

AMENDED THIS 6th DAY OF JULY 2006  
PURSUANT TO THE ORDER OF JUSTICE RADY  
DATED THE 29th DAY OF JUNE 2006  
M. M. PARUS  
LOCAL OFFICE  
MONTREAL  
COMPTONVILLE / BORDONVILLE  
FAIT LE ONTARIO  
**SUPERIOR COURT OF JUSTICE**  
~~BEFORE LE JUGE LOCAL COUR SUPERIEUR DE JUSTICE~~

Court File No. 47025

IRVING PAPER LIMITED, IRVING PULP & PAPER, LIMITED,  
3969410 CANADA INC. c.o.b. as  
PARK AVENUE HAIR SALON, DISTRIBUTECH INC. and  
STACEY LEAVITT

Plaintiffs

- and -

A TOFINA CHEMICALS INC., ARKEMA INC., ARKEMA CANADA INC., ARKEMA S.A., FMC CORPORATION, FMC of CANADA, LTD., SOLVAY CHEMICALS INC., SOLVAY S.A., DEGUSSA COPRORATION, DEGUSSA A.G., DEGUSSA CANADA INC., EKA CHEMICALS, INC., EKA CHEMICALS CANADA INC., AKZO NOBEL CHEMICALS INTERNATIONAL B.V., KEMIRA OYJ, and KEMIRA CHEMICALS CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

Date May , 2005

Issued by \_\_\_\_\_  
Local registrar

Address of Court House  
court office 80 Dundas Street  
London, ON  
N6A 6A1

**TO:** **Atofina Chemicals Inc.**  
2000 Market Street  
Philadelphia, Pennsylvania  
19103

**AND TO:** **Arkema Inc.**  
2000 Market Street  
Philadelphia, Pennsylvania  
19103

**AND TO:** **Arkema Canada Inc.**  
655 Alphonse-Deshaies Boulevard  
Bécancour, Quebec  
G9H 2Y8

**AND TO:** **Arkema S.A.**  
4-8 cours Michelet - La Défense 10  
F 92091 Paris la Défense Cedex  
France

**AND TO:** **FMC Corporation**  
1735 Market Street,  
Philadelphia, Pennsylvania  
19103

**AND TO:** **FMC of Canada Ltd.**  
2147 Pulp Mill Rd.  
P.O. Box 2366  
Prince George, British Columbia

**AND TO:** **Solvay Chemicals, Inc.**  
3333 Richmond Avenue,  
Houston, Texas  
77098

**AND TO: Solvay S.A.**  
Rue du Prince Albert, 33  
B-1050  
Brussels, Belgium

**AND TO: Degussa Corporation**  
379 Interpace Parkway,  
Parsippany, New Jersey  
07054

**AND TO: Degussa A.G.**  
Weissfrauenstrasse 9  
D-60311 Frankfurt on Main  
Frankfurt, Germany

**AND TO: Degussa Canada Inc.**  
235 Orenda Road,  
Brampton, ON  
L6T 1E6

**AND TO: EKA Chemicals Inc.**  
1775 West Oak Commons Court  
Marietta, Georgia  
30062

**AND TO: EKA Chemicals Canada Inc.**  
39 Industrial Street  
Toronto, ON  
M4G 1Z2

**AND TO: AKZO Nobel Chemicals International B.V.**  
Velperweg 76,  
P.O. Box 9300,  
6800 SB Arnhem, The Netherlands

**AND TO: Kemira OYJ**  
Porkkalankatu 3  
P.O. BOX 330  
00101 Helsinki, Finland

**AND TO: Kemira Chemicals Canada Inc.**  
1380 County Road #2  
P.O. Box 615  
Maitland, ON  
K0E 1P0

## CLAIM

1. THE PLAINTIFFS CLAIM, on behalf of themselves and other persons in Canada who are similarly situated:
  - (a) general damages for conspiracy in the amount of \$250,000,000.00;
  - (b) general damages for intentional interference with economic interests in the amount of \$250,000,000.00;
  - (c) general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S.C, 1985, c. 19 (2<sup>nd</sup> Supp.) in the amount of \$250,000,000.00;
  - (d) punitive and exemplary damages in the amount of \$25,000,000.00;
  - (e) costs of investigation pursuant to Part VI of the *Competition Act*, R.S.C, 1985, c. 19 (2<sup>nd</sup> Supp.) s. 36;
  - (f) pre-judgment interest at the rate of 10% compounded annually or as otherwise ordered by this court;
  - (g) costs of this action on a substantial indemnity basis; and
  - (h) such further and other relief as this court deems just.

## NATURE OF THIS ACTION

2. This class action concerns the conspiracy among the defendants to fix the price at which hydrogen peroxide and its 'downstream' products, sodium perborate and sodium percarbonate, (collectively "Hydrogen Peroxide") was sold in Canada and worldwide. The plaintiffs allege that from at least 1994 to the present, (the "Relevant Period"), the defendants and their senior executives participated in illegal and secretive meetings and

made agreements relating to price targets, specific price increases, market share divisions and production capacity for Hydrogen Peroxide.

### **THE PLAINTIFFS**

3. Irving Paper Limited ("Irving Paper") is a New Brunswick corporation with its registered office in Saint John, New Brunswick. Irving Paper owns and operates a paper mill in Saint John, New Brunswick. Throughout the Relevant Period, Irving Paper purchased in Canada, on its own behalf or through its agent Irving Forest Services Limited ("Irving Forest"), approximately \$11,000,000.00 of Hydrogen Peroxide from the defendants for use in the manufacture of newsprint.
4. Irving Pulp & Paper, Limited ("Irving Pulp & Paper") is a New Brunswick corporation with its registered office in Saint John, New Brunswick. Irving Pulp & Paper owns and operates a pulp mill in Saint John New Brunswick. Throughout the Relevant Period, Irving Pulp & Paper purchased in Canada, on its own behalf or through its agent Irving Forest, approximately \$20,000,000.00 of Hydrogen Peroxide from the defendants for use in the manufacture of pulp.
5. 3969410 Canada Inc. is a Canadian corporation which carries on business as Park Avenue Hair Salon ("Park Avenue") in London, Ontario. Throughout the Relevant Period, Park Avenue purchased in Canada Hydrogen Peroxide, and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide, for use in its business.
6. Distributech Inc., ("Distributech") is a Canadian corporation that provides outsourced business and marketing solutions to other businesses. Throughout the Relevant Period, Distributech purchased in Canada products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide for use in its business.

7. Stacey Leavitt is an individual resident in London, Ontario. She is, and was throughout the Relevant Period, a consumer of products containing Hydrogen Peroxide, including cleaning products and paper products.

#### **THE DEFENDANTS**

8. The acts alleged in this claim to have been done by each defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
9. Various persons and/or firms, not named as defendants herein, may have participated as co-conspirators in the violation alleged herein and may have performed acts and made agreements in furtherance thereof.

#### **The Arkema Defendants**

10. Arkema S.A. is headquartered in France. It has been known as Arkema S.A. since approximately October of 2004. Prior to October, 2004 it was known by one or more other names including Atofina.
11. On or about October 1, 2004, Atofina Chemicals Inc. ("Atofina"), was renamed Arkema Inc. Arkema Inc. is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Arkema Inc. is a subsidiary of Arkema S.A. Arkema Canada Inc. ("Arkema Canada"), a wholly owned subsidiary of Atofina (now Arkema Inc.), is headquartered in Oakville, Ontario.
12. Since 1998 the Arkema defendants or their corporate predecessors have been the world's third largest producer of Hydrogen Peroxide with a production capacity of 341,000 metric tonnes, and production plants in Europe, North America, and Asia. In 1998 Arkema Inc.'s predecessor, Elf Atochem North America Inc., purchased a plant in Bécancour, Quebec through its amalgamation with Chemprox Chemicals, which had a

North American capacity for Hydrogen Peroxide production of about 73,000 metric tonnes. It also purchased DuPont's plant in Memphis, Tennessee, which produced about 70,000 metric tonnes of Hydrogen Peroxide per year. Following those purchases, Arkema Inc. combined the two plants.

13. Throughout the Relevant Period, the Arkema defendants directly or indirectly, through the control of their predecessors, subsidiaries and affiliates, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.
14. The business of each of the Arkema defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada and for the purposes of the conduct hereinafter described.

#### **The FMC Defendants**

15. FMC Corporation is a Delaware corporation with its principle places of business in Philadelphia, Pennsylvania, and Chicago Illinois.
16. FMC of Canada, Ltd., a subsidiary of FMC Corporation, is a Canadian corporation which has its principal place of business in Prince George, British Columbia.
17. The FMC defendants are the largest North American producers of Hydrogen Peroxide with a production capacity of approximately 283 million pounds in 1998, and Hydrogen Peroxide production plants in Prince George, British Columbia; Bayport, Texas; and Spring Hill, West Virginia, as well as Europe and the Far East.
18. Throughout the Relevant Period, the FMC defendants directly and/or indirectly, through the control of their subsidiaries and affiliates, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.

19. The business of each of the FMC defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada and for the purposes of the conduct hereinafter described.

### **The Solvay Defendants**

20. Solvay S.A. is a Belgium corporation with its principal place of business in Brussels, Belgium.
21. Solvay Chemicals, Inc., ("Solvay Chemicals"), a subsidiary of Solvay S.A., is a Delaware corporation which has its principal place of business in Houston, Texas. In or about late 2004, Solvay Chemicals was formed from the combination of Solvay Interlox, Solvay Minerals and Solvay Fluorides.
22. The Solvay defendants are currently the world's leading producers of Hydrogen Peroxide with production units worldwide and approximately U.S. \$258 million in annual sales of Hydrogen Peroxide. Solvay Chemical's predecessor, Solvay Interlox Inc., was the third largest producer of Hydrogen Peroxide in the United States in 1998, with a North American capacity of approximately 236 million pounds from its plant in Deer Park, Texas and annual sales of approximately U.S. \$137 million.
23. Throughout the Relevant Period, the Solvay defendants directly and/or indirectly, through the control of their predecessors, subsidiaries and affiliates, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.
24. The business of each of the Solvay defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada, and for the purposes of the conduct hereinafter described.



### **The Degussa Defendants**

25. Degussa A.G. is a German corporation with its principal place of business in Dusseldorf, Germany. Degussa Corporation, a subsidiary of Degussa A.G. is an Alabama corporation with its principle place of business in Persippany, New Jersey.
26. Degussa Canada Inc., a subsidiary of Degussa Corporation, is an Ontario corporation which has its registered office in Burlington, Ontario.
27. The Degussa defendants rank second worldwide in Hydrogen Peroxide production. Degussa Corporation acquired the Hydrogen Peroxide business of DuPont in or about 1998 and became the largest producer of Hydrogen Peroxide in the United States, with a North American production capacity of 575 million pounds in 1998 and production facilities in Allendale, New Jersey, and Winnemucca, Nevada.
28. Throughout the Relevant Period, the Degussa defendants directly and/or indirectly, through control of their predecessors, affiliates and subsidiaries, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.
29. The business of each of the Degussa defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada, and for the purposes of the conduct hereinafter described.

### **The AKZO Defendants**

30. AKZO Nobel Chemicals International B.V. is a Netherlands company with its principal place of business in Arnhem, the Netherlands.
31. EKA Chemicals, Inc., a subsidiary of AKZO Nobel Chemicals International B.V., is a Delaware corporation with its principal place of business in Marietta, Georgia and

Hydrogen Peroxide production plants in Columbus, Mississippi and Moses Lake, Washington.

32. EKA Chemicals Canada Inc., a subsidiary of EKA Chemicals, Inc., is a Canadian corporation with its registered office in Magog, Quebec.
33. The AKZO defendants are one of the world's largest manufacturers of Hydrogen Peroxide, with a total global capacity of 245,000 tonnes, and production plants in Sweden, Norway, the United States, and Venezuela. EKA Chemicals, Inc. had a North American production capacity of 78 million pounds of Hydrogen Peroxide in 1998.
34. Throughout the Relevant Period, the AKZO defendants directly and/or indirectly, through the control of their subsidiaries and affiliates, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.
35. The business of each of the AKZO defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada, and for the purposes of the conduct hereinafter described.

#### **The Kemira Defendants**

36. Kemira OYJ is a Finnish company with its principle place of business in Helsinki, Finland.
37. Kemira Chemicals Canada Inc., is a New Brunswick corporation with its registered office in Saint John, New Brunswick. Kemira Chemicals Canada Inc. operates manufacturing facilities in Maitland, Ontario.

38. The Kemira defendants are one of the world's major producers of Hydrogen Peroxide, with production plants in Finland, the Netherlands, South Korea, Canada, Sweden, and Japan.
39. Throughout the Relevant Period, the Kemira defendants, directly and/or indirectly, through the control of their subsidiaries and affiliates, manufactured, marketed, sold and/or distributed Hydrogen Peroxide in Canada.
40. The business of each of the Kemira defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in Canada, and for the purposes of the conduct hereinafter described.

#### **FACTUAL BACKGROUND**

41. Hydrogen Peroxide is an inorganic chemical compound and a colourless, slightly viscous liquid that is a strong oxidizing agent. Hydrogen Peroxide is widely used in the pulp and paper industry for the bleaching of pulps, and is also used for bleaching textiles in the textiles industry, in chemical and laundry products and other bleaching related markets, including the hair care industry, and is also used in industrial wastewater treatment, and as a disinfectant and sterilizer. Hydrogen Peroxide is sold in various standard and specialty grades and each grade is available in different concentrations.
42. During the Relevant Period, there were no practical or reasonable substitutes to Hydrogen Peroxide. To the extent that innovations were possible, the defendants were, as a result of their market position and resources, best suited to participate in such developments.

43. The defendants in this action manufactured, marketed, sold, and/or distributed the vast majority of Hydrogen Peroxide that was sold or distributed in Canada during the Relevant Period.

#### **INVESTIGATIONS AND CHARGES**

44. On January 31, 2005, the European Commission antitrust regulators confirmed that the European Commission had formally charged 18 chemical companies including the defendants, Arkema Inc., Kemira OYJ, Solvay S.A. and Degussa A.G., with fixing prices of hydrogen peroxide and downstream products including sodium perborate and sodium percarbonate during the period from 1994 to 2001.
45. An October 31, 2003 press release from the Solvay Group made reference to the then ongoing inquiry by the European competition authorities in the area of hydrogen peroxide.
46. On February 9, 2005, the defendant FMC Corporation confirmed in a Securities Exchange Commission form 8K filing that on January 28, 2005, it received a Statement of Objections from the European Commission concerning alleged violation of the competition law in the hydrogen peroxide business in Europe during the period 1994 to 2001. FMC Corporation further confirmed that it received a subpoena for documents from a grand jury sitting in the Northern District of California, which is investigating anticompetitive conduct in the hydrogen peroxide business in the United States during the period from 1994 to 2003.
47. On March 14, 2006, the United States Department of Justice announced that Solvay S.A. had agreed to plead guilty to charges under the United States' *Sherman Act* (15 U.S.C. § 1) that it had participated in an international conspiracy to fix the price of hydrogen peroxide and sodium perborates in the United States and elsewhere. It agreed to pay a US\$40.8 million dollar criminal fine for its participation in the conspiracy.

48. On March 14, 2006, the United States Department of Justice announced that Akzo Nobel Chemicals International B.V. had agreed to plead guilty to charges under the United States' *Sherman Act* (15 U.S.C. § 1) that it had participated in an international conspiracy to fix the price of hydrogen peroxide in the United States and elsewhere. It agreed to pay a US\$32 million dollar criminal fine for its participation in the conspiracy.
49. On May 3, 2006, the European Commission announced that it had found that nine companies participated in cartels in the hydrogen peroxide and perborate markets in violation of European Commission Treaty rules between 1994 and 2000. The Commission found that the companies involved had exchanged commercially important and confidential information, limited production, allocated market shares and customers and fixed and monitored prices of hydrogen peroxide between 1994 and 2000.
50. The following entities were found to have participated in the cartel by the European Commission:
  - (a) Solvay was fined €167,062,000, which included a 10% fine reduction for cooperation;
  - (b) Arkema was fined € 78,663,000 which included a 30% reduction for cooperation;
  - (c) Akzo Nobel/Akzo Nobel Chemical Holdings/ EKA Chemicals AB was fined €25,200,000, which included a 40% reduction for cooperation;
  - (d) FMC Corporation was fined € 25,000,000, which did not include a discount for cooperation;
  - (e) Kemira was fined € 33,000,000 which did not include a discount for cooperation;

- (f) Edison/ Ex-Ausimont (now Solvay Solexis) was fined € 58,125,000 which did not include a discount for cooperation;
- (g) Snia/Caffaro was fined €1,078,000, which did not include a discount for cooperation;
- (h) De Gussa was also found to have participated in the cartel, but its fine was discounted 100% for cooperation; and
- (i) Air Liquide was found to have participated in the cartel, but had exited the market by 1998. The European Commission was therefore no longer entitled to fine it as a result of an expired limitation period.

#### **THE CONSPIRACY**

51. Throughout the Relevant Period, the defendants dominated the world market for the manufacture, marketing, sale and/or distribution of Hydrogen Peroxide in the foregoing manner, and were thus in a position to engage in the unlawful practices as alleged by the plaintiffs herein.
52. The defendants' supra-competitive prices were implemented by *inter alia*, a series of coordinated price increase announcements that began in or about 1994. These coordinated price increases have continued on a regular basis throughout the Relevant Period, with the actual and intended results that the plaintiffs, and others similarly situated, have paid supra-competitive prices for Hydrogen Peroxide for over a decade.
53. The plaintiffs allege that, at various times from at least as early as January 1, 1994 to the present, senior executives and employees of each of the defendants engaged in meetings and other communications with each other at various times and places, the precise details of which are known only to the defendants.

54. In particular, the European Commission found that the Solvay Defendants, the Arkema Defendants, the Akzo Defendants, the DeGussa Defendants, the Air Liquide Defendants, the FMC Defendants, the Kemira Defendants and others to have attended the following meetings:
- (a) meeting in early 1995 during which they discussed "*a model for sharing out among producers*";
  - (b) a meeting in a Brussels restaurant on 26 November 1997 during which the participants discussed the implementation and assessment of price increases agreed at a high-level meeting in August 1997 and scheduled further price increases; and
  - (c) a high level meeting in early 1998 where the participants welcomed the implementation of the price increase of October/November 1997 and verified the parties' compliance with the implementation guidelines fixed during this and earlier meetings.
55. As a result of these communications and meetings, the defendants entered into a conspiracy in which they unlawfully agreed to coordinate the timing and amounts of price increases for Hydrogen Peroxide and to allocate customers and sales volumes amongst the defendants.
56. In furtherance of the conspiracy, during the Relevant Period, the following acts were done by the defendants, and their senior executives, employees and agents:
- (a) they communicated secretly by telephone and in person to discuss and fix prices and volumes of sales of Hydrogen Peroxide;

- (b) they agreed to, and did, fix and maintain prices and coordinate price increases for the sale of Hydrogen Peroxide;
- (c) they agreed to, and did, allocate the volumes of sales, customers, and markets for Hydrogen Peroxide amongst themselves;
- (d) they agreed to refrain from bidding or to submit intentionally high, complementary and non-competitive bids for Hydrogen Peroxide supply contracts;
- (e) they exchanged information regarding the prices and volumes of sales of Hydrogen Peroxide for the purpose of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (f) they instructed members of the conspiracy not to divulge the existence of the conspiracy;
- (g) they took active steps to conceal the conspiracy from their customers, the authorities, and the public; and
- (h) they disciplined any corporation that failed to comply with the conspiracy.

57. The defendants were motivated to conspire and their predominant purpose and intention was:

- (a) to harm the plaintiffs and members of the public by requiring them to pay artificially high prices for Hydrogen Peroxide and consequently the products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide; and
- (b) to unlawfully increase their profits on the sale of Hydrogen Peroxide.



58. The acts particularized in paragraphs 52 to 56 were unlawful acts directed toward purchasers of Hydrogen Peroxide and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide, including the plaintiffs and others similarly situated, which unlawful acts the defendants knew or ought to have known in the circumstances would likely cause injury to those purchasers. Accordingly, the defendants are liable to the plaintiffs and other similarly situated for the tort of civil conspiracy.

**INTERNATIONAL INTERFERENCE WITH ECONOMIC INTEREST**

59. Alternatively, the acts particularized in paragraphs 52 to 56 were unlawful acts undertaken by the defendants with the intent to injure purchasers of Hydrogen Peroxide and/or purchasers of products containing Hydrogen Peroxide and/or purchasers of products the production of which involved the use of Hydrogen Peroxide, including the plaintiffs and others similarly situated, and the defendants are accordingly liable to them for the tort of intentional interference with economic interests.

**BREACH OF THE COMPETITION ACT**

60. The acts particularized in paragraphs 52 to 57 were also in breach of Part VI of the *Competition Act* and render the defendants liable to pay damages to the plaintiffs and others similarly situated pursuant to s. 36 of the *Competition Act*.

## **DAMAGES**

61. As a result of the acts particularized above, the plaintiffs and others similarly situated have suffered the following damages:
- (a) the price of Hydrogen Peroxide and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide purchased by the plaintiffs in Canada has been fixed, raised, maintained and stabilized at artificially high and non-competitive levels; and
  - (b) competition in the sale of Hydrogen Peroxide in Canada has been restrained.
62. During the Relevant Period, the plaintiffs and others similarly situated purchased in Canada Hydrogen Peroxide and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide manufactured by the defendants. By reason of the alleged violations of the *Competition Act* and unlawful conduct at common law, the plaintiffs and others similarly situated paid more for Hydrogen Peroxide and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide than they would have paid in the absence of the unlawful conduct and, as a result, have been injured in their business and property, and have suffered damages in an amount presently undetermined.
63. The plaintiffs' damages and those of other persons who are similarly situated are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the defendants and the prices which would have been obtained in the absence of their unlawful conduct.
64. The defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in disregard of the plaintiffs'

rights and the rights of others who are similarly situated, and as such, renders the defendants liable to pay aggravated, exemplary and punitive damages.

65. The plaintiffs' damages and those of other persons who are similarly situated have been suffered in the province of Ontario and elsewhere in Canada.
66. The plaintiffs plead and rely on the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended, the *Competition Act*, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp), ss. 36 & 45, as amended and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
67. The plaintiffs plead and rely on clauses 17.01 (g) (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario in that the claim is:
  - (a) in respect of a tort committed in Ontario (rule 17.02(g));
  - (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
  - (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
  - (d) against a person carrying on business in Ontario (rule 17.02(p)).
68. The plaintiffs state that they are representative of persons in Canada who purchased Hydrogen Peroxide and/or products containing Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide in Canada during the Relevant Period.

69. The plaintiffs propose that this action be tried at London, Ontario.

May , 2005

**Siskind, Cromarty, Ivey & Dowler<sup>LLP</sup>**

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Solicitors for the Plaintiffs

Park Avenue Hair Salon, et al.  
Plaintiffs and  
Atofina Chemicals Inc. et al.  
Defendants

Court File No: 47025

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**FRESH AS AMENDED STATEMENT OF CL**

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