

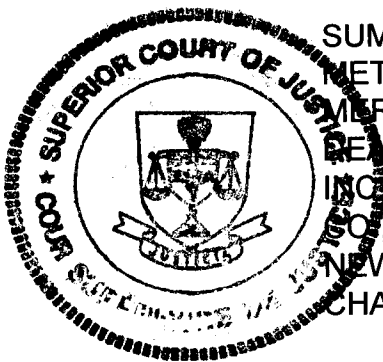
**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CELLO PRODUCTS INCORPORATED

Plaintiff

and



SUMITOMO CORPORATION; GLOBAL MINERALS AND METALS CORPORATION; MERRILL LYNCH & CO., INC.; MERRILL LYNCH PIERCE FENNER & SMITH (BROKERS & DEALERS), LIMITED; MERRILL LYNCH INTERNATIONAL, INC.; CREDIT LYONNAIS ROUSE, LTD.; J.P. MORGAN & CO., INC.; MORGAN GUARANTY TRUST COMPANY OF NEW YORK; UNION BANK OF SWITZERLAND AG; and CHASE MANHATTAN BANK, N.A.

Defendants

*PROCEEDING UNDER THE CLASS ACTION  
PROCEEDINGS ACT, 1992*  
**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.

Date JUN 07 2002

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

Address of court office:  
Ministry for the Attorney General  
London Court House  
80 Dundas Street  
London Ontario  
N6A 6A3

TO: Sumitomo Corporation  
Tokyo Head Office  
8-11, Harumi 1-chome, Chuo-ku  
Tokyo 104-8610, Japan

AND TO: Global Minerals and Metals Corporation, Inc.  
Global Minerals & Metals Corporation  
7125 Avenue  
New York, NY 10019

AND TO: Merrill Lynch & Co., Inc.  
Global Headquarters  
4 World Financial Center  
250 Vesey Street  
New York, NY 10080

AND TO: Merrill Lynch Pierce Fenner & Smith  
(Brokers & Dealers) Ltd.  
Merrill Lynch Financial Centre  
2 King Edward Street  
London, England EC1A 1HZ

AND TO: Merrill Lynch International, Inc.  
Merrill Lynch Financial Centre  
2 King Edward Street  
London, England  
EC1A 1HQ

AND TO: Credit Lyonnais Rouse, Ltd.  
515 South Flower Street  
Los Angeles, California 90071

AND TO: J.P. Morgan & Co., Inc.  
60 Wall Street  
New York, New York, 10260-0060.

AND TO: Morgan Guaranty Trust Company of New York  
60 Wall Street  
New York, New York 10260-0060.

AND TO: Union Bank of Switzerland AG  
633 West 5<sup>th</sup> Street, 64<sup>th</sup> Floor  
Los Angeles, California 90071.

AND TO: Chase Manhattan Bank, N.A.  
Corporate Headquarters of J.P. Morgan Chase & Co.  
270 Park Avenue  
New York, NY 10017-2070

## CLAIM

1. The Plaintiff, Cello Products Incorporated, claims on its own behalf and on behalf of class members:
  - (a) damages for civil conspiracy, intentional interference with economic relations, and conduct that is contrary to Part VI of the *Competition Act*, R.S., c.19 (2<sup>nd</sup> Supp.), s.45, in the amount of \$40,000,000.00;
  - (b) punitive and exemplary damages in the amount of \$10,000,000.00;
  - (c) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.128;
  - (d) costs of this action on a substantial indemnity basis;
  - (e) such further and other relief as this Honourable Court deems just.

## THE NATURE OF THE ACTION

2. This action concerns the conspiracy among the defendants to artificially and illegally increase the price of copper on the London Mercantile Exchange ("LME") and around the world. The plaintiff alleges that the defendants were direct participants in a scheme further described below to manipulate copper prices on the LME and worldwide, through extremely large purchases of copper and copper contracts which were not made for any conceivable proper commercial purpose, the loaning of money to support such purchases, the extension of credit and the providing of trading facilities, accounts and trading capacity.
3. Sumitomo Corporation ("Sumitomo") and Global Minerals and Metals Corporation, Inc. ("GMMC"), conspired to enter into elaborate off-market deals intended to manipulate upward the worldwide price of copper and copper futures contracts. These activities directly and

predictably caused copper prices, including prices on North American markets, to reach artificially high levels. This price manipulation was joined in by clearing brokers and financed by the defendant financial institutions. These conspiring defendants profited from the scheme, *inter alia*, through profit sharing arrangements and by charging Sumitomo interest and fees in connection with improper copper swap and option transactions.

4. The illegal and anti-competitive actions of the defendant conspirators created an artificial shortage of copper, altering the natural market dynamics and thereby precluding free and unrestricted competition among purchasers and consumers in the copper market. By unduly lessening competition in the purchase and supply of copper, the defendants artificially raised the price of copper and copper options worldwide at the expense of other participants in the copper market and purchasers of copper, scrap copper, and copper products.

#### **THE CLASS AND CLASS PERIOD**

5. The Plaintiff brings this action on behalf of all Canadians and Canadian entities who purchased any copper, scrap copper, copper products, or products containing copper products for use in any trade or business or for resale (except the defendants), from June 1, 1993 to May 31, 1996 (the "Class Period").

#### **THE PLAINTIFF**

6. The Plaintiff, Cello Products Incorporated ("Cello"), is a company duly incorporated pursuant to the laws of the Province of Ontario. Cello is a manufacturer and distributor of wrought

copper and cast brass plumbing fittings, and a purchaser of copper tube, brass ingots and finished plumbing fittings during the Class Period.

## **THE DEFENDANTS AND THEIR EMPLOYEES**

7. Sumitomo Corporation ("Sumitomo") is a diversified company incorporated and carrying on business in Japan and throughout the world. Sumitomo supplied copper in substantial quantities to its customers prior to and throughout the Class Period. Yasuo Hamanaka ("Hamanaka") was general manager of Sumitomo's copper section, and was responsible for Sumitomo's transactions in copper physicals, futures, and/or options between June 1, 1993 and May 31, 1996. Hamanaka's actions as general manager were undertaken on behalf of Sumitomo for which Sumitomo is responsible at law.
  
8. Defendant GMMC is a copper merchant company with its principal place of business in New York, New York and had close ties with Sumitomo and Hamanaka. GMMC effected manipulative copper transactions for Sumitomo and other defendants during the Class Period. Donald Campbell ("Campbell") is a principal of GMMC and participated with his company in effecting manipulative copper transactions for Sumitomo, Hamanaka and other defendants during the Class Period. Campbell's actions as principal were undertaken on behalf of GMMC for which GMMC is responsible at law.
  
9. Defendant Credit Lyonnais Rouse, Ltd. ("CLR") is a French bank and futures brokerage firm which maintains offices at 515 South Flower Street, Los Angeles, California 90071. At all material times, CLR was a member of the National Futures Association ("NFA"), a Ring Dealing Member of the LME, and a member of the London Clearing House ("LCH").

10. Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch & Co.") is a holding company organized under the laws of the State of Delaware, with offices in the State of New York. Defendant Merrill Lynch Pierce Fenner & Smith (Brokers & Dealers) Ltd. ("Merrill Lynch (B&D)") is a British corporation with its principal place of business in London, England, and is a wholly-owned subsidiary of Merrill Lynch & Co. Defendant Merrill Lynch International, Inc. ("Merrill Lynch International") is a corporation which maintains offices in New York City and London and is a wholly owned subsidiary of Merrill Lynch & Co. Defendants Merrill Lynch & Co., Merrill Lynch (B&D), and Merrill Lynch International ("Merrill Lynch") financed Sumitomo's and GMMC's transactions in physical copper and copper futures and/or options contracts in furtherance of the conspiracy to fix, stabilize and maintain at artificially high levels the price for copper as more particularly set out in paragraphs 41-45 herein.
  
11. Defendant J.P. Morgan & Co., Inc. ("J.P. Morgan") is an international bank holding company organized and existing under the laws of the State of Delaware, with its principal place of business located at 60 Wall Street, New York, New York, 10260-0060. Defendant Morgan Guaranty Trust Company of New York ("Morgan Guaranty") is an international commercial bank incorporated under the laws of the State of New York, with its principal place of business located at 60 Wall Street, New York, New York 10260-0060. Defendant Morgan Guaranty is the largest wholly-owned subsidiary of defendant J.P. Morgan. Defendants J.P. Morgan and Morgan Guaranty ("Morgan") financed Sumitomo's and GMMC's transactions in physical copper and copper futures and/or options contracts in furtherance of the conspiracy to fix, stabilize and maintain at artificially high levels the price for copper as more particularly set out in paragraphs 41-45 herein.

12. Defendant Union Bank of Switzerland AG ("UBS") is a Swiss bank which maintains offices at 633 West 5<sup>th</sup> Street, 64<sup>th</sup> Floor, Los Angeles, California 90071. At all material times, UBS was a member of the NFA. UBS financed Sumitomo's and GMMC's transactions in physical copper and copper futures and/or options contracts in furtherance of the conspiracy to fix, stabilize and maintain at artificially high levels the price for copper as more particularly set out in paragraphs 41-45 herein.
  
13. Defendant Chase Manhattan Bank is an American banking corporation duly organized under the laws of the State of New York, with its principal place of business in New York, New York, and branch offices in, among other places, Tokyo and Hong Kong. As a result of a merger in July 1996, Chase Manhattan Bank is the successor to Chase Manhattan Bank, N.A., a U.S. federally chartered bank which originally made the loans to Hamanaka. These entities are collectively referred to herein as "Chase" in this claim. As part of its business, Chase engages in various financial transactions related to commodities, including swaps, futures, and other complex derivatives. Chase's worldwide commodities business is run out of its New York headquarters by its "Global Commodities" group, which approved all the Chase transactions alleged in this claim, prepared and/or approved documentation, and implemented the various funds transfers necessary to carry out these transactions as more particularly set out in paragraphs 41-45 herein.



## BACKGROUND

### *The Copper Market*

14. Copper is a non-ferrous metal and a commodity as the term is defined in section 1 of the *Commodity Futures Act*, R.S.O. 1990, Chap C.20 (the "CFA"). Copper can be sold as either physical copper or via copper futures.
  
15. The market for immediate purchase of physical copper is known as the "spot market", and its prices are known as "spot prices". Physical copper is traded on the LME and informally by and among producers, dealers, and users of copper, and is not subject to the rules of COMEX, a designated contract market pursuant to section 5 of the U.S. Commodity Exchange Act ("CEA") or any other contract market.
  
16. Copper futures are contracts with standardized price and delivery terms that impose on the futures purchaser or seller the right and obligation to take or make delivery of physical copper on a date certain in the future. However, these obligations rarely result in the actual delivery of copper. The overwhelming majority of copper futures contracts are "offset". In an offset situation the contracts are satisfied through the sale or purchase of an equal and opposite number of copper futures contracts for delivery in the same contract month. For example, upon the purchase of five copper contracts for June delivery (said to be "long"), a purchaser may discharge the obligation to take delivery of June copper by selling five copper contracts for June delivery (said to be "short").
  
17. Generally, the price of a futures contract on the date of delivery exceeds the spot price for physical copper because the future price takes into account the storage, insurance, interest,

and delivery costs that are not necessarily part of spot pricing. Similarly, the prices of a near-term futures contract will generally be lower than the price for a contract for delivery in a later month. Simply stated, under normal market conditions, the farther away the delivery date of a futures contract, the greater costs and risks associated with it and the higher the futures price.

18. When the futures price is less than the spot price, or when the long-term futures price is less than the short-term futures price, the market for that commodity is disrupted, which results in enormous futures price pressures. One way in which these pressures affect the futures market is through the open short "put" positions in that commodity. Short "puts" are option positions which, if exercised, obligate the sellers of "puts" to take delivery of the future or physical commodity underlying the option. In return for undertaking that obligation, the seller receives an immediate cash payment (the "premium").
19. Producers of copper purchase put options to establish a minimum selling price (a "floor") for their sales of physical copper at a date certain in the future. In situations where normal market mechanisms are disrupted and the futures price falls below the strike price of the "put", producers will exercise their long puts to obtain at least the floor price for their copper, thereby forcing holders of short put positions to either take delivery of massive physical copper positions or to offset the short position in a falling market, which in turn creates additional downward price pressures on the futures.
20. When the price for longer-term copper futures does not exceed the price for shorter-term copper futures, or the spot price, short "puts" will be exercised, forcing sales of futures in the

market and creating sharp downward futures price movements. By artificially adjusting copper supplies or availability, or by artificially rigging copper prices through fictitious or pre-arranged trades, or cross-trades, or by "capping" or "pegging" the market to artificial levels, market manipulators can adjust or destroy the natural market conditions, with the resultant effects described above, all of which the manipulators can predict and use to advance their own positions and achieve illegal profits.

21. Market manipulators adjust or destroy the natural market conditions by "squeezing" the market. The "squeeze" describes a situation where a dominant long position prevents those who are short from offsetting their contracts except at a price substantially higher than the value of those contracts in relation to the rest of the market. Simply put, one person with a dominant long position has the power to squeeze the market if the person's futures positions exceeds the deliverable supply in independent hands.

#### **PENALTIES AND FINES LEVIED**

22. In December 1995, the U.S. Commodity Futures Trading Commission ("CFTC") commenced an investigation into the abnormal conditions and activities in the copper markets.
23. In May 1998, the CFTC charged Sumitomo with violating the U.S. Commodity Exchange Act (the "CEA") by entering into a scheme to manipulate the price of copper from 1995 to 1996.
24. Without admitting or denying the findings of the CFTC, Sumitomo agreed to settle the matter by payment of \$150 million, \$125 million of which was a civil penalty and \$25 million of

which would be paid to the U.S. Treasury if not used within 4 years to compensate victims of Sumitomo's violations of the CEA.

25. On October 11, 1993, the LME issued a notice which stated that CLR had apologized for its involvement in the development of an adverse situation in the copper market caused by a very large trade made on behalf of Sumitomo, and agreed to pay the LME £100,000 towards its costs.
26. In May of 2000, the LME fined Rudolf Wolff & Co., Ltd., a brokerage clearing firm which conducted multiple transactions on behalf of Sumitomo during the Class Period, \$1 million in connection with the broker's role in the subject copper scandal.
27. On April 3, 1997, the Federal Reserve Bank of New York disciplined J.P. Morgan for its financing involvement in the subject copper scheme. J.P. Morgan was reprimanded by U.S. banking regulators for its role in financing Sumitomo's illegal copper trading activities.

## **THE CONSPIRACY**

### ***Copper Merchants***

28. In the spring of 1993, senior executives and employees of the copper merchants Sumitomo and GMMC conspired with each other to illegally increase copper prices and copper spread price differentials ("spreads"). By increasing copper prices and copper spreads, Sumitomo, in partnership with GMMC, sought to profit at the expense of other participants in the copper market and users of copper worldwide. Campbell and others were instrumental in forming GMMC, a copper merchant company to conduct trades on behalf of and to otherwise

service Sumitomo. Through a highly unusual arrangement, GMMC operated at least two London brokerage accounts in Sumitomo's name through a power of attorney, as an undisclosed alter ego of Sumitomo. The arrangement also effectively made Sumitomo, through Hamanaka, the guarantor of all GMMC's trading transactions.

29. In furtherance of the conspiracy, Campbell and Hamanaka agreed to enter into a series of copper supply contracts pursuant to which Sumitomo would purchase physical copper from GMMC in large quantities in order to:
- (a) create a false appearance of a commercial need to obtain physical copper;
  - (b) provide price support for the spot copper market; and
  - (c) establish excessive copper forward positions to "hedge" this purported need.
30. Sumitomo and GMMC did not have a commercial need for physical copper in the amounts represented by the supply contracts. The copper supply contracts contained highly unusual features including:
- (a) a "Minimum Price" feature: the right of Sumitomo, within a limited window of time, to fix the minimum price which it would be obligated to pay for the entire delivery contract according to the LME settlement price on the monthly day of fixation; and
  - (b) a "Price Participation" feature: a shared profit structure between Sumitomo and GMMC for profits generated by GMMC in the purported "hedging" of the contracts.

The net effect of these provisions was to provide both Sumitomo and GMMC with a strong interest in higher copper prices. As copper prices rose above the pre-established minimum price, GMMC and Sumitomo shared in the price appreciation.

31. During the Class Period, Sumitomo and GMMC entered into a total of seven copper supply contracts which, on their face, called for the delivery of approximately two million metric tons ("MT") of copper.
  
32. The foregoing actions, agreements and conduct by Sumitomo and its co-conspirators created an artificial shortage of copper, thereby precluding free and unrestricted competition among purchasers and consumers in the copper market. By unduly lessening competition in the purchase and supply of copper, the defendants artificially raised the price of copper and copper options worldwide at the expense of other participants in the copper market.

***Clearing Broker***

33. Sumitomo is not a member of the LME and as such, must utilize the trading services of LME broker members and LME warehouses in which to store metal until it is needed for delivery against its physical contracts. Sumitomo and the defendant clearing broker, CLR, willingly participated and conspired in the elaborate scheme to corner the copper market.
  
34. From as early as January 1, 1993, Sumitomo and CLR began to manipulate the copper market through elaborate off-market deals to purchase copper options, including copper futures. The transactions were intended to drive up copper prices by:
  - (a) hoarding supplies of physical copper;

- (b) entering into paper transactions designed to appear as trading activity; and
- (c) providing price support for the spot copper market.

35. As part of the scheme Sumitomo, through Hamanaka, arranged to buy and sell options, spread over three years, covering in excess of 1 million metric tons of copper. The counterparty to these transactions was the "Winchester Group", which went "short" by more than 1 million metric tons. The "Winchester Group" included Winchester Commodities Group, Ltd., and its subsidiaries Winchester Brokerage Limited ("Winchester Brokerage") and Winchester Metals Tokyo Limited ("Winchester Tokyo").
36. Winchester Group had close ties to the defendant clearing broker CLR. Sumitomo, CLR and Winchester Brokerage and/or Winchester Tokyo entered into an arrangement whereby CLR agreed to process transactions flowing from Winchester Brokerage, on the instructions of Sumitomo. Further, under the terms of the agreement, Winchester passed on to CLR the credit risk involved in extending lines of credit to Sumitomo. The arrangement also allowed the Winchester Group to take on bigger trades with Sumitomo and still execute them in a manner that did not disclose Sumitomo's identity.
37. CLR and Winchester Group entered into a profit sharing arrangement whereby CLR would share 20% of the Winchester Group's profits, and CLR had an option to acquire a 20% stake in the Winchester Group.
38. The relative volume of off-market trades and credit arrangements processed by CLR were such that CLR knew, or ought to have known, that the majority of these trades were for an

improper purpose. The largest copper transaction, called the "RADR" deal, consisted of a total of 2,380,000 MT of options and 150,000 MT of futures. These volumes were huge by comparison with Sumitomo's annual requirement for physical copper of approximately 500,000 MT.

39. CLR knew or could reasonably foresee that Sumitomo's actions were not warranted by any genuine commercial need. Sumitomo's copper transactions were unusually large in the context of the global copper market and Sumitomo was not engaged in customer delivery visible to CLR that supported any purported commercial needs. In summary, CLR wrongfully and unlawfully participated in the conspiracy by:

- (a) clearing "wash trades" for Sumitomo's account (through Winchester Brokerage and/or Winchester Tokyo), which consisted of pairs of sale and purchase transactions where the only difference between the sale and the purchase price was that the purchase price in each case was slightly higher than the sale price;
- (b) accepting the difference in price in the above noted "wash trades" as commission;
- (c) clearing a number of other trades at off-market prices;
- (d) extending credit to Sumitomo in the form of a \$30 million LME credit line for funding variation margin but not initial margin or realized losses; and
- (e) extending additional credit lines of \$60 million, \$100 million, and \$200 million for a total of at least \$530 million to engage in massive copper transactions.

40. The foregoing actions, agreements and conduct by CLR and its co-conspirators created an artificial shortage of copper, thereby precluding free and unrestricted competition among purchasers and consumers in the copper market. By unduly lessening competition in the



purchase and supply of copper, the defendants artificially raised the price of copper and copper options worldwide at the expense of other participants in the copper market.

***The Financiers***

41. During the Class Period, each of Merrill Lynch International, J.P. Morgan, Morgan Guaranty, UBS and Chase (collectively the "Financiers") conspired with Sumitomo to finance massive copper transactions and use these transactions to manipulate the price for copper.
  
42. The Financiers knew or could reasonably foresee that Sumitomo's actions were not warranted by any genuine commercial need. Sumitomo's copper transactions were unusually large in the context of the global copper market and Sumitomo was not engaged in customer delivery visible to Financiers that supported any purported commercial needs.
  
43. In furtherance of the conspiracy, senior executives and employees of the defendant Financiers unlawfully agreed to participate by:
  - (a) collectively providing over one billion dollars in financing for phony or 'sham' copper transactions through credit arrangements including, but not limited to, the following:
    - (i) "buy-sell back" lines of financing whereby copper positions requiring immediate acceptance of delivery were purchased by financiers and simultaneously sold back for acceptance of delivery on the following day at a price differential; and/or
    - (ii) commodity inventory purchase obligation credit lines, through which GMMC purportedly was to finance the acquisition of premium grade copper and location copper to be shipped to Sumitomo; and/or

- (iii) "option contracts" whereby financiers engaged in a series of large financing transactions that provided Sumitomo with large option premiums upon execution; and/or
  - (iv) simultaneous sales of "forward contracts" (a sold forward contract is a short position - a position that increases in value for the seller of the contract as the market price decreases) from Hamanaka to financiers settled in cash, rather than exchanging copper cathode; and/or
  - (v) "copper swap transactions", whereby the same quantity of copper was bought and simultaneously sold in the options market through transactions that did not completely offset one another, thereby providing Sumitomo with financing equal to the difference.
- (b) extending financing for massive copper transactions when the Financiers knew, or ought to have known, that GMMC and Sumitomo's transactions were motivated by their intention to manipulate the world's copper market, and not by any genuine commercial need;
  - (c) assisting Sumitomo in concealing the 'sham' or 'hedge' transactions from the public; and
  - (d) collecting billions in interest and fees in connection with the 'sham' copper transactions.
44. The defendant financiers essentially allowed Sumitomo and GMMC to acquire the control of virtually all of the stocks of deliverable physical copper in LME warehouses. Further, the Financiers knew that the concentration of ownership of all, or essentially all, of the LME

warehouse stocks in the hands of cooperating market participants would have the effect of increasing the price of copper.

45. The foregoing actions, agreements and conduct by the Financiers and their co-conspirators created an artificial shortage of copper, thereby precluding free and unrestricted competition among purchasers and consumers in the copper market. By unduly lessening competition in the purchase and supply of copper, the defendants artificially raised the price of copper and copper options worldwide at the expense of other participants in the copper market.

#### **THE CONSPIRATORS' KNOWLEDGE AND PARTICIPATION IN THE MARKET MANIPULATION**

46. Each of the conspiring defendants knew or could reasonably foresee that one of Sumitomo's objectives was the manipulation of the copper market.
47. The transactions between each of the clearing brokers and Sumitomo, and the transactions between each of the financiers and Sumitomo, involved a volume of copper for which Sumitomo could not have had any legitimate need. Indeed, the purpose of the transactions was never to ensure a physical delivery of copper to Sumitomo. The defendants knowingly conspired with Sumitomo to manipulate the copper market.
48. During the period of the manipulation, the defendants each knew that Sumitomo's actions were not warranted by any genuine commercial need, as Sumitomo's transactions and loans for copper were unusually large in the context of the global copper market. Further,

Sumitomo was not engaged in customer delivery visible to any of the defendant conspirators that supported any purported commercial needs.

49. Having entered into an illegal conspiracy with Sumitomo, each of the defendants is likewise liable for all of the reasonably foreseeable consequences of the conspiracy. Given the facts and circumstances known to each of the defendants, manipulation of the price of copper was a reasonably foreseeable consequence of each of the conspiracies with Sumitomo.

## **DAMAGES**

50. Because copper was withheld from the market, the supply of copper available to short position holders was greatly reduced. This caused LME copper prices to increase. These price increases directly affected the prices paid for physical copper in all world markets including the prices paid for copper futures, the prices paid for scrap copper, and the prices paid for copper products, because of the well-established and well-known pricing relationships that exist between the LME and the worldwide cash and futures markets.
51. Sumitomo's conduct in furtherance of the contract, combination and conspiracy had the necessary, intended and foreseeable effect of raising copper prices, consisting of prices of copper futures and physical copper.
52. These necessary, intended and foreseeable effects on copper prices were worldwide in scope and included Canada.

53. There were, at all times relevant to this action, well-established and well-known pricing relationships between the LME and the United States and Canadian physical copper markets, and the United States and Canadian copper futures markets.
54. These pricing and supply effects were known to and reasonably foreseeable by each of the defendants.
55. The Plaintiff and the Class were injured by the manipulation due to the inflated prices for copper which were passed on to them in the chain of distribution. The Plaintiff and the Class paid more for copper and copper products than they would have but for the unlawful conspiracies described above. The existence of the unlawful conspiracies had the effect of inflating, stabilizing, maintaining and establishing copper product prices above competitive levels.
56. The Plaintiff states that the predominant purpose of the conduct of the Defendants was to cause injury to the Plaintiff Class; in the alternative and in any event, the conduct of the Defendants was unlawful, directed towards the Plaintiff Class, and the defendants should have known that the damage sustained by the Plaintiff Class was likely to result.

#### **THE RELEVANT STATUTES**

57. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c.19 (2<sup>nd</sup> Supp.), and in particular s. 36 and s.45.
58. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*, .S.O. 1992, c.6.

## **SERVICE**

59. The Plaintiff pleads and relies on Rule 17.02 (g), (h), (n), (o) and (p) of the Ontario *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign defendants. In particular, *inter alia*, the Defendants' activity described herein constitutes a tort committed in the Province of Ontario and addresses damage sustained by Class Members in Ontario. In addition, some or all of the Defendants carry on business in Ontario and/or are necessary and proper parties to this proceeding in the circumstances described herein.

## **THE PLACE OF TRIAL**

60. The Plaintiff proposes that this action be tried at the City of London, Province of Ontario.

June 7, 2002

**SISKIND, CROMARTY, IVEY & DOWLER <sup>LLP</sup>**  
Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, Ontario  
N6A 3V8

C. Scott Ritchie (LSUC #10912S)  
Charles M. Wright (LSUC #36599Q)  
Tel : (519) 672-2121  
Fax: (519) 672-6065

Solicitors for the Plaintiff