminum Sulfate and the high capital costs of developing production facilities is prohibitive. Industries with high-barriers to entry are susceptible to collusive behavior.

46. Entry into the Liquid Aluminum Sulfate market is further discouraged by the mature nature of the market and low demand growth. The Liquid Aluminum Sulfate market is very mature and had a projected annual growth rate of only two percent. *See* ICIS Chemical Business, Jennifer Ouellette "Alum Prices on the Rise as PAC Faces Overcapacity, Higher Costs," 29 January 2001; <http://www.icis.com/resources/news/2001/01/29/131348/alum-prices-on-the-rise-as-pac-faces-overcapacity-higher-costs/>.

C. DOJ Investigation and Reichl Guilty Plea

47. On March 4, 2014, Defendant CLIF issued an Annual Information Form ("AIF") for calendar year 2013, the year it commenced the Chemtrade Acquisition. In that AIF, it stated:

Chemtrade is currently a subject of an ongoing investigation by the U.S. Department of Justice concerning alleged anticompetitive conduct in the water treatment chemicals industry. Chemtrade is cooperating with the investigation and has the benefit of the conditional amnesty and a leniency "marker" from the U.S. Department of Justice for its conduct regarding sales of the water treatment chemicals under investigation which General Chemical had obtained prior to the General Chemical Acquisition. The investigation may result in separate civil litigation being initiated against Chemtrade. In addition, there is a risk that Chemtrade could become ineligible for a period of time to do business or bid for new contracts

with certain municipal or other government customers as a consequence of its conduct, and thereby could lose some or all of its municipal and other government water treatment chemicals business in certain jurisdictions for a period of time. Chemtrade does not anticipate that the costs associated with the investigation or related matters will have a material adverse impact on its business or operations. The vendors pursuant to the General Chemical Acquisition have agreed to indemnify Chemtrade for certain losses that could result from the conduct that is the subject of this investigation.

48. On March 5, 2015, CLIF issued an AIF for calendar year 2014 stating that:

Chemtrade is currently a subject of an ongoing investigation by the U.S. Department of Justice concerning alleged anticompetitive conduct in the water treatment chemicals industry. Chemtrade is cooperating with the investigation and has the benefit of the conditional amnesty from the U.S. Department of Justice for its conduct regarding sales of the water treatment chemicals under investigation which General Chemical had obtained prior to the General Chemical Acquisition. The investigation may result in separate civil litigation being initiated against Chemtrade. In addition, there is a risk that Chemtrade could become ineligible for a period of time to do business or bid for new contracts with certain municipal or other government customers as a consequence of its conduct, and thereby could lose some or all of its municipal and other government water treatment chemicals business in certain jurisdictions for a period of time. Chemtrade does not anticipate that the costs associated with the investigation or related matters will have a material adverse impact on its business or operations. The vendors pursuant to the General Chemical Acquisition have agreed to indemnify Chemtrade for certain losses that could result from the conduct that is the subject of this investigation.

49. The significance of CLIF obtaining conditional amnesty under the DOJ's corporate leniency program is explained on the DOJ's website:

Does a leniency applicant have to admit to a criminal violation of the antitrust laws before receiving a conditional leniency letter?

Yes. The Division's leniency policies were established for corporations and individuals "reporting their illegal antitrust activity," and the policies protect leniency recipients from criminal conviction.

Thus, the applicant must admit its participation in a criminal antitrust violation involving price fixing, bid rigging, capacity restriction, or allocation of markets, customers, or sales or production volumes before it will receive a conditional leniency letter. Applicants that have not engaged in criminal violations of the antitrust laws have no need to receive leniency protection from a criminal violation and will receive no benefit from the leniency program.

See <http://www.justice.gov/atr/frequently-asked-questions-regarding-antitrust-divisionsleniency-program>.

50. On October 27, 2015, the Antitrust Division of the DOJ announced that Frank A. Reichl, the former executive of a water treatment chemicals manufacturer, had pled guilty in New Jersey federal court for his role in the conspiracy to eliminate competition in the Liquid Aluminum Sulfate market by fixing prices, rigging bids and allocating customers for Liquid Aluminum Sulfate supplied to United States municipalities and pulp and paper companies from at least 1997 through July 2010. See <http://www.justice.gov/opa/pr/former-executive-admitsguilt-conspiracy-affecting-water-treatment-chemicals>. Reichl was the Vice President of Sales and Marketing for General Chemical Corporation between the years 2006 and 2010. During the Class Period, and prior to that time, he also served as General Chemical Corporation's General Manager of Water Chemicals. In both those positions, Reichl was responsible for the oversight of the sale and marketing of water treatment chemicals, including Liquid Aluminum Sulfate. Reichl was responsible for pricing, strategy, analyzing and approving bid and pricing proposals, and supervising General Chemical Corporation's sales and marketing employees.

51. Based on information, belief and research, General Chemical Corporation is the company identified by the DOJ as "Company I" in its criminal complaint against Reichl.

D. The Bid-Rigging Conspiracy

52. From as early as January 1, 1997 and continuing until at least July 31, 2010, the exact dates being unknown to Plaintiff, Defendants and their co-conspirators agreed to reduce competition by rigging bids and allocating customers in the sale and marketing of Liquid Aluminum Sulfate and were thereby engaged in a continuing combination and conspiracy to restrain trade to artificially raise, fix, maintain, and/or stabilize the price of Liquid Aluminum Sulfate in the United States.

53. According to DOJ's Press Release, "[b]y 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." See <http://www.justice.gov/opa/pr/former-executive-admits-guilt> conspiracy-affecting-water-treatment-chemicals.

54. The means and methods of the conspiracy effectuated by Reichl, the Defendants, and his co-conspirators in the criminal complaint include, but are not limited, to the following:

- a. Participating in meetings and conversations in the District of New Jersey and other locations to discuss each other's Liquid Aluminum Sulfate businesses;
- b. Agreeing to "stay away" from one another's "historical" customers by not pursuing those customers' business;
- c. Tracking bid and pricing histories in order to determine which were the "historical" customers' accounts of each co-conspirator or other Liquid Aluminum Sulfate supplier in order to determine whether or not 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 one another's "historic" Liquid Aluminum Sulfate customers;
- e. Sometimes discussing the price 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. Sometimes withdrawing or inadvertently winning bids submitted to co-conspirators' "historical" customers, upon request of a co-conspirator;
- g. Bidding to lose on one of its own customers to compensate for the loss of that "historical" customer when a co-conspirator could not withdraw its inadvertently winning bid; and
- h. Instructing new employees how to tell whether and how to bid on or quote a price for a Liquid Aluminum Sulfate customers' business so as to comply with the agreement not to compete between Reichl and co-conspirators.

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55. The DOJ Press Release further noted that, "Reichl and his co-conspirators colluded to circumvent competitive bidding and independent pricing for liquid aluminum contracts, and conspired to raise prices by submitting artificially inflated bids to their customers . . . They also allocated customers in furtherance of their collusive scheme. By agreeing to violate both the spirit and the letter of the competitive process, Reichl and others defrauded municipalities as well as pulp and paper companies out of millions of dollars."

56. According to the 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; and discuss and agree to submit bids intended to lose and withdraw bids that were accidentally successful in order to ensure that the chosen contractor won.

57. 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 for Liquid Aluminum Sulfate.

58. The DOJ's investigation into collusion in the Liquid Aluminum Sulfate industry is ongoing.

59. Paragraph 13(b) of the Reichl Criminal Information states Reichl and his

co-conspirators combined and conspired to stay away from each other's historical customers by not pursuing the business of other customers. Jefferson County's contracting experience is consistent with Paragraph 13(b).

60. For example, in 2008, Jefferson County sent out invitations to bid for liquid aluminum sulfate to over twenty (20) Liquid Aluminum Suppliers, including but not limited to General Chemical, Geo Specialty Chemicals, Continental Research Corp., Sweetwater Technologies, Water Services, Inc., and Industrial Chemicals, Inc.

61. Other municipalities, counties, and other government entities have experienced a similar lack of robust competitive bidding participation during the Class Period. For example, when the Minnesota-based Metropolitan Council requested bids for Liquid Aluminum Sulfate in early 2009, only a single bid was received from C&S Chemicals. This occurred, despite the fact that another Liquid Aluminum Sulfate manufacturer, Hawkins, Inc., had bid for every other water treatment chemical in the Metropolitan Council's bid request, and Hawkins' main manufacturing facility is based in the Twin Cities area, giving it the lowest transportation cost of any competitor.

VII. CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on its own behalf and on behalf of the following class (the "Class"):

All persons and entities in the United States residing in the United States who directly purchased Liquid Aluminum Sulfate from one or more Defendants, or any predecessor, successor, subsidiary or affiliate, between January 1, 1997 to July 31, 2010, or until the anticompetitive effects of Defendants' conduct cease.

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

64. The exact number of Class members is unknown to Plaintiff. Due to the nature of the trade and commerce involved, Plaintiff believes there are likely hundreds, if not thousands, of Class members geographically dispersed throughout the United States, such that joinder of all Class members is impracticable.

- a. There are questions of law and fact common to the Class, including but not limited to the following: Whether Defendants engaged in or entered into a contract combination or conspiracy among themselves to fix prices, rig bids and allocate customers of Liquid Aluminum Sulfate sold in the United States;
- b. Whether Defendants' unlawful conduct has enabled them to fix prices, rig bids and allocate customers of Liquid Aluminum sold in the United States;
- c. The effect of the combination or conspiracy on the prices of Liquid Aluminum Sulfate sold in the United States during the Class Period;
- d. Whether Defendants participated in meetings and conversations in the District of New Jersey and elsewhere to discuss each other's Liquid Aluminum Sulfate business;
- e. Whether Defendants agreed to "stay away" from one another's "historical" customers by not pursuing those customers' business;
- f. Whether Defendants tracked bid and pricing histories in order to determine which were the "historical" customers' accounts of each co-conspirator or other Liquid Aluminum Sulfate supplier in order to determine whether or not to pursue a particular contract or to submit an intentionally losing or "throw away" bid or price quotation;
- g. Whether Defendants submitted intentionally losing or "throw away" bids or price quotations to one another's "historic" Liquid Aluminum Sulfate customers;
- h. Whether Defendants sometimes discussed the price 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;
- i. Whether Defendants sometimes withdrew inadvertently winning bids submitted to co-conspirators' "historical" customers, upon request of a co-conspirator;
- j. Whether Defendants bid to lose on one of their own customers to

compensate for the loss of that “historical” customer when a co-conspirator could not withdraw its inadvertently winning bid;

- k. Whether Defendants instructed new employees how to tell whether and how to bid on or quote a price for a Liquid Aluminum Sulfate customers’ business so as to comply with the agreement not to compete between Defendants and co-conspirators;
- l. The identity of the co-conspirators;
- m. Whether Defendants and their co-conspirators violated Section 1 of the Sherman Act;
- n. Whether the conduct of Defendants and their co-conspirators caused injury to the business of Plaintiff and Class members;
- o. The appropriate measure of damages sustained by Plaintiff and Class members;
- p. Whether Defendants engaged in fraudulent concealment;
- q. Whether injunctive relief is appropriate;
- r. If injunctive relief is appropriate, what types of relief are suitable in this matter; and
- s. Whether Plaintiff and the Class members should be awarded attorney’ fees and costs.

65. These common questions and others predominate over questions, if any, that affect only individual Class members.

66. Plaintiff is a member of the Class. Plaintiff’s claims are typical of the claims of the Class because Plaintiff purchased Liquid Aluminum Sulfate directly from one or more Defendants or their co-conspirators. As a result, Plaintiff and all Class members were injured by the same wrongful conduct of Defendants, and the relief sought is common to all Class members.

67. 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. By advancing its claim, Plaintiff will also advance the claims of all Class members, because

Defendants participated in activities that caused all Class members to suffer similar injuries.

68. Plaintiff and its counsel will fairly and adequately protect the interests of absent Class members. There are no material conflicts between Plaintiff's claims and those of absent Class members that would make class certification inappropriate. Counsel for Plaintiff are highly experienced in complex class action litigation, including antitrust litigation, and will vigorously assert Plaintiff's claims and those of absent Class members.

69. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

70. A class action is superior to other methods for the fair and efficient resolution of this controversy. The class action device presents fewer management difficulties, and provides the benefit of a single adjudication, economy of scale, and comprehensive supervision by a single court. The damages suffered by Plaintiff and each Class member are relatively small as compared to the expense and burden of individual prosecution of claims asserted in this litigation. Thus, absent class certification, it would not be feasible for Plaintiff and Class members to redress the wrongs done to them. It would also be grossly inefficient for the judicial system to preside over large numbers of individual cases. Further, individual litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and to the judicial system.

VIII. ANTITRUST INJURY

71. The aforesaid conspiracy had the following effects, among others:

- a. Price competition among the Defendants and co-conspirators in the sale of Liquid Aluminum Sulfate was restrained and suppressed;

- b. Prices of Liquid Aluminum Sulfate sold in the United States were fixed, raised, maintained and/or stabilized at supra-competitively higher, noncompetitive levels; and
- c. Purchasers of Liquid Aluminum Sulfate, including Plaintiff and Class members, were deprived of the benefit of free and open competition in the purchase of Liquid Aluminum Sulfate.

72. Defendants' and co-conspirators' anticompetitive conduct, as alleged herein, has artificially inflated the prices of Liquid Aluminum Sulfate in the United States. By engaging in a price-fixing and bid-rigging conspiracy, prices have been supported at artificially high levels throughout the United States, and as a result, direct purchasers of Liquid Aluminum Sulfate have paid supra-competitive prices.

73. As a result of the Defendants' anticompetitive conduct, Plaintiff and Class members paid more for Liquid Aluminum Sulfate in the absence of the conspiracy than they would have, and thus suffered substantial damages.

IX. FRAUDULENT CONCEALMENT AND TOLLING

74. Throughout the Class Period, Defendants and their co-conspirators affirmatively and fraudulently concealed their unlawful conduct. Prior to receiving a subpoena from the DOJ, and subsequent disclosure of the DOJ press release and complaint, revealing for the first time critical facts about Defendants' conspiracy to artificially inflate the price of Liquid Aluminum Sulfate, Defendants' unlawful conspiracy to reduce competition was concealed and carried out in a manner to preclude detection.

75. Defendants secretly effectuated their price-fixing and bid-rigging scheme, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

76. 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.

77. Not only did Defendants conduct their conspiracy in secret, they affirmatively misled their customers as to the existence of their conspiracy and its effect in raising Liquid Aluminum Sulfate prices misled their customers as to the existence of their conspiracy and its effect in raising Liquid Aluminum Sulfate prices.

78. For instance, in submitting a bid to Jefferson County, each Defendant and co-conspirator had to submit an offer to be legally bound by a "Certificate of Independent Price Determination," whereby each bidder certified that:

"(A) The prices in this bid have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting as to any matter relating to such prices with any other Bidder or with any competitor; and

(B) Unless otherwise required by law the Bidder has not knowingly disclosed the prices that have been quoted in this bid directly or indirectly to any other bidder or to any competition prior to the opening of the bid.

(C) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition."

These certifications were false and fraudulently concealed Defendants' illegal collusion from Jefferson County. Accordingly, Plaintiff and Class members could not have discovered the violations alleged herein until shortly before filing this Complaint. Plaintiff and Class members were not put on notice of the alleged conspiracy and, despite exercising all reasonable diligence, could not have discovered Defendants' price-fixing and bid-rigging scheme until the DOJ's October 27, 2015 Press Release announcing Defendant Frank Reichl's guilty plea, or at the very earliest the receipt of the DOJ Subpoena in September 2015.

79. 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 they have discovered through exercising all reasonable diligence, that Defendants were engaged in the price-fixing and bid-rigging scheme as alleged herein.

80. Plaintiff and Class members could not have discovered the existence of the price-fixing and bid-rigging scheme alleged herein at an earlier date by the exercise of all reasonable due diligence because of the deceptive practices and techniques of secrecy employed by Defendants to avoid detection and affirmatively conceal such violations.

81. 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.

COUNT ONE
VIOLATION OF SECTION 1 OF THE SHERMAN ACT 15 U.S.C. § 1

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

83. 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.

84. 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.

85. 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 Liquid Aluminum Sulfate 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 Liquid Aluminum Sulfate, 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" Liquid Aluminum Sulfate customers;
- e. Selling Liquid Aluminum Sulfate to customers at collusive and noncompetitive prices in the United States; and
- f. Fixing, raising, stabilizing and maintaining at artificially high and supra-competitive levels the prices for Liquid Aluminum Sulfate charged to Plaintiff and Class members in the United States.

86. As a direct and proximate result of the unlawful combination, contract or conspiracy, Plaintiff and Class members sustained damages to their businesses, property and operations.

87. The conspiracy had its intended effect, as Defendants and their co-conspirators benefitted from their price-fixing and bid-rigging conspiracy by reaping inflated prices and revenues from their supra-competitive pricing of Liquid Aluminum Sulfate.

88. As a result of Defendants' unlawful conduct, Plaintiff and Class members have been injured in their business, property, and operations in that they have paid more for Liquid Aluminum Sulfate 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.

89. 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.

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) Declaring that the unlawful contract, combination and conspiracy alleged herein be adjudged and decreed to be in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- (c) Granting permanent injunctive relief which enjoins Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claims to act on their behalf, from, in any manner, continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy having similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect; and from otherwise 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;
- (d) Declaring that Plaintiff and the Class recover treble their damages as caused by the conspiracy alleged herein, as provided by law, and that judgment in favor of Plaintiff and the Class be entered against Defendants in that amount;
- (e) 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) Granting Plaintiff and Class members recovery of the costs of this suit, including reasonable attorneys' fees and costs, as provided by law; and
- (g) Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all issues so triable.

/s/ Craig L. Lowell

Craig L. Lowell

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