IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Carrier Corporation, Carrier S.A., Carrier Italia S.p.A., Plaintiffs, v. Outokumpu Oyj, Outokumpu Copper Products Oy, Outokumpu Copper (U.S.A.), Inc, Outokumpu Copper Franklin, Inc., Mueller Industries, Inc., Mueller Europe Ltd., Defendants.	06-CV-2186 (BBD) (TMP) **JURY TRIAL REQUESTED**

AMENDED COMPLAINT

Plaintiffs hereby allege, on personal knowledge or information and belief, based upon investigation made by and through their attorneys, as follows:

NATURE OF THE CASE

1. This lawsuit arises from a long-standing cartel carried out by the Defendants and their co-conspirators. Plaintiffs Carrier Corporation and affiliates collectively are the world's largest manufacturer of air-conditioning and commercial refrigeration equipment. Carrier Corporation is a U.S. corporation, with world-wide operations and centralized purchasing functions operating out of its headquarters in the United States. As part of this world-wide operation, Carrier is also one of the largest purchasers – if not the single largest – of ACR Copper Tubing (defined below) in the United States, Europe, and elsewhere in the world. Defendants are major international manufacturers and distributors of ACR Copper Tubing, who entered into an

unlawful combination and conspiracy with each other and with other companies to illegally restrain trade, allocate customers and markets, and fix and maintain the price of ACR Copper Tubing. Plaintiffs bring this antitrust case seeking redress under the laws of the United States of America for the harm caused by this unlawful conspiracy.

2. Beginning at least as early as May 1988, and continuing thereafter until at least March 2001, Defendants engaged in a world-wide conspiracy, the purpose and effect of which was to fix, raise, maintain, and/or stabilize prices and to allocate markets and customers for ACR Copper Tubing sold in the United States, Europe, and elsewhere. Because of Defendants' and their co-conspirators' unlawful conduct, Plaintiffs paid artificially inflated and supra-competitive prices for ACR Copper Tubing in the United States, Europe, and elsewhere and, as a result thereof, have suffered antitrust injury to their business and property.

3. The cartel focused, in particular, on large customer accounts. As one of the world's largest purchasers of ACR Copper Tubing, Carrier was a principal target of the cartel. A decision of the European Commission in December 2003 ("the E.C. Decision") reveals that the cartel targeted "big industrial companies with which prices were individually negotiated once a year." E.C. Decision ¶ 98. The European Commission found that the conspirators decided to limit their focus "to the important customers that everybody wanted to discuss" and "discussed prices charged to individual customers broken down by product type and tube length, as well as market shares and targets for the following year." According to the Commission, the agreements involved "the 70 largest European customers" and the conspirators' "key customers," of which Carrier – as one of the largest purchasers of ACR Copper Tubing throughout the world – was certainly one. *Id.* ¶¶ 116, 173.

4. The cartel's plan was to raise the prices charged to customers like Carrier to supra-competitive levels. To do so, they developed a customer and market allocation scheme designed to suppress price competition and result in higher prices being charged to Carrier in the United States, Europe and elsewhere. Pursuant to the cartel's agreement, Carrier's business in the United States was allocated to the Outokumpu defendants. The other co-conspirators agreed not to pursue Carrier for this business. In return, other co-conspirators, in particular Wieland-Werke AG ("Wieland") and KM Europa Metal AG ("KME") (or the affiliates it controlled), were allocated Carrier business in Europe, as well as business with International Comfort Products ("ICP"), a significant manufacturer of air conditioning equipment based in Tennessee that was acquired late in the conspiracy period by Carrier. As part of the cartel's agreement, Outokumpu did not aggressively pursue business with Carrier in Europe. With occasional exceptions designed to conceal the cartel, it generally either refused to bid for business or submitted non-competitive proposals for Carrier's facilities in Europe. Outokumpu did so, even though it was well-positioned to obtain that business in light of its capability and the close relationship between Carrier and Outokumpu in the United States. The allocation scheme ensured that all the cartel members got a share of the cartel profits and allowed a means of ensuring compliance with the cartel's goal of raising prices in the United States, Europe and elsewhere to uniform and supra-competitive levels. The scope of the cartel's price fixing/allocation was global. Thus, for example, the E.C. Decision reports an internal Outokumpu document dated August 22, 1994 that references the global nature of the conspirators' customer allocation and other cartel activities. It states: "[. . .] is 'our client' and will also keep it. If [. . .] goes along with the 'Global Agreement,' we will have to take it." *Id.* ¶ 144.

5. Together, Outokumpu, Wieland and KME had the market power to make this conspiracy succeed. During the relevant time period, they were the three largest producers of ACR Copper Tubing in the world. Their principal potential competitors were located in Asia, where demand for ACR Copper Tubing in parts of Asia was so high that competition from them outside of these areas in Asia was virtually non-existent. Potential alternative sources of supply – such as other European or United States producers – sufficient to meet the requirements in terms of type, quality, reliability and quantity needed by a large air-conditioning manufacturer like Carrier did not exist. These circumstances facilitated the conspiracy orchestrated by Outokumpu, Wieland and KME. Collectively, these three entities had the market power to maintain a successful cartel in the United States, Europe and elsewhere.

6. But Outokumpu, Wieland and KME also took steps to ensure that alternative sources of supply would not develop. They enlisted the support of others in the conspiracy such as Defendant Mueller Industries, Inc. and its corporate affiliates Mueller Europe Ltd. and Desnoyers S.A. As part of the conspiracy, the Mueller entities agreed not to compete for Carrier's business in ACR Copper Tubing and in return received the benefits of other allocated customers and supra-competitive prices, as well as lack of competition and supra-competitive prices with respect to other product areas like copper plumbing tube, in which the Mueller entities competed with Outokumpu, Wieland and KME. Carrier believes that there may have been other participants in the conspiracy beyond Outokumpu, Wieland, KME and Mueller. The other conspirators should become apparent as discovery in this matter proceeds.

7. The cartel proceeded apace until at least 2001, when Mueller became disaffected, afraid, or possibly both. It decided to blow the whistle to the European Commission in an effort to gain amnesty or otherwise avoid fines for the vast copper tubing and fitting cartel in which it

had participated. As a result, the European Commission began an investigation. Thereafter, competition increased. Those companies that, pursuant to the cartel's agreement, had previously failed to compete effectively for Carrier's business in the United States began to do so because the cartel had begun to disband. In 2003, Wieland turned its attention to the United States in a substantial way by forming a United States joint venture with Kobe Steel. The Wieland joint venture aggressively pursued Carrier for ACR Copper Tubing business in the United States. Likewise, in the 2003 timeframe, KME began aggressively pursuing Carrier for business in the United States beyond the smaller quantity previously supplied to ICP. KME and the Wieland joint venture both began making sales to Carrier's U.S. operations (other than ICP) in 2003. The competition for the United States business that had previously been allocated to Outokumpu was unprecedented. That is because the cartel that had previously restrained competition for Carrier's business had apparently ended.

JURISDICTION AND VENUE

8. Plaintiffs bring this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for treble damages and injunctive relief, as well as reasonable attorneys' fees and costs of suit, for Defendants' violation 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(a) and 26.

10. This Court has *in personam* jurisdiction over each of the Defendants because each was engaged in an illegal customer and market-allocation and price-fixing scheme and conspiracy in unreasonable restraint of trade that was directed at, and had the intended effect of causing injury to, persons and entities residing in, located in, or doing business in the United States. There

is also *in personam* jurisdiction over each of the Defendants because each was found or had agents present in the United States, including, *inter alia*, in Tennessee.

11. Venue is proper in this Judicial District pursuant to Sections 4(a) and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b), (c) and (d), because one or more of the Defendants resided, transacted business, was found, or had agents in this District, and because a substantial part of the events giving rise to Plaintiffs' claims occurred, and a substantial portion of the affected interstate trade and commerce described below has been carried out, in this District.

DEFINITIONS

12. As used in this Complaint:

(a) "ACR Copper Tubing" refers to, but is not limited to, copper tubes used in the manufacturing of air-conditioning and refrigeration ("ACR") units. This includes both straight length tubes and annealed level wound coils ("LWC"). It also includes both smooth tubes and inner grooved tubes.

(b) "Relevant Period" means at least the time period of May 1988 through March 2001.

13. Whenever, in this Complaint, reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

PLAINTIFFS

14. Plaintiff Carrier Corporation is a company incorporated under the laws of Delaware with a principal place of business at One Carrier Place, Farmington, Connecticut. During the Relevant Period, Carrier Corporation purchased in the United States and elsewhere ACR Copper Tubing from Defendants. As a result of Defendants' conspiracy, Carrier Corporation has been injured in its business and property because the prices it paid were artificially raised to anti-competitive levels by Defendants and their co-conspirators.

15. Plaintiff Carrier Corporation is the parent company of a worldwide network of affiliated entities that comprise the world's largest manufacturer and distributor of heating, ventilating, and air-conditioning ("HVAC") systems, refrigeration and food service equipment, and related controls for residential, commercial, industrial, and transportation applications.

16. Plaintiff Carrier France S.A. ("Carrier France") is a company incorporated under the laws of France with registered offices at Rillieux Cedex, Rhone, France. Plaintiff Carrier Italia S.p.A. ("Carrier Italia") is a company incorporated under the laws of Italy with registered offices at Via Raffaello Sanzio, 9, 20058 Villasanta (Milano), Italy. Carrier France and Carrier Italia are subsidiaries of Carrier Corporation. During the Relevant Period, they purchased in the United States and elsewhere ACR Copper Tubing from Defendants or their co-conspirators. For example, in Europe, Desnoyers S.A., Wieland, and Tréfimétaux SA ("Tréfimétaux"), a KME subsidiary, supplied Carrier France, while Wieland, Tréfimétaux and Europa Metalli S.p.A. (another KME subsidiary) supplied Carrier Italia. As a result of Defendants' conspiracy, Carrier France and Carrier Italia have been injured in their business and property because the prices they paid were artificially raised to anti-competitive levels by Defendants and their co-conspirators.

17. Collectively, the plaintiffs will be referred to as "Carrier" or "Plaintiffs."

18. Through the oversight of Carrier's global headquarters in Farmington, Connecticut, Carrier combines its global HVAC and refrigeration expertise in manufacturing, purchasing and sales, with the responsiveness of its local operations in every geographic market, on every continent. Carrier is committed to providing the highest level of quality and service to its customers around the world. Carrier has a storied tradition of excellence in the air conditioning business, dating to 1902 when its founder Willis Carrier invented the first system for "manufactured weather" and sparked an industry that revolutionized the way in which people around the world live, work and play. From that defining moment in New York in 1902 – and through to the present day – Carrier has been a company built on a legacy of innovation. For more than a century, its research, expertise and forethought have resulted in market-leading innovations and "firsts" that have shaped and defined the heating, air conditioning and refrigeration industry. Through over 100 years of product excellence and committed customer service, Carrier has evolved from its roots in the United States into a global company serving millions of people and businesses in 172 countries on six continents around the world. Today, across the globe, Carrier's products create comfortable environments, safeguard food supply, enable the proper transport and delivery of vital medical supplies, and maintain exceptional indoor air quality.

19. Carrier had annual revenues of approximately $12.5 billion in 2005. ACR Copper Tubing is a critical component of many of its products. During the Relevant Period, Carrier estimates that it spent over $1.0 billion on ACR Copper Tubing in the United States and Europe, with approximately three-quarters of those purchases occurring in the United States. The vast majority of those purchases in the United States were made from Outokumpu, per the cartel's

allocation agreement. In Europe, also pursuant to the cartel's allocation, most of the purchases were from Outokumpu's co-conspirators.

20. As a result of Defendants' conspiracy, Carrier Corporation has been injured in its business and property because the prices it paid were artificially raised to anti-competitive levels by Defendants and their co-conspirators. The Defendants and their co-conspirators are jointly and severally liable to Carrier for the anticompetitive effects of their global price fixing and allocation scheme in the United States, Europe and elsewhere.

DEFENDANTS

The Outokumpu Defendants

21. Defendant Outokumpu Oyj is a company organized under the laws of Finland with a registered agent at Riihitontuntie 7 D, 02201 Espoo, Finland. Outokumpu Oyj was engaged in the production or sale of ACR Copper Tubing in the United States, Europe, and elsewhere, directly and/or through its wholly-owned subsidiaries during the Relevant Period. Among other things, Outokumpu Oyj imported copper tubing, including ACR Copper Tubing, into the United States from manufacturing facilities in Finland and sold it directly to customers in the United States or had its U.S. subsidiaries resell it in the United States.

22. Defendant Outokumpu Copper Products Oy ("Outokumpu Copper") is a company organized under the laws of Finland with a registered agent at Riihitontuntie 7 A, 02201 Espoo, Finland. Outokumpu Copper was engaged in the production or sale of ACR Copper Tubing in the United States, Europe, and elsewhere, directly and/or through its affiliates and/or wholly-owned subsidiaries during the Relevant Period. Among other things, Outokumpu Copper imported copper tubing, including ACR Copper Tubing, into the United States from

manufacturing facilities in Finland and sold it directly to customers in the United States or had its U.S. subsidiaries resell it in the United States.

23. Defendant Outokumpu Copper (U.S.A.), Inc. ("Outokumpu U.S.A.") is a company organized under the laws of the United States with its principal place of business located in Bloomingdale, Illinois. It has a registered agent located at 208 S. LaSalle Street, Suite 814, Chicago, Illinois. Outokumpu U.S.A. was engaged in the production or sale of ACR Copper Tubing in the United States, Europe, and elsewhere, directly and/or through its affiliates and/or wholly-owned subsidiaries during the Relevant Period.

24. Defendant Outokumpu Copper Franklin, Inc. ("Outokumpu Franklin") is a company organized under the laws of the United States with its principal place of business located at 4720 Bowling Green Road, Franklin, Kentucky and with a registered agent located at 239 South 5th Street, Suite 1511, Louisville, Kentucky. Outokumpu Franklin was engaged in the production or sale of ACR Copper Tubing in the United States, Europe, and elsewhere, directly and/or through its affiliates and/or wholly-owned subsidiaries during the Relevant Period. During the Relevant Period, it sold substantial quantities of ACR Copper Tubing to Carrier in the United States.

25. Collectively, Outokumpu Oyj, Outokumpu Copper, Outokumpu U.S.A., and Outokumpu Franklin will be referred to as "Outokumpu." During the Relevant Period, these entities had coordinated and interrelated business operations in the ACR Copper Tubing market, acting with a unity of interest. The parent company, Outokumpu Oyj, had effective control over the commercial policy and business decisions of its subsidiaries, and did business through its subsidiaries.

26. During the Relevant Period, Outokumpu Oyj divided its business into different divisions. One of these was the Copper Products Division, responsible for Outokumpu Oyj's worldwide copper products business. The Copper Products Division was run by a 100% wholly-owned subsidiary – Defendant Outokumpu Copper – which in turn, owned and controlled various Outokumpu subsidiaries throughout the world with copper-related businesses, including Defendants Outokumpu U.S.A. and Outokumpu Franklin. Outokumpu Copper was incorporated on December 30, 1988, in the wake of Outokumpu Oyj's prior commencement of the Cuproclima conspiracy discussed below.

27. Outokumpu Copper was Outokumpu Oyj's tool for implementing the antitrust conspiracy. In fact, the European Commission found no evidence "showing real business autonomy" of Outokumpu Copper, and held Outokumpu Oyj and Outokumpu Copper "jointly and severally liable" for their cartel activities. Even after the creation of Outokumpu Copper as the means for implementing the copper tube cartel, Outokumpu Oyj remained very involved in the machinations of the conspiracy. For example, the Chief Executive Officer of Outokumpu Oyj, who had the ultimate responsibility for the global operations of Outokumpu's business, had meetings and contacts with high-ranking executive officers of co-conspirators to discuss the market situation in copper tubes. The CEO of Outokumpu Oyj also routinely intervened in Outokumpu Copper's business operations to ensure regular meetings among management of its subsidiaries and the management of co-conspirators. Outokumpu Oyj ensured its dominance of its subsidiaries through its unfettered control of the Executive Board responsible for the management of Outokumpu Copper. During the Relevant Period, Outokumpu Copper's Executive Board was composed of all or nearly all of the members of Outokumpu Oyj's executive management (usually four to five individuals) plus one to three members of Outokumpu Copper's

top executives. For its part, as Outokumpu Oyj's puppet, Outokumpu Copper was run by an executive committee composed of various executives from its global businesses. Outokumpu Copper was organized in this way to ensure, among other things, global application of Outokumpu Oyj's conspiracy and the participation in the cartel of Outokumpu Oyj's direct and indirect subsidiaries, including Outokumpu U.S.A. and Outokumpu Franklin. High-ranking executives from the various world-wide operating subsidiaries, including its U.S. subsidiaries, were involved in the management of Outokumpu Copper. Moreover, Outokumpu Copper executives were members of the Boards of Outokumpu Copper's U.S. subsidiaries, including Outokumpu U.S.A. and Outokumpu Franklin.

28. During the Relevant Period, Outokumpu Oyj operated its business as a single global enterprise. It made a systematic effort to familiarize the management of its copper business throughout the world of Outokumpu Oyj's objectives and the corporate values that it expected its management to commonly share, including its disdain for global competition laws. These values illustrated Outokumpu's corporate culture and influenced the way in Outokumpu management sought to develop their business. Outokumpu is a recidivist cartel participant, who has been found on multiple occasions to have disregarded competition laws. Its participation in the vast copper tubing conspiracy is only the latest chapter in its anticompetitive business conduct, as it had previously violated competition laws, as found by the European Commission, for actions in the stainless steel industry.

29. To the outside world, including its customers, Outokumpu sold itself as an integrated and unified copper enterprise with outposts throughout the world. It boasted of a worldwide customer-focused production and service network. Outokumpu Copper's corporate website portrayed Outokumpu's Finnish and American components as a single global enterprise.

It states: "No matter where you are in the world, when you forge a relationship with [Outokumpu], you're also getting the support and resources of a globally successful company."

30. Outokumpu's public statements were consistent with the business practices that Carrier experienced firsthand. Year to year, Carrier witnessed key managerial personnel rotate between Outokumpu's Finnish and American entities. It was apparent that career advancement in Outokumpu's United States subsidiaries entailed time working for the Finnish entities and vice versa. The executive rotation system was another device used to ensure consistent day-to-day management of the cartel across all the Outokumpu entities.

31. In 1997, Outokumpu explained its international strategy to investors: "Our strategy in copper products is to operate globally, but not everywhere with every product. We supply each product only in areas where we can achieve the market position and profitability targets." The cartel was the secret to Outokumpu's success, ensuring its market position and profitability targets in its international operations. That secret, however, was concealed from Outokumpu's investors and the general public.

The Mueller Defendants

32. Defendant Mueller Industries, Inc. ("Mueller Industries") is a company organized under the laws of the United States with its principal place of business located in Memphis, Tennessee. It has a registered agent at 800 South Gay Street, Knoxville, Tennessee. Mueller Industries owns and operates plants throughout the United States. Mueller Industries was engaged in the production or sale of ACR Copper Tubing in the United States directly and/or through its wholly-owned subsidiaries, during the Relevant Period.

33. Defendant Mueller Europe Ltd. ("Mueller Europe") is a limited liability company organized under the laws of the United Kingdom with its principal place of business located at

Oxford Street, Bilston, West Midland, WV14 7DS, Great Britain. It is a wholly-owned subsidiary of Defendant Mueller Industries. Mueller Europe was engaged in the production or sale of ACR Copper Tubing in the United States, Europe, and elsewhere, directly and/or through its affiliates and/or wholly-owned subsidiaries, during the Relevant Period. Among other things, Mueller Europe imported copper tubing, including ACR Copper Tubing, into the United States from manufacturing facilities in Great Britain or France and sold directly to customers in the United States or had its U.S. affiliates resell it in the United States.

34. Collectively, Mueller Industries and Mueller Europe will be referred to as "Mueller." During the Relevant Period, these entities had coordinated and interrelated business operations in the ACR Copper Tubing market, acting with a unity of interest. The parent company, Mueller Industries, had effective control over and did business through its subsidiaries.

35. At the beginning of the Relevant Period, Mueller Industries was not among the world's leading suppliers of ACR Copper Tubing. In fact, it toiled under the cloud of bankruptcy that engulfed its parent company Sharon Steel Corporation. But the management of Mueller Industries dreamed of greater possibilities. Thus, upon emerging from the Sharon Steel bankruptcy as an independent, publicly-owned company and no longer a subsidiary of Sharon Steel, Mueller Industries' management embarked on a campaign of building the business. Key to their vision was the internationalization of Mueller Industries. In particular, Mueller Industries' management aspired to play in the same league as the big three – Outokumpu, Wieland and KME. Accordingly, Mueller Industries looked for an opportunity to enter into the European arena. In 1997, Mueller Industries made that move through the acquisitions of Wednesbury Tube Company in Great Britain and Desnoyers S.A. ("Desnoyers") in France. Some time thereafter, Mueller Industries changed the names of the two companies to Mueller Europe Ltd. and Mueller Europe

S.A., respectively. In the course of the following years, Mueller Industries treated its two European subsidiaries as one entity, and over time undercapitalized the former Desnoyers, stripped it of assets and consolidated its operations in France into those of Mueller Europe in Great Britain. Eventually, Mueller closed the former Desnoyers facilities and put what had become Mueller Europe S.A. into liquidation.

36. After Mueller Industries' acquisition of the two European Mueller operations, Mueller, Mueller Europe, and Mueller Europe S.A. enjoyed coordinated and interrelated business operations in the ACR Copper Tubing market in the United States and Europe and acted with a uniformity of interest. Throughout the Relevant Period, Mueller Industries exercised effective control over Mueller Europe and conducted business through Mueller Europe, its subsidiary. From its acquisition in 1997, rather than treating Mueller Europe as an independent subsidiary, Mueller Industries operated and held out Mueller Europe as an internal operational division during the Relevant Period. Mueller Europe's Bilston manufacturing plant was listed among Mueller Industries' other, domestic manufacturing plants as Mueller's European Operations, part of the Standard Products Division of Mueller Industries. Corporate management and direction of Mueller Europe and Mueller Industries are highly intertwined. Three of Mueller Europe's seven directors are currently Executive Officers of Mueller Industries, as is Mueller Europe's corporate secretary. Three of the remaining four directors were officers of Mueller Industries during the Relevant Period. Mueller Europe's president, Patrick Donovan, is currently an Executive Officer of Mueller Industries with the title of President – European Operations. Mueller Europe is not financially independent of Mueller Industries. Mueller Industries funded a substantial ($40 million) capital improvement project to modernize the Mueller Europe plant.

37. Mueller was a willing participant in the cartel with Outokumpu, Wieland and KME. Mueller Industries controlled and directed the activities of Mueller Europe and Desnoyers after their acquisition to ensure its place at the table in the European meetings of the co-conspirators regarding the conspiracy. This promoted Mueller Industries to the position of "elephant" among the major European copper tube manufacturers. "Elephants" was actually a code name used by the cartel members for the executives of the major tube manufacturers, including executives of Outokumpu, Wieland and KME. Mueller's executives joined this secret club, attending several meetings of the "elephants" between 1997 and 2001. During that time, Mueller Industries and its European subsidiaries discussed and agreed to market and sales volume allocation schemes and price increases with the other "elephants." Some of the discussions related to plumbing tubes because the "elephants" were also involved in that related line of business, but they also had discussions and made conspiratorial agreements with respect to ACR Copper Tubing. The supplemental remunerative benefits that Mueller received in plumbing tube allocations and price fixes were part and parcel of a larger copper tube conspiracy involving Copper ACR Tubing. The frequent meetings of the "elephants" about the copper tube markets and ways to control them gave them ample opportunity to conspire with respect to all manner of products; the profits to be made from coordinated activity in their various endeavors gave them the motive to conspire; and they in fact acted on the opportunity and the motive, and did conspire with respect to ACR Copper Tubing.

38. Mueller Industries used Mueller Europe and Desnoyers as interchangeable parts in its conspiratorial plan. Mueller Europe and Desnoyers were in frequent contact and acted jointly as a single enterprise at Mueller Industries' direction. Thus, in its decision with respect to a plumbing tube cartel issued in September 2004 (¶ 572), the European Commission had no

hesitation in finding that the two subsidiaries coordinated their activities and acted jointly as alter egos of one another:

> [T]he Commission considers that the facts demonstrate that Mueller Europe Ltd. (formerly Wednesbury) and Mueller S.A. (formerly Desnoyers) participated jointly in the infringement. Often, they were represented by business leaders of either of the two companies and co-ordinated their participation. Thus, they were necessarily aware of each other's illegal behaviour throughout the entire period of the infringement. When the companies of the same group all manufacture the cartelized product and furthermore participate in the same cartel, it is hardly conceivable that each of them would conduct its own autonomous policy on the market of the product in question and make independent decisions with regard to competitively sensitive issues, in particular, prices, sales and production volumes. This finding is not contested by Mueller.

39. Mueller was well aware of the cartel and its activities in the time period both before and after its acquisition of Mueller Europe and Desnoyers. It was a willing participant in meetings of the cartel members, intentionally kept the cartel secret, and obtained the benefits of the supra-competitive pricing achieved by the cartel's activities. Not until 2001, at the earliest, when Mueller reported the cartel to the European Commission did Mueller and its subsidiaries begin a withdrawal from the cartel. Before that, among other things, Mueller Industries' status as an "elephant" enabled frequent complicit and illicit discussions and agreements with its co-conspirators. As it related to Carrier, Mueller's complicity principally involved yielding Carrier's ACR Copper Tubing business to other co-conspirators and thereby ensuring supra-competitive prices. But Mueller also benefited from some sales of ACR Copper Tubing to Carrier made at supra-competitive prices made possible by the cartel. By way of example, Mueller Industries made some sales to Carrier in the United States at supra-competitive prices, and Desnoyers, in the time periods both before and after its acquisition by Mueller, made sales to Carrier France at supra-competitive prices.

DOE DEFENDANTS AND CO-CONSPIRATORS

40. Various individuals, partnerships, corporations and associations other than the Defendants named in this Complaint (the "co-conspirators") have participated in the violations of the federal antitrust laws for which Plaintiffs seek relief, and have performed acts and made statements in furtherance thereof. Among others, these unnamed co-conspirators included Wieland Werke AG (Wieland") and KM Europa Metal AG ("KME"), as well as its subsidiaries Europa Metalli SpA and Tréfimétaux SA. The executives at the highest levels of these companies were informed of and involved in the conspiratorial activities of the cartel. These executives had responsibility for the global businesses of Wieland and KME and their subsidiaries. There may also have been other participants in the conspiracy, currently unknown to Carrier, but whose identity may become known during discovery in this litigation.

THE COPPER TUBING MARKET

41. Generally, copper tubing is divided into two main product groups: 1) plumbing tubes (also called sanitary tubes), which are used for water, oil, gas, and heating installations, and 2) higher value-added industrial tubes, which are divided into subgroups based on their end use. The most significant of the industrial tube types in terms of volume is tubing for air-conditioning and refrigeration ("ACR") applications.

42. ACR Copper Tubing provides the situs in these ACR applications for the heat exchange. The walls of the ACR Copper Tubing are exposed to the coolant/refrigerant, which reduces the temperature of the air in contact with the tube. Copper is the ideal metal for the walls of these tubes due to its high level of thermal conductivity.

43. ACR Copper Tubing is typically supplied in two forms. The first is called straight length tubes, which are hard or "drawn" tubes. The second is a more advanced type of tube

called level wound coils. LWCs are soft or "annealed" tubes that have a higher thermal conductivity than the straight length tubes because they have thinner walls. In addition, a superior form of LWC is called inner grooved tubing ("IGT"), also called "enhanced LWC," which has grooves to further increase thermal conductivity by increasing the tube's surface area.

44. The price of ACR Copper Tubing consists of two elements: 1) the price of the raw material, copper, and 2) the conversion price. The price of the copper is usually set based on the index of either the London Metal Exchange ("LME") or the Comex Division of the New York Mercantile Exchange ("Comex"). The conversion price corresponds to the value added by the manufacturer, which includes the profit margin.

45. In some instances, a customer will provide the copper raw material, and the manufacturer would then charge a price based solely on the conversion price. These are called "tolling" arrangements.

46. LWCs, and in particular enhanced LWCs, typically have a significantly higher conversion price because of the higher value added by the manufacturer.

DEFENDANTS' WRONGFUL CONDUCT

Trade and Interstate Commerce

47. During the Relevant Period, the Plaintiffs purchased ACR Copper Tubing from one or more of the Defendants.

48. Defendants and their co-conspirators are located in various states throughout the United States and in a number of countries throughout the world.

49. During the Relevant Period, the market for the manufacture and sale of ACR Copper Tubing was a global economic market. Defendants and their co-conspirators directed

their anticompetitive conduct not just at the United States but also at the global market for the manufacture and sale of ACR Copper Tubing.

50. During the Relevant Period, Defendants and their co-conspirators sold ACR Copper Tubing in a continuous and uninterrupted flow of interstate and foreign trade and commerce to customers located in countries and in states other than the countries or states in which the Defendants produced ACR Copper Tubing.

51. The supply chain dynamics of the global ACR Copper Tubing market, such as supply cost and lead time, are conducive to importing and exporting product between the different sales regions. Therefore, customers such as Plaintiffs purchase ACR Copper Tubing both in their own sales region and in others, further illustrating the global nature of this market. For example, Carrier France and Carrier Italia both purchased ACR Copper Tubing from Outokumpu Franklin in the United States during the Relevant Period. The amounts purchased were fairly limited because of the cartel put in effect by Defendants and their co-conspirators. Nonetheless, these purchases reflect the global nature of the ACR Copper Tube Market, in which ACR Copper Tubing manufactured in one part of the world could be and was sold into another part of the world. Likewise, sales could be and were made from Europe to the United States. For example, as part of its allocation under the conspiracy, Tréfimétaux, one of KME's subsidiaries located in France, sold ACR Copper Tubing to ICP in the United States and imported and delivered the ACR Copper Tubing to ICP in Lewisburg, Tennessee. In 1999, Carrier acquired ICP, though its purchasing function was not fully centralized with other Carrier ACR Copper Tubing purchasing prior to the closure of the Lewisburg facility in 2002. As a result of the acquisition, Carrier has standing to pursue damages arising from the supra-competitive prices charged to ICP during the Relevant Period as a result of the anticompetitive cartel by Defendants and their co-conspirators.

52. The activities of Defendants and their co-conspirators were within the flow of, and substantially affected, interstate and foreign trade and commerce.

53. The worldwide conspiracy in which the Defendants and their co-conspirators participated had a direct, substantial, and reasonably foreseeable effect on United States commerce.

54. Among other unreasonable restraints on interstate trade and commerce, Defendants' combination and worldwide conspiracy artificially raised the price of ACR Copper Tubing in the United States, Europe, and elsewhere, and deprived Plaintiffs of the benefits of free and open interstate competition for ACR Copper Tubing.

General Allegations of Defendants' Illegal Conduct

55. Beginning at least as early as May 1988, and continuing thereafter until at least March 2001, Defendants and their co-conspirators engaged in a continuing combination and conspiracy with respect to the sale of ACR Copper Tubing in the global market, including the United States, Europe, and elsewhere, in unreasonable restraint of interstate and foreign trade and commerce.

56. The combination and conspiracy consisted of an agreement among the Defendants and their co-conspirators, the substantial terms of which were to allocate customers and markets and to fix, raise, stabilize and maintain at artificially high levels the prices they charged for ACR Copper Tubing in the United States, Europe, and elsewhere.

57. For the purpose of forming and effectuating their combination and conspiracy, Defendants and their co-conspirators have done those things that they combined and conspired to do, including, among other things:

(a) Participating in meetings and conversations, including the biannual meetings of the ACR Copper Tubing trade association called the Cuproclima Quality Association, during the Relevant Period to discuss and fix the prices of ACR Copper Tubing sold in the United States, Europe, and elsewhere;

(b) Agreeing to charge prices at certain levels and otherwise fix, increase, and maintain prices of ACR Copper Tubing sold in the United States, Europe, and elsewhere;

(c) Selling ACR Copper Tubing at the agreed upon prices and/or in conformity with their combination and conspiracy;

(d) Agreeing to allocate sales regions and customers of ACR Copper Tubing sold in the United States, Europe, and elsewhere so as to reduce competition and to raise, stabilize and maintain artificially high price levels.

(e) Instituting mechanisms to monitor compliance with and to punish any deviation from the combination and conspiracy;

(f) Instituting a strategy of coordinating price bids submitted to major purchasers of ACR Copper Tubing;

(g) Engaging in coordinated attempts to lure competitors into the combination and conspiracy;

(h) Engaging in coordinated attempts to purchase, financially subjugate, or drive competitors out of business;

(i) Agreeing to conceal and keep secret their illegal combination and conspiracy; and

(j) Removing, concealing or destroying documents containing evidence of their illegal conduct.

58. Defendants conspired in a global price-fixing scheme that had the direct and substantial effect of keeping prices paid by Carrier in the United States, Europe and elsewhere artificially high. Price movements in each sales region were inextricably linked to all other regions so that the prices charged to Carrier by Defendants and their co-conspirators in one country had a direct, substantial and foreseeable effect on prices charged to Carrier in another country.

59. Many purchasers of ACR Copper Tubing are multinational corporations that buy these products in Europe, the United States, Asia and elsewhere. Because of this, Defendants affirmatively acted to eliminate any regional procurement price differentials by setting and maintaining artificially high prices throughout the global market. For example, in furtherance of the conspiracy, Defendants acted to assure that prices they were charging for ACR Copper Tubing in the United States were the same (taking shipping costs into account) as those they were charging elsewhere to those companies, like Carrier, that had access to markets around the world. Otherwise, multinational corporate purchasers like Carrier, would have been able to purchase all of the corporation's world-wide demand for ACR Copper Tubing in the United States and then ship those products to facilities world-wide. Defendants recognized that such behavior by multinational buyers would be immediately damaging to the cartel's profitability and stability. Thus, Defendants acted to eliminate regional price differentials, at least to an extent that prevented intra-firm arbitrage-like behavior on the part of multinational corporate purchasers.

60. Carrier is a multinational corporation that procures ACR Copper Tubing worldwide through its integrated purchasing operations. Carrier's purchasing operations were managed out of its worldwide headquarters in the United States. As part of those centralized purchasing operations, purchasing personnel from Carrier's headquarters would work with Carrier personnel responsible for Carrier plants throughout the world to ensure that Carrier was

obtaining the best price possible for its purchases from wherever the product could be obtained. Among other things, Carrier's centralized purchasing department would collect data on sales prices being charged by suppliers throughout the world for use in negotiating supply contracts. Personnel from Carrier's centralized purchasing department in its United States headquarters would be involved in negotiations with ACR Copper Tubing suppliers relating to potential Carrier purchases in different areas of the world, including Europe and the United States.

61. During the Relevant Period, Defendants and their co-conspirators singled out Carrier and other similarly situated companies by devising a unique global approach for fixing the prices of ACR Copper Tubing offered to Carrier. This approach assured that worldwide pricing for Carrier was centrally managed and coordinated. In other words, the inflated prices charged by Defendants and their co-conspirators to Carrier were effectively the same throughout the world, whether the deal was consummated in the United States or in some other country.

62. Specifically, Defendants and their co-conspirators knew that if the cartel did not act to assure that prices in one area of the globe were no less expensive (taking shipping costs into account) than those in another area, Carrier would have been able to purchase its worldwide demand for ACR Copper Tubing in one area and then ship those products to their other global locations. As a result, Defendants and their co-conspirators took affirmative steps to eliminate any regional procurement price differentials available to Carrier by setting and maintaining artificially high prices throughout the global market for ACR Copper Tubing.

63. Because of Carrier's multinational presence and its centralized management and approach to purchasing, the cartel could not afford to limit its strategy to within Europe, but also included the United States. In order to prevent differentials that could allow Carrier to find the best price worldwide, thereby undermining the effectiveness of the cartel, the members of the

cartel: (a) globally coordinated product pricing to Carrier; (b) designated global account management to assure price continuity across Carrier's worldwide locations; and (c) instituted a strategy for globally approaching Carrier. As a result, the same illegal price increase affected Carrier's American facilities and any facilities in Europe or elsewhere.

64. The combination and conspiracy engaged in by the Defendants and their co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Cuproclima Quality Association and Formation of the Cartel

65. The Cuproclima Quality Association for ACR Tubes ("Cuproclima") was established on September 27, 1985, with the primary purpose of establishing and controlling a quality standard and label for ACR Copper Tubing. The members included Outokumpu, Wieland and KME, among others.

66. By at least the late 1980's, and as described in detail below, Cuproclima became a principal vehicle, though not the exclusive means, through which Defendants coordinated their price fixing and customer and market allocation activities.

67. Official Cuproclima meetings would occur two times a year, once in the Spring and once in the Fall. Starting at least since May 1998, an "unofficial" agenda was added to the regular official meetings. These meetings provided a regular opportunity for the cartel participants to discuss and fix prices, allocations and other commercial conditions. But the meetings were supplemented with frequent bilateral or multi-lateral contacts among Defendants and their co-conspirators outside the official Cuproclima venue.

68. While the conspiracy involved Cuproclima members, outsiders, such as Desnoyers and Austria Buntmetall, are known to have participated in some of its activities in the 1990's.

69. Cuproclima was officially disbanded after a European Commission ("E.C.") investigation began in March 2001.

Specific Activity of the Conspiracy

70. With the Cuproclima and other meetings as a foundation, Defendants engaged in a world-wide conspiracy to fix, raise, maintain, and/or stabilize prices and to allocate markets and customers for ACR Copper Tubing sold in the United States, Europe, and elsewhere during the Relevant Period.

71. The illegal conspiracy consisted primarily of setting target prices and agreeing on concerted price increases, as well as allocating customers and markets. The Fall Cuproclima meetings would take place prior to these negotiations, and a primary purpose of these meetings was for Defendants to coordinate their individual negotiations with customers in furtherance of the conspiracy. At the following Spring Cuproclima meetings, Defendants would monitor each party's compliance with the agreed upon price targets and customer and market allocations by analyzing the general market information and the development of market shares.

72. The success of any price increase depended on the producers being content to maintain their market share at the prevailing level, hence the need to establish a base for comparison and a continuing monitoring system. Accordingly, Defendants allocated customers and froze their market shares. Implementation was ensured through a "market leader" arrangement for certain territories and key customers. Compliance was further monitored through regular exchanges of confidential information by fax, e-mail, and phone, as well as in the unofficial Cuproclima meetings.

73. Because the cost of copper was based on the LME or Comex index, Defendants' price collusion related to the conversion price element of the total price of ACR Copper Tubing.

General price increase announcements were not made, because purchasers included large industrial companies for whom prices were individually negotiated once a year.

74. In furtherance of this conspiracy, Defendants would frequently exchange competitively sensitive information, such as pricing and volume information for specific customers.

75. There were essentially three elements to Defendants' illegal cartel: 1) fixing of target conversion prices and other commercial terms; 2) allocation of market shares and customers; and 3) monitoring and implementation mechanisms.

Fixing of Target Prices and Other Commercial Terms

76. Specific evidence of Defendants' cooperation to fix conversion prices and other terms of ACR Copper Tubing during the Relevant Period includes, but is in no way limited to, the following:

77. Handwritten notes taken by an Outokumpu representative demonstrate price cooperation among competitors was functioning well in 1989. They state, "Cuproclima- working fine. . . . Current situation [for LWC tubes] is good. Demand is high. Prices have been rised. . . . Cuproclima works well."

78. On October 29-30, 1992, an internal document of one of the cartel members notes the objective to "focalize our efforts to increase the prices at least 10% in the countries where the currency was devaluated."

79. In 1992, cartel members had bilateral discussions with regard to the target prices and the level of price increase.

80. An internal Outokumpu fax in August 1994 notes "the price increase of ACR tubes in Europe – target 20%."

81. In September 1994, the Defendants agreed to specific increased prices for 1995. Defendants and their co-conspirators subsequently implemented these collusive price increases.

82. On July 24, 1995, Defendants and their co-conspirators set their 1996 price targets at a multi-lateral meeting. The targets ranged from 5% to 10%.

83. From May 17-19, 1995, in France, cartel members met to further memorialize the details of the illegal cartel. Among other things, the parties agreed to certain market conditions and security rules to keep the cartel secret, such as an agreement not to memorialize the content of the meetings.

84. At the Cuproclima meeting in Prague on October 31, 1995, Defendants and their co-conspirators presented tables containing each producer and customer, with indication of prices and volumes for each customer and the targets Defendants agreed upon to be reached. They also indicated the order in which Defendants would approach a particular customer to announce the price increase, as well as other terms of the agreement.

85. In 2000, Defendants and their co-conspirators jointly prepared a pricing sheet that contained price increase targets for 2001. The targets ranged from 4% to 5.5%.

86. The cartel members had regular contacts over the phone to discuss individual customers or prices. These calls took place until at least March 2001.

87. The last known Cuproclima meeting during which commercial issues were discussed was in Zürich on February 2, 2001. As noted in the internal documents of one of the cartel members, Defendants shared their market share and sales volume data for 1998-2000, and projections for 2001-2003.

88. In addition to fixing prices, Defendants agreed upon other types of commercial terms such as payment terms and consignment stocks.

Allocation of Market Shares and Customers

89. In addition to the facts recited above, evidence of Defendants' cooperation to allocate customers and market shares in the ACR Copper Tubing industry during the Relevant Period included, but was in no way limited to, the following:

90. Unofficial minutes of a Cuproclima meeting note that the Defendants agreed upon specific market shares that would be controlled during a subsequent meeting to monitor eventual deviations. Defendants further agreed that if a market share loss was found, they would examine the reasons for the loss and then attempt to reestablish the agreed upon market share percentages.

91. To agree upon customer allocations, an identification number assigned to a specific customer would be called at a Cuproclima meeting, and the Defendants supplying that customer would answer the call and withdraw from the meeting to discuss how to proceed towards that customer with respect to pricing, supply quantities and terms and conditions. If another Defendant also wanted to supply ACR Copper Tubing to that customer, there was a mechanism for conveying that request to the existing supplier, who ultimately made the decision as to whether to grant that Defendant a supply share.

92. The customer allocation was also implemented with Defendants' agreement to quote artificially high prices if a supplier was approached by a customer that was not allocated to it.

Monitoring and Implementation Mechanisms

93. To police the illegal cartel, Defendants and their co-conspirators appointed "market leaders" who were responsible for determining and managing prices the conspirators would charge in certain regions. The market leader was usually the Defendant or the co-conspirator with the highest sales of ACR Copper Tubing in that region.

94. A cartel member's business document explains that "[t]he mission of the market leader is to protect the interest of each member as agreed. He has to manage the sequence of visits, he must be informed before each visit and immediately after the report of the negotiation. Only the market leader can change the targets if necessary and must inform immediately all the [companies] involved. No change to be applied before everybody is informed. In the case of disagreement between a member and a market leader[,] the market leader is taking the final decision."

95. Periodically, the Defendants and their co-conspirators would meet for the purpose of controlling compliance. Thus, for example, an internal Outokumpu report concerning the spring Cuproclima meeting in 1993 at Tegernsee expressed concern over controlling compliance in the future, noting "[b]efore the next meeting we will reassess how the compliance with these principles could be ensured."

96. In addition to the market leader arrangement, the illegal cartel was monitored through exchanges of detailed information on sales, market shares, customers, and prices. For example, during the cartel the Defendants and their co-conspirators developed a spreadsheet to facilitate the compilation of such detailed information. Thereafter, they brought laptop computers to their meetings and exchanged this spreadsheet information on disks to facilitate data processing and dissemination of the information.

EUROPEAN COMMISSION INVESTIGATION AND FINES

97. On December 16, 2003, the European Commission ("E.C.") adopted a decision and assessed fines totaling €79 million against participating companies in an international price-fixing and market allocation conspiracy in the ACR Copper Tubing industry. Specifically, the following fines were imposed:

Outokumpu Oyj and Outokumpu Copper – €18,130,000;

Wieland – €20,790,000;

KME-Group – €18,990,000;

KM Europa – €10,410,000; and

Europa Metalli and Trèfimètaux – €10,410,000.

98. The E.C. determined that at least during the Relevant Period, these entities illegally agreed on price targets and other commercial terms for ACR Copper Tubing, coordinated price increases, allocated customers and market shares, as well as monitored implementation of their competitive arrangements by a market leader arrangement, and by exchanging competitively sensitive information.

99. The E.C.'s Decision catalogues the charged parties' continuous and frequent efforts to reap profits from their illegal cartel arrangement for over a decade. The Commission further found that "[n]one of the parties substantially contested . . .the anti-competitive infringements identified in this Decision."

100. In September 2004, the Commission came out with a second decision detailing further illicit meetings among the conspirators, including Outokumpu, Mueller, Wieland and KME. This decision imposed additional fines for anticompetitive conduct relating to copper plumbing tube. A third decision from the Commission relating to copper fittings is expected in the future. On September 20, 2006, the Commission issued a press release announcing the imposition of € 314.7 million in fines relating to a price fixing cartel involving copper fittings producers, including Mueller. According to the press release, between 1988 and 2004, some thirty companies involved in this cartel fixed prices, discounts and rebates, agreed on mechanisms

to coordinate price increases, allocated customers, and exchanged commercially important and confidential information.

101. The participants in the cartel that were investigated by the Commission did not limit their activities to Europe. The E.C. Decision primarily concerned itself with conduct in Europe because its jurisdiction does not extend beyond the European Union. However, the combination and conspiracy were global in scope, as evidenced by, among other things, the following facts:

(a) Representatives of Cuproclima members who engaged in the illegal activity, including without limitation representatives of the cartel members' management boards and the chief executive officer of Outokumpu Oyj, had responsibility for the cartel members' global businesses;

(b) Purchasers of ACR Copper Tubing were large industrial companies with global operations such as Carrier;

(c) Defendants coordinated negotiations with their customers in the United States, including Carrier's centralized purchasing representatives from the United States, in accordance with the fall Cuproclima meetings, waiting until after these meetings to negotiate yearly contracts with customers such as Plaintiffs;

(d) Prices in the United States had to be and were maintained at levels comparable to those fixed in other regions in order to maintain the price levels in Europe and elsewhere;

(e) The failure during the Relevant Period of co-conspirators to compete aggressively for Carrier's business in the United States and Europe, including Outokumpu's

repeated failure to pursue Carrier's European supply needs and its co-conspirators' corresponding failure to pursue Carrier's supply needs in the United States;

(f) Wieland and KME's dramatic change in direction in or about 2003 in aggressively pursuing the supply of ACR Copper Tubing to Carrier in the United States; and

(g) Documentary evidence reflects the existence of a global conspiracy;

102. Thus, by way of example, an internal Outokumpu document reflects the existence of a "Global Agreement" that Outokumpu had to accept in order to ensure a properly functioning cartel, a substantial agreed-upon price increase, and the protection of its customer allocation from competition.

FRAUDULENT CONCEALMENT

103. Plaintiffs had no knowledge of the combination and conspiracy alleged in this Complaint, or of any facts that could or would have led to the discovery thereof, until after December 16, 2003, the date of the E.C. Decision. Plaintiffs could not have discovered these violations at an earlier date through the exercise of due diligence, because the Defendants and their co-conspirators employed acts and techniques that were calculated to conceal the existence of such illegal conduct.

104. Defendants and their co-conspirators engaged in a successful illegal price-fixing conspiracy with respect to ACR Copper Tubing, which was affirmatively concealed, as set forth herein, and which, by its nature, was inherently self-concealing, in at least the following respects:

(a) by utilizing covert meetings, discussions and communications to devise and implement their illegal course of conduct;

(b) by agreeing among themselves not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme;

(c) by giving false and pretextual reasons for the pricing of ACR Copper Tubing sold by them during the Relevant Period and by describing such pricing falsely as being the result of competitive factors rather than collusion; and

(d) by destroying or suppressing evidence of their illegal conduct.

105. The European Commission noted the extent to which Defendants affirmatively concealed their illegal price-fixing conspiracy. It summarized the parties' actions to conceal the conspiracy as follows: "The anticompetitive object of the parties is also shown by the fact that they took explicit action to conceal their meetings and to avoid detection of their agreements and documents. To this effect, they established security rules to prevent a paper trail . . . and used a coding-system to hide the identity of the producers in their documents and spreadsheets concerning target prices . . . . Moreover, certain documents concerning Cuproclima meetings contain an express mention instructing the addressee to destroy the document after reading . . ., which further indicates the illegal purpose of the meeting and the intention to conceal it."

106. Sometime after the initiation of the E.C. investigation in March 2001, but before publication of the E.C. Decision in December 2003, the precise date being unknown to Carrier, Carrier became aware of the E.C. investigation after reviewing press reports regarding the investigation. But, through the exercise of reasonable diligence, it was unable to uncover any meaningful details of Defendants' illegal acts until the E.C. Decision was issued. Carrier cannot currently identify precisely which entities were identified in these press reports that it saw, but it does not believe Mueller was among them. The press reports that Carrier saw provided no details regarding the scope, nature, duration, or effect of the conduct being investigated. Nor was there any press report of which Carrier was aware in which any ACR Copper Tubing suppliers admitted

any wrongdoing or in which any other source concluded or provided evidence that there had been wrongdoing.

107. Equally devoid of any meaningful information were the public securities filings and shareholder reports of the Defendants and their co-conspirators. They intentionally and repeatedly omitted any acknowledgement of wrongdoing or the scope or nature of the investigation by the European Commission in the filings that followed the commencement of the E.C. investigation. For example, at least until September 2003, Mueller chose not to disclose even an alleged existence, let alone an actual existence, of a cartel or the involvement of Mueller or its subsidiaries in such a cartel, to the public and the victims of the conspiracy. In a press release accompanying a Form 8-K filed by Mueller with the United States Securities and Exchange Commission on or about September 3, 2003, Mueller reported for the first time that "the European Commission had released a statement alleging infringement in Europe of competition rules by manufacturers of copper tubes including Mueller Industries, Inc. and businesses in France and England, which it acquired in 1997." Mueller, however, provided no further details about the scope, nature, duration and effect of the cartel.

108. Sometime before the E.C. issued its decision in December 2003, an employee in Carrier's Global Purchasing Department, Fred Benedict, who has since retired from Carrier, made an inquiry of representatives of one or more ACR Copper Tubing suppliers about the press reports Carrier had seen in an effort to gain any meaningful information about whether there had in fact been any wrongdoing and what, if any, impact it had on Carrier. The representatives refused to give Mr. Benedict any meaningful information about the E.C. investigation or to acknowledge the existence of the illegal cartel. The names of the participants to these

conversations are not currently known to Carrier, but they are believed to include representatives of Outokumpu.

109. In fact, Outokumpu affirmatively misrepresented its involvement in the cartel through statements made to the press. On March 24, 2001, the New York Times reported the European Commission's unannounced inspection of Outokumpu to look "for evidence of anti-competitive behavior in the market for copper tubes and fittings" and quoted Outokumpu as saying "it did 'not have information that would support the said allegations.'" Similarly, on March 24, 2001, the Financial Times reported on the Commission's inspections of Outokumpu and stated that "Outokumpu, a metals company based in Espoo, Finland, denied any involvement in a cartel." Outokumpu's statements to the press were fraudulent. They were intended to mislead the public, including the victims of the cartel like Carrier, and could be and were reasonably relied upon by those victims. Not until July 2003 did Outokumpu modify its public statements, though it still failed to admit any meaningful details. On or about July 14, 2003, as reported in a Metal Bulletin article of that date, Outokumpu informed the press that it had received a notice from the European Commission alleging the participation of Outokumpu's copper tube business in a cartel. Outokumpu, however, did not admit any wrongdoing, but rather said it would examine the allegations and submit a written reply in due course. Outokumpu also did not disclose details regarding the scope, nature, duration or effect of the cartel alleged by the Commission. That information was not disclosed until publication of the E.C. Decision in December 2003.

110. Defendants and their co-conspirators had, as explained above, committed extensive affirmative acts to conceal the details of their illegal cartel, and Carrier could not have had any confirmation that the cartel existed – let alone any specific details about the conspiracy – prior to

the issuance of the E.C. Decision. The coordinated concealment continued even after the Commission announced its investigation. The conspirators agreed to suppress the disclosure of any meaningful information to the public prior to the issuance of a decision by the European Commission. In this way, the conspirators hoped to avoid liability to the victims of their cartel by creation of a potential limitations defense through the lapse of time between announcement of the E.C. investigation and publication of its decision.

111. After extensive evidence of Defendants and their co-conspirators' cartel was revealed in the E.C. Decision, Carrier acted with reasonable diligence in investigating whether it was harmed by the cartel. Only with the publication of the E.C. Decision was there any public announcement of actual wrongdoing by the co-conspirators. Moreover, it was the first revelation of the extensive scope, nature, duration and effect of the conspiracy and the fact that it was aimed at large key customer accounts like Carrier. As a result of the E.C. Decision, Carrier for the first time knew that a cartel had existed and grounds existed for believing that the cartel may have injured Carrier. The E.C. Decision also provided the first means for beginning an analysis of cartel behavior and its effect on Carrier. Accordingly, Carrier acted reasonably promptly after issuance of the E.C. Decision to retain outside counsel to investigate the matter. Due to the complicated and covert nature of antitrust conspiracies, it took substantial research and analysis for outside counsel to begin to discern the extent to which Carrier was harmed by the cartel. Among other things, outside counsel engaged an economic consultant to gather economic data on the ACR Copper Tubing market. The economist's analysis revealed patterns of pricing indicative of the existence of a conspiracy occurring not just in Europe but extending also to the United States.

112. After adequately researching the basis for its claims, Carrier, through its attorneys, approached certain co-conspirators to discuss its right to damages. Among them was Outokumpu, Carrier's largest supplier of ACR Copper Tubing in the United States. Outokumpu demonstrated an unwillingness to resolve Carrier's claims without litigation. As a result, Carrier filed its Complaint in this Court on March 29, 2006.

113. These acts by Carrier constitute sufficient due diligence, when coupled with the acts of concealment by the Defendants, to permit application of the doctrine of fraudulent concealment, which tolls commencement the statute of limitations until at least December 16, 2003, the date of the E.C. Decision.

EFFECTS

114. Defendants' combination and conspiracy has had the following effects:

(a) prices for ACR Copper Tubing sold by Defendants and their co-conspirators were fixed, raised, stabilized, and maintained at artificially high and non-competitive levels in the United States, Europe, and elsewhere;

(b) Plaintiffs were deprived of the benefits of free and open competition in the purchase of ACR Copper Tubing in the United States, Europe, and elsewhere;

(c) price competition in the sale of ACR Copper Tubing was restrained, suppressed and eliminated in the United States, Europe, and elsewhere; and

(d) as a direct and proximate result of the illegal conspiracy, Plaintiffs paid more for ACR Copper Tubing in the United States, Europe and elsewhere than they would have paid in the absence of the illegal conspiracy, have been injured in their business or property, and have suffered damages in an amount presently undetermined.

FIRST CAUSE OF ACTION

Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

115. Plaintiffs re-allege and incorporate each and every allegation set forth in the paragraphs above.

116. Beginning at least as early as May 1988, and continuing thereafter until at least March 2001, the exact dates being unknown to Plaintiffs, Defendants engaged in a continuing contract, combination, and conspiracy to fix prices of and allocate customers and markets for ACR Copper Tubing in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

117. The contract, combination, and conspiracy alleged herein consisted of a continuing agreement, understanding, and concert of action among Defendants, the substantial terms of which were to allocate customers and markets and to raise, fix, and maintain prices of ACR Copper Tubing sold in the United States, Europe, and elsewhere.

118. For the purpose of forming and carrying out the alleged contract, combination and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including, but not limited to, meeting to discuss and agree upon customer and market allocations and future price increases and other activities designed to implement the illegal price-fixing conspiracy.

119. During the Relevant Period, Plaintiffs directly purchased ACR Copper Tubing from Defendants and other conspiring manufacturers of ACR Copper Tubing. By reason of the violations of the antitrust laws of the United States alleged herein, Plaintiffs paid more for ACR Copper Tubing than they would have in the absence of Defendants' illegal contract, combination, and conspiracy. As a result, Plaintiffs have been injured and have suffered damages in an amount presently undetermined.

SECOND CAUSE OF ACTION

Violation of the Tennessee Trade Practices Act, § 47-25-101, *et seq.*

120. Plaintiffs re-allege and incorporate each and every allegation set forth in the paragraphs above.

121. Beginning at least as early as May 1988, and continuing thereafter until at least March 2001, the exact dates being unknown to Plaintiffs, Defendants engaged in a continuing arrangement, contract, agreement, trust or combination in violation of Section 47-25-101, *et seq.*, of the Tennessee Trade Practices Act ("TTPA").

122. The arrangement, contract, agreement, trust, combination, and conspiracy alleged herein was intended to and did in fact have a substantial effect on ACR Copper Tubing trade or commerce within Tennessee during the Relevant Period. Defendants are engaged in the business of manufacturing, marketing, and/or selling ACR Copper Tubing for import, purchase and use in Tennessee. Carrier has operations in Tennessee that utilize ACR Copper Tubing sold by the Defendants and were affected by the Defendants' contract, combination and conspiracy. Furthermore, Carrier made purchases from Defendants or their co-conspirators in the state of Tennessee. As a result of the conspiracy, customers within Tennessee, including Carrier, paid artificially higher prices for ACR Copper Tubing during the Relevant Period.

123. The contract, combination, and conspiracy alleged herein consisted of a continuing agreement, understanding, and concert of action among Defendants, the substantial terms of which were to allocate customers and markets and to raise, fix, and maintain prices of ACR Copper Tubing sold within Tennessee and elsewhere.

124. For the purpose of forming and carrying out the alleged contract, combination and conspiracy, Defendants and their co-conspirators did those things that they combined and

conspired to do, including, but not limited to, meeting to discuss and agree upon future price increases, customer and market allocation, and other activities designed to implement the illegal cartel.

125. By reason of the violations of the TTPA alleged herein, Plaintiffs paid more for ACR Copper Tubing than they would have in the absence of Defendants' illegal contract, combination, and conspiracy. As a result, Plaintiffs have been injured and have suffered damages in an amount presently undetermined.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that:

A. The unlawful contract, combination and conspiracy alleged in this Complaint 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, and Sections 4 and 16 of the Clayton Act.

B. The unlawful contract, combination and conspiracy alleged in this Complaint be adjudged and decreed to be an unlawful arrangement, contract, agreement or combination in violation of the TTPA, §§ 47-205-101, *et. seq.*

C. Plaintiffs recover damages, as provided by law, that Defendants be held liable for the damages suffered by Plaintiffs, and that judgment in favor of Plaintiffs be entered against Defendants in an amount to be trebled in accordance with the antitrust laws;

D. An injunction enjoining, preliminarily and permanently, Defendants from continuing the unlawful contract, combination and conspiracy alleged herein be entered;

E. Plaintiffs recover their costs of suit, including reasonable attorneys' fees, as provided by law;

F. Plaintiffs recover prejudgment interest pursuant to Section 4(A) of the Clayton Act, 15 U.S.C. § 15(a); and

G Plaintiffs be granted such other and further relief as the nature of the case may require or as may seem just and proper to this Court.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury of all issues so triable.

Respectfully submitted,

/s/ Tim Wade Hellen (per telephone on 10/25/06)

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Dated: October 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2006, I caused a true and correct copy of the foregoing Amended Complaint to be served via ECF and electronic mail on the following:

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