IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BAILEY LUMBER & SUPPLY CO.; and 84 LUMBER COMPANY, Plaintiffs	)	CIVIL ACTION NO. 1:08-CV-1394-LG-JMR
v.	)	
GEORGIA-PACIFIC CORPORATION; BLUELINX CORPORATION; WEYERHAEUSER COMPANY; and LOUISIANA-PACIFIC CORPORATION, Defendants.	)	JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

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Plaintiffs Bailey Lumber & Supply Co. and 84 Lumber Company, by and through their undersigned counsel, hereby amend their Complaint in this action for treble damages and injunctive relief, as well as attorneys' fees and costs, under the antitrust laws of the United States against the defendants named herein. In addition to expanding upon the prior allegations of unlawful conduct undertaken by the defendants, the Second Amended Complaint specifically addresses the following topics with allegations of fact concerning: (1) the source of Bailey Lumber & Supply Co.'s right to assert its assigned claims; (2) the definition of the product market; (3) the benefit to BlueLinx Corporation of participating in the conspiracy; and (4) how Random Lengths operation differs from the conspirators price-sharing conspiracy. Upon information and belief, and in connection therewith, Plaintiffs allege as follows:

THE PLAINTIFFS

1. Plaintiff Bailey Lumber & Supply Co. ("Bailey Lumber") is a Mississippi corporation with its principal place of business located in Gulfport, Mississippi. Bailey Lumber is the largest Mississippi-based supplier of lumber and other building materials. Bailey Lumber operates stores within this judicial district in the following cities: Gulfport, Ocean Springs, Bay St. Louis, Jackson, Brandon, Meridian, and Hattiesburg. During the relevant time period, as alleged below, Bailey Lumber purchased oriented strand board ("OSB") and plywood from one or more of the defendants for its stores within this judicial district.

2. Bailey Lumber also purchased OSB and plywood through Lumbermen's Merchandising Corp. ("LMC") and received an assignment from LMC to pursue these antitrust claims as to those purchases. LMC is a cooperative buying association owned by its members, including Bailey Lumber, who leverage their combined buying power to receive greater

discounts than individual members can obtain alone. LMC levies a service charge on members' purchases to cover its overhead and other expenses. In the case of Bailey Lumber, during the relevant years of the conspiracy alleged herein, that service charge was eight-tenths of one percent (0.8%) of the purchase price for either OSB or plywood. Bailey Lumber secured the assignment from LMC, timely opted out of the class-action case, *In Re OSB*, Master File No. 06-826 (E.D. Pa.) (Diamond, J.), and notified the Court and the parties that it was opting out both on its own purchases and its purchases subject to the LMC assignment. LMC then reduced the amount of its claim in the class-action case by the amount of Bailey Lumber's OSB purchases. Thus, defendants are not threatened by multiple liability for those LMC purchases made for Bailey Lumber. Because Bailey Lumber had the right to opt out of the class action and pursue its own claim in any appropriate forum, there is no danger of multiplicative litigation. Furthermore, because any antitrust claims held by either LMC or Bailey Lumber are not contract claims between them and any of the defendants, it was unnecessary to secure the defendants' permission to opt out of the class action. LMC also had a right to opt out of the class action and could have pursued these same claims that have been assigned to Bailey. Antitrust claims historically have been recognized as property rights and have been recognized by the courts as assignable claims for over a century. Accordingly, Bailey Lumber brings this action regarding its own direct purchases of OSB and plywood, as well as those purchases which are the subject of the assignment.

3. Plaintiff 84 Lumber Company ("84 Lumber") is a Pennsylvania limited partnership with its principal place of business located in Eighty Four, Pennsylvania. Founded in 1956, 84 Lumber is one of the nation's five leading suppliers of building materials and services to professional builders. The company has operated over 475 locations nationwide, including 24

component manufacturing facilities. 84 Lumber operates stores in some 38 States, including Mississippi. 84 Lumber operates stores within this judicial district in the following cities: Gulfport, Waveland, Moss Point, Jackson and Canton. During the relevant time period, as alleged below, 84 Lumber purchased OSB and plywood from one or more of the defendants for its stores within this judicial district.

THE DEFENDANTS AND OTHER MAJOR PARTICIPANTS IN THE STRUCTURAL PANELS MARKET

4. Defendant Louisiana-Pacific Corporation ("Louisiana-Pacific") is a Delaware corporation with its principal place of business located in Nashville, Tennessee. Louisiana-Pacific, during the years of the conspiracy alleged herein, was the largest OSB manufacturer in North America. It traded four plywood mills to Georgia-Pacific in 2002, as alleged in more detail herein, and it continuously operated another plywood mill in British Columbia during the conspiracy. Louisiana-Pacific at all relevant times has been registered to do business in the State of Mississippi and has been doing business within the State and within this judicial district. During the relevant time period, as alleged below, Louisiana-Pacific sold OSB within this judicial district to one or more of the Plaintiffs.

5. Defendant Georgia-Pacific Corporation ("Georgia-Pacific"), now known as Georgia-Pacific LLC, existed as a Georgia corporation with its principal place of business in Atlanta, Georgia. Georgia-Pacific at all relevant times was registered to do business in the State of Mississippi and has been doing business within the State and within this judicial district. Georgia-Pacific has been a major landowner within the State of Mississippi, holding over 700,000 acres as of June 1999. Georgia-Pacific has operated 22 facilities in Mississippi, including wood and fiber supply offices in Columbia, Gloster, Grenada, Jackson, Louisville, Monticello, New Augusta and Taylorsville. It has operated a major regional distribution facility

in Jackson. Georgia-Pacific has operated both OSB and plywood mills within the State of Mississippi, including an OSB mill at Grenada and plywood mills within this judicial district at Taylorsville and Gloster. During the relevant time period, as alleged below, Georgia-Pacific sold OSB and plywood within this judicial district to one or more of the Plaintiffs. In February 2007, Georgia-Pacific withdrew its registration to do business within the State of Mississippi, but it appointed the Mississippi Secretary of State as its agent for service of process.

6. Defendant BlueLinx Corporation ("BlueLinx") is a wholly-owned subsidiary of BlueLinx Holdings, Inc., which has its principal place of business in Atlanta, Georgia. BlueLinx Holdings, Inc. was formed in 2004 when Georgia-Pacific spun off its distribution division. BlueLinx Holdings, Inc., primarily through its subsidiary BlueLinx, is a leading distributor of building products in North America. Employing approximately 2,000 people, BlueLinx offers greater than 10,000 products from over 750 suppliers to service approximately 11,500 customers nationwide, including dealers, industrial manufacturers, manufactured housing producers and home improvement retailers. The company operates its distribution business from sales centers in Atlanta and Denver and its network of more than 70 warehouses. BlueLinx has been on the Fortune 500 list of the nation's largest companies. Since 2004, BlueLinx has been registered to do business and has been doing business in the State of Mississippi. Since that time, BlueLinx has sold OSB and plywood within this judicial district to one or more of the Plaintiffs.

7. Defendant Weyerhaeuser Company ("Weyerhaeuser") is a Washington corporation with its principal place of business located in Federal Way, Washington. Weyerhaeuser at all relevant times has been registered to do business in the State of Mississippi and has been doing business within the State since 1956 and within this judicial district. Weyerhaeuser employs over 1500 people within the State of Mississippi and has a major

building materials distribution center in Gulfport. Weyerhaeuser has other operations in Jackson, Magnolia, Olive Branch, Columbus, Bruce, McComb, Philadelphia, Silver Creek, Columbia, Bellefontaine, Scooba and Hillsdale. Weyerhaeuser has been a major landowner within the State of Mississippi, owning over 700,000 acres. During the relevant time period, as alleged below, Weyerhaeuser sold OSB and plywood within this judicial district to one or more of the Plaintiffs.

8. Norbord Inc. ("Norbord") is a Canadian corporation with its principal place of business located in Toronto, Canada. In 2004, Norbord emerged as a purely focused new panelboard company from what had been a business segment within the more diversified Nexfor Inc. ("Nexfor"). On June 30, 2004, Nexfor divested its paper business and renamed itself Norbord. Norbord has in fact been doing business within the State and within this judicial district. Norbord operates OSB mills throughout the southeastern United States, including an OSB mill in Guntown, Mississippi. During the relevant time period, as alleged below, Norbord sold OSB within this judicial district to one or more of the Plaintiffs. Although not named as a defendant in this case, Norbord participated in the conspiracy, as alleged herein.

9. Potlatch Corporation ("Potlatch") is a Delaware corporation with its principal place of business in Spokane, Washington. On September 22, 2004, Potlatch sold its OSB manufacturing facilities and related assets to Ainsworth Lumber Co. Ltd. ("Ainsworth"). Potlatch continued to operate one plywood mill in Idaho, however. During the relevant years, Potlatch sold structural panels to one or more of the Plaintiffs. Shortly after that sale of its OSB mills, Potlatch withdrew its registration to do business within the State of Mississippi, but it appointed the Mississippi Secretary of State as its agent for service of process. Although not named as a defendant in this case, Potlatch participated in the conspiracy, as alleged herein.

10. Ainsworth is a Canadian corporation with its principal place of business in Vancouver, British Columbia. Effective September 22, 2004, Ainsworth finalized its acquisition of three OSB manufacturing facilities located in Minnesota from Potlatch, thereby becoming the fourth largest OSB manufacturer in North America, behind Louisiana-Pacific, Weyerhaeuser, and Norbord. Ainsworth also operated one plywood mill in British Columbia during the period of the conspiracy alleged herein. At all relevant times, Ainsworth sold structural panels in the United States. Although not named as a defendant in this case, Ainsworth participated in the conspiracy, as alleged herein.

11. Tolko Industries, Ltd. ("Tolko") is a Canadian corporation with its principal place of business in Vernon, British Columbia. It manufactures both OSB and plywood at various facilities in Canada. Tolko has also operated a distribution division, through which it purchased various structural panels from other manufacturers. Tolko has sold structural panels to one or more of the Plaintiffs during the relevant years of the conspiracy alleged herein. Although not named as a defendant in this case, Tolko participated in the conspiracy, as alleged herein.

12. Grant Forest Products, Inc. ("Grant Forest") is a Canadian corporation with its principal place of business in Toronto, Ontario. Grant Forest has in recent years owned approximately one-third of Ainsworth's common stock. In addition, Grant Forest and Ainsworth have owned and operated through a joint venture, Footner Forest Products Ltd., the world's largest OSB manufacturing facility, in High Level, Alberta, Canada. Grant Forest recently built two OSB manufacturing plants in the southeastern United States (in South Carolina) and during the relevant time period, as alleged below, Grant Forest sold OSB to one or more of the Plaintiffs. Grant Forest Products Sales, Inc. ("Grant Sales") was formed from the sales staff and operations of Grant Forest sometime after January 2002. It is wholly-owned by Grant Forest and

has its principal place of business in Mississauga, Ontario. The two corporations are closely intertwined. They use the same payroll, telephone, IT, and e-mail systems; their computers are linked; the President of Grant Sales is an Executive Vice-President of Grant Forest; and all the members of the Grant Sales Board of Directors are members of Grant Forest's Board of Directors. Although Grant Sales assumed responsibilities for accepting orders from customers and soliciting sales, at least one of the Plaintiffs sent all remittances for purchases to a lockbox in Chicago, Illinois, held in the name of Grant Forest. Thus, by accepting the remittances, Grant Forest effectively was the seller of OSB. Although not named as a defendant in this case, Grant Forest participated in the conspiracy, as alleged herein.

13. Huber Engineered Woods LLP ("Huber") is a subsidiary of J. M. Huber Corporation, a large, diversified private company. Huber's principal place of business is located in Charlotte, North Carolina. It manufactures OSB in mills located in Maine, Virginia, Tennessee, Georgia, and Oklahoma. During the relevant time period, Huber sold OSB to one or more of the Plaintiffs for its stores in this judicial district.

14. Boise Cascade, L.L.C. ("Boise Cascade") is a wholly-owned subsidiary of a Delaware corporation, Boise Cascade Holdings, L.L.C. Like its parent company, Boise Cascade is headquartered in Boise, Idaho. Boise Cascade operates largely through two divisions. One division is Boise Building Materials Distribution ("Boise Distribution"), which currently operates approximately 30 distribution centers throughout the United States and is still one of the largest distributors of building materials, including OSB and plywood, in the country. A second division is Boise Wood Products, which currently is the second largest manufacturer of softwood plywood in the United States. Boise Wood Products also operated an OSB manufacturing facility in Barwick, Ontario until 2004, when it was sold to Ainsworth. During the relevant

years, Boise Cascade sold structural panels to one or more of the Plaintiffs. Although not named as a defendant in this case, Boise Cascade participated in the conspiracy, as alleged herein.

15. Canfor Corporation ("Canfor") is a Canadian manufacturer of OSB and plywood. In a transaction valued at approximately $900 million and which closed on April 1, 2004, Canfor acquired Slocan Forest Products, Ltd. ("Slocan"), another large Canadian wood products manufacturer of OSB and plywood. Canfor and Louisiana-Pacific opened a joint venture, the Peace Valley OSB mill, in British Columbia in 2005 before the conspiracy unraveled. Although not named as defendants in this case, Slocan and Canfor participated in the conspiracy, as alleged herein.

16. Hood Industries, Inc. is a company headquartered in Hattiesburg, Mississippi. It operates two plywood mills in Mississippi and a distribution system with offices in 11 states. It is wholly owned by Hood Companies, Inc., also headquartered in Hattiesburg, Mississippi. During the relevant years, Hood Industries sold plywood to one or more of the Plaintiffs. Although not named as a defendant in this case, Hood Industries participated in the conspiracy, as alleged herein.

JURISDICTION AND VENUE

17. Plaintiffs bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 15(c) and 26, for treble damages and injunctive relief, as well as reasonable attorneys' fees and costs, with respect to the injuries sustained by Plaintiffs arising from defendants' violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337(a) and 15 U.S.C. §§ 15(c) and 26.

18. Venue is proper in this district pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b) and (c), because at least one plaintiff resides in this district and each of the defendants is found within this district because its officers and agents have carried on the business of the corporation in this district, or because the defendants have transacted business in this district in a practical and business sense of a substantial character, and/or because the claims arose in this district, in whole or in part.

19. Sales of OSB and plywood by the defendants to plaintiffs for their stores in this district have been substantial and significant. The conspiracy alleged below existed before Hurricane Katrina ravaged the Mississippi Gulf Coast in late August 2005, resulting in the destruction of tens of thousands of homes and buildings and generating enormous demand for OSB and plywood, and the conspiracy continued after Hurricane Katrina had wreaked its havoc. As a result of the conspiracy, prices for OSB and plywood rose almost immediately after Hurricane Katrina. Consequently, this judicial district may have suffered more, on a per capita basis, from the conspiracy than any other judicial district in the country.

20. The defendants sold OSB and plywood in a continuous and uninterrupted flow of interstate commerce throughout the period 2000 to the present. The defendants' business activities that are the subject of this Complaint were therefore within the flow of, and substantially affected, interstate trade and commerce.

21. According to studies by Mississippi State University researchers with 1998 data, forest products are a vital part of Mississippi's overall economic health, supporting directly and indirectly over 150,000 employees and total annual industry output in excess of $14 billion. Mississippi has over 18.6 million acres of forests, including those owned by various defendants and participants in the structural panels market. Mississippi's forest products industry includes

several hundred manufacturing locations, including the OSB and plywood mills operated by the defendants and others. Thus, the nationwide conspiracy likely had a disparate impact upon this judicial district, making it not unfair for all the co-conspirators to defend their conduct in this District.

ALLEGATIONS OF FACT

I. THE STRUCTURAL PANELS MARKET

22. OSB and plywood together comprise what is generally referred to as the structural panels market. The defendants have acknowledged and at times have actively promoted: (a) that the market is a single structural panels market; (b) the interchangeability of plywood and OSB; (c) the tendency for OSB and plywood prices to move in the same direction; and (d) the fact that the Federal Trade Commission ("FTC") has viewed this as the structural panels industry.

23. Both OSB and plywood are used in building construction for purposes such as wall sheathing, roof sheathing, subflooring, and decking. In terms of functionality and usability, OSB and plywood are reasonably interchangeable. For example, in a letter dated May 11, 2004 to the President of the National Association of Home Builders, David J. Paterson, the Executive Vice-President of Building Products for Defendant Georgia-Pacific, stated flatly that plywood "can be directly substituted for OSB." The two products share similar properties of strength, water resistance, and resistance to bowing – all of which are important features of structural panels. Plywood was developed and sold long before OSB and is generally referred to as a mature product.

24. OSB serves as the principal component in numerous engineered building products manufactured by defendants. The OSB-engineered products include, but are not limited to, I-

Joists, OSB flooring and wall systems, and siding products. Such engineered products have been similarly impacted by the allegations set forth in this Complaint.

25. The industry defines itself as the structural panels industry. Individual companies, such as Weyerhaeuser and Georgia-Pacific, held themselves out to the public and to shareholders as participants in the structural panels industry. Random Lengths Publications, Inc. ("Random Lengths"), an industry tracking organization based in Eugene, Oregon, publishes twice weekly reports on historical price trends and industry news for both OSB and plywood. Among its indices, Random Lengths features the "Random Lengths Structural Panels Composite Price," a weighted average of more than ten key items of OSB and plywood. Another organization, RISI, Inc., also collects industry data and owns Crow's Weekly Market Report, a price report similar to Random Lengths. In its 2001 North American Wood Panels Forecast, a document produced in the class-action case by Weyerhaeuser, RISI explains its view on the proper scope of the market:

> This chapter discusses the *North American* markets for structural panels and combines the discussion that was previously contained in two separate country-specific chapters for the U.S. and Canada . . . . For purposes of analysis, RISI believes North American structural panels largely operate as one market with reasonably consistent trends across all sectors of the Canadian and U.S. industry, both in plywood and OSB. (Emphasis added.)

Thus, the industry's two major data collection organizations, Random Lengths and RISI, both treat OSB and plywood as a single structural panels market. Furthermore, the leading trade association, the APA—The Engineered Wood Association, changed its name from the American Plywood Association in 1994 "to better reflect the range of [structural panels] products manufactured by APA members and the international scope of the Association." Its members include most of the manufacturers of plywood and OSB.

26. Executives of the defendants also considered their companies to be participants in a structural panels market. On September 15, 2005, in a conference call sponsored by UBS Paper and Forest Products, Curt Stevens, the Executive Vice-President and Chief Financial Officer of Louisiana-Pacific, explained that the FTC viewed the industry as the structural panels industry, citing the fact that the FTC reviewed Louisiana-Pacific's purchase of Le Groupe Forex as an acquisition within the structural panels market.

27. During the Le Groupe Forex acquisition, counsel for Louisiana-Pacific [redacted]

[redacted]

* * * *

[redacted]

28. Louisiana-Pacific's Rule 30(b)(6) witness in the class-action case testified that [redacted]

[redacted]

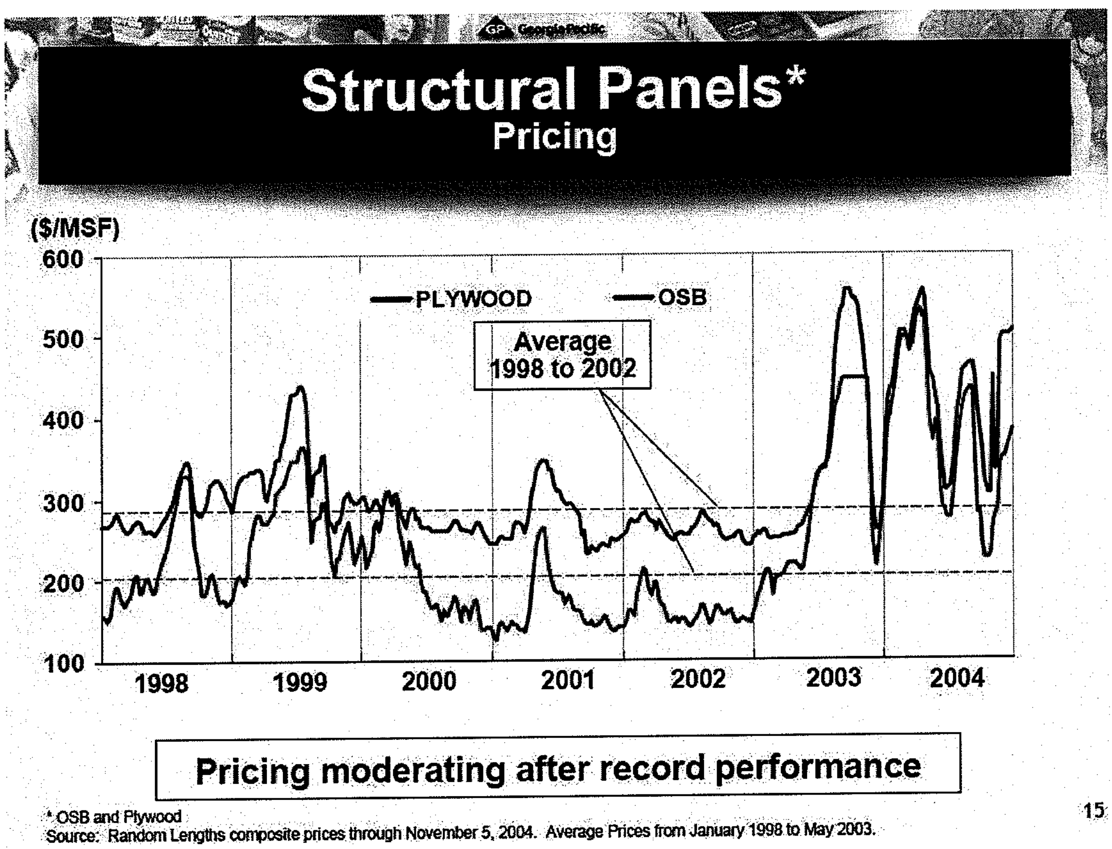
29. Likewise, Georgia-Pacific's Vice-President of Strategic Planning and Technology, Michael Cousin, Ph.D., testified in 2007 that "OSB is considered part of a structural panels business." When preparing a supply/demand model, he testified that "I was very adamant that it had to be—the market was a structural panels market, not an OSB or plywood market." For emphasis, he added, "I consider it a structural panels industry, not an OSB industry."

30. Plaintiffs in the class-action case also recognized that the true market extended beyond OSB and filed at least ten separate requests for production of documents explicitly dealing with this issue, ranging from a request for documents "concerning any building material or materials which are, or can be used or specified in place of OSB in residential and/or commercial construction applications" to a request for documents "concerning the change in demand for OSB in response to any changes in the price of any other building materials, including but not limited to plywood" to a request for documents "concerning comparisons between demand elasticity for OSB and demand elasticity for plywood and/or other building materials."

31. OSB developed as a less expensive alternative to plywood. North American OSB mills are often newer and have larger production capacities than North American plywood mills. The variable cost of production, or "cash cost," for OSB is generally lower than the cash cost to manufacture plywood, leaving OSB with a distinct cost advantage. The lower cost of OSB has materially contributed to its popularity, particularly for new residential construction. Plywood still remains popular for certain commercial and industrial construction applications. Demand for both products is driven primarily by new construction, whether for single-family,

multifamily, mobile homes, nonresidential, or industrial uses. Repair and remodeling uses also produce some demand for both products. In recent years, OSB has captured over 60% of the North American structural panels market. When prices for both products are lower and approach the cash cost of plywood, OSB and plywood are separated by a "price gap" with OSB fetching a lower price. But when prices for both products rise above the cash cost for plywood production, the price gap shrinks (as a percentage), and customers choose between the two products based largely on cost.

32. The chart below, prepared by Georgia-Pacific and used for public presentations, demonstrates this phenomenon:



As alleged herein, the conspiracy began in mid-2002. But at that time, the existing supply of structural panels held in "dealer stocks" (supplies held in warehouses by dealers such as the plaintiffs) around the country was so high that it took months for the conspiracy to restrict supply and work that excess out of the system. Once the dealer stocks were thinned down, the daily actions of the conspirators to fix, raise, maintain, and stabilize prices, combined with the continuing consolidation in the industry and the removal of certain fiercely independent companies, began to make an impact. As can be seen on the above chart, the average price for OSB began to rise slowly at the beginning of 2003, then shot up at the beginning of June, reaching an all-time record high by September, where it remained for eight consecutive weeks, as alleged herein, due to the conspiracy. Prices for plywood rose in tandem with the prices for OSB, beginning in the spring of 2003. An internal Georgia-Pacific document, prepared in October 2003, made the point even more emphatically. After exhaustively analyzing factors such as seasonally adjusted dealer stocks, seasonally adjusted mill stocks, the seasonality of panel demand, and other factors, Georgia-Pacific similarly concluded that "OSB and Plywood pricing are highly correlated. They move together in the Structural Panels market."

33. In addition, as alleged in more detail herein, the immediate and precipitous drop in prices for both OSB and plywood in late 2003 is attributable largely to the issuance of subpoenas by the West Virginia Attorney General on November 20, 2003. By Friday, November 21, Louisiana-Pacific, Georgia-Pacific, Weyerhaeuser and Norbord all had received subpoenas. On Monday, November 24, prices for new orders began to plummet by as much as 40% from the levels of the preceding business day. This phenomenon of a sudden drop in prices after an industry first becomes aware of a governmental antitrust investigation is recognized by economists and courts as a potential indication of the existence of a conspiracy.

A. **Plus Factors Indicating a Market More Susceptible to Collusion**

34. The structural panels market is concentrated on the selling side. The top five OSB manufacturers (Louisiana-Pacific, Weyerhaeuser, Norbord, Ainsworth, and Georgia-Pacific) have controlled approximately 75% of the North American OSB manufacturing capacity. The defendants and the other conspirators listed above have controlled at least 90% of the North American OSB manufacturing capacity during the relevant years. The defendants and the other conspirators listed above have also controlled at least 52% of the North American plywood manufacturing capacity. Overall, the conspirators controlled over 73% of the manufacturing capacity of the structural panels industry during the years 2003-2005 (not counting Bon Wier, Texas and Urania, Louisiana, two plywood mills shut down by the conspiracy, as alleged herein). Georgia-Pacific and Weyerhaeuser, have controlled approximately 40% of the North American plywood manufacturing capacity. These two companies have controlled an even larger percentage of the southern yellow pine plywood manufacturing capacity. The top three structural panels manufacturers – Georgia-Pacific, Louisiana-Pacific, and Weyerhaeuser – produced roughly half of the structural panels in North America during the relevant years of the conspiracy, and they controlled an even larger percentage of the overall market through the purchases of such products by their distribution divisions. Incomplete discovery from the class action indicates that the Weyerhaeuser Building Materials group purchased 300 million square feet (3/8" equivalent)[1] of OSB from other members of the conspiracy and other vendors in each of the years 2003, 2004, and 2005.

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[1] Structural panels are sold in different thicknesses. For example, the most popular thicknesses of OSB are 7/16" and 23/32". In order to have a common basis for accounting and reporting, among other reasons, the industry converts all thicknesses to a common reference, which is 3/8" equivalent. Sales of 1000 square feet of 7/16" would be multiplied by 1.16667 to convert to 1166.67 square feet of 3/8" OSB, for example. Throughout the rest of this Complaint, all references to numbers of square feet will be expressed in 3/8" equivalent.

Weyerhaeuser purchased in excess of 500 million square feet of plywood from other members of the conspiracy and other vendors in the years 2004 and 2005. Georgia-Pacific purchased as much as 1 billion square feet of plywood from other members of the conspiracy and other vendors in particular years before the divestiture of its Distribution Division. With total North American structural panels capacity running at over 40 billion square feet per year during the relevant years of the conspiracy, these outside purchases by Weyerhaeuser, Georgia-Pacific, Boise Cascade, and Tolko, all of which had distribution divisions, had the effect of increasing substantially the percentage of the structural panels market controlled by the conspirators.

35. For OSB, there has been a fringe of small sellers, which collectively have had almost no potential to impact pricing trends. For plywood, the fringe of small sellers is mostly concentrated in the Pacific Northwest states and have limited ability to impact pricing trends nationally.

36. For both OSB and plywood, demand at the competitive price is relatively inelastic. Demand is driven largely by the number of new construction projects, which require building materials other than OSB and plywood.

37. Entry into the market by newcomers generally takes a long time. New manufacturing facilities require an extensive lead time to procure land, design the mill, obtain permits, construct the mill, secure sources of raw materials, and develop the financing for the project. In recent years, the total fixed costs of constructing a new OSB mill have exceeded $100 million.

38. The buying side of the market for structural panels, whether for OSB or plywood, is unconcentrated. Literally thousands of companies, partnerships, and individuals purchase

OSB and plywood directly from the manufacturers. The largest such direct purchaser buys less than ten percent of industry output.

39. Both OSB and plywood are relatively standardized. One relatively small manufacturer of OSB, namely Huber, has attempted to differentiate its primary product, Advantech™, from the "commodity" OSB manufactured by the rest of the industry. Advantech™ differs from other OSB products, however, only in the sense that all of its mats of wood chips are bound together by methylene diisocyanate ("MDI"), resulting in a slight improvement in stiffness and water resistance. Huber has marketed Advantech™ as a substitute for plywood, primarily for flooring uses, and for at least some period of time tried to link its selling price for Advantech™ to the published prices for plywood. Other manufacturers produce "enhanced" flooring products, which, to some extent, are comparable to Huber's flooring products. For all other practical purposes, there is no difference between the OSB products of the various manufacturers. Even the "value-added" engineered products, such as I-Joists, are relatively similar from manufacturer to manufacturer.

40. The defendants sell at the same level in the chain of distribution, with at least one significant exception. During the time of the conspiracy alleged herein, Georgia-Pacific spun off its distribution division into a new entity that now operates as BlueLinx Corporation, a wholly-owned subsidiary of BlueLinx Holdings LLC. Prior to that divestiture, Georgia-Pacific manufacturing and distribution divisions operated under the leadership of one person at the company: Executive Vice-President Ronnie Paul. The defendants sell primarily to "big box" retailers, such as Home Depot and Lowe's; "pro dealers," or stores that cater to professional builders; and home and commercial construction companies.

41. Price competition is more important for OSB and plywood than other forms of competition.

42. There is a high ratio of fixed to variable costs. As alleged above, the fixed costs for a new OSB mill have often exceeded $100 million in recent years. For example, the Footner Forest Products OSB mill in High Level, Alberta, Canada, jointly owned by Ainsworth and Grant Forest, cost a reported $265 million to construct. That mill had an annual capacity of about 800 million square feet in 2003.

43. Within OSB mills, manufacturers share similar cost structures and production processes. Data assembled by RISI and provided to members of the industry have documented that the variable costs for North American OSB mills are extraordinarily similar, at least within certain areas of North America. Likewise, the variable costs for southern yellow pine plywood mills are similar, but generally higher than for OSB. The variable costs for fir plywood mills are generally higher than for southern yellow pine plywood mills. Other organizations also prepared similar benchmarking studies and provided their findings to various manufacturers. Only a handful of companies in the world manufacture the large presses used in OSB production, limiting the variation found in production processes.

44. Prices for structural panels can be changed rapidly. Manufacturers can, and do, alter their open market prices on a frequent basis. The open market prices were the primary objects of the conspiracy, and these prices dragged contract prices. Random Lengths's semi-weekly online reports provide a composite look on the industry's recent past prices, but do not offer real-time price information used by and shared among the conspirators to affect prices. Many direct purchasers of structural panels have contracts with manufacturers in which the price is explicitly linked to the reported Random Lengths price, often stated as a percentage discount

off the Random Lengths price from the previous Friday or two Fridays previous. In recent years, a large percentage, perhaps more than half, of the total industry sales of structural panels have been a function of the regularly-reported Random Lengths prices.

45. On the buying side, the market is localized. Builders of new homes and other construction projects require OSB and/or plywood and generally shop for supply sources that are near to their jobsites. Pro dealers have therefore endeavored to locate in areas of large demand, namely in areas with substantial ongoing and future construction. Those stores then purchase OSB and plywood in quantities sufficient to meet the local demand. The large pro-dealers and big box purchasers then generally aggregate those localized purchasing requirements into a larger order.

46. Some of these defendants, the forest products industry generally, and the structural panels industry particularly, have a history of cartel behavior. Cartels have been formed with such products as plywood, linerboard, folding cartons, corrugated containers, and other forest products. In fact, the price-fixing conspiracy alleged herein is remarkably similar to the conspiracy condemned by the United States Supreme Court in 1969 in *United States v. Container Corp. of America,* a case in which plaintiffs alleged a conspiracy involving Georgia-Pacific and Weyerhaeuser, whose conduct was later enjoined for many years. Likewise, the price-fixing conspiracy alleged herein is remarkably similar to the conspiracy condemned by the Fifth Circuit Court of Appeals in 1981 in *In re Plywood Antitrust Litigation*, where Georgia-Pacific and Weyerhaeuser were again defendants. Louisiana-Pacific was itself formed in a judicially-ordered break-up of Georgia-Pacific as a result of antitrust violations. Furthermore, the conspiracy to manipulate the supply of structural panels alleged herein is remarkably similar

to *In re Linerboard Antitrust Litigation*, yet another case in which Georgia-Pacific and Weyerhaeuser were also defendants.

B. Laying the Foundation for the Conspiracy Through Mergers and Acquisitions

47. Members of the industry often used the term "rationalize" as a short-hand for keeping supplies tight, because tight supplies could lead to higher prices and higher profits. The first step to "rationalize" the structural panels market was further industry consolidation, leading to a high degree of market concentration. In 1999, the top five OSB producers controlled only 56% of production capacity. Over the next five years, the defendants and others achieved significant consolidation by increasing their share of production capacity through the acquisition of existing OSB and plywood operations, rather than building additional OSB mills, which would have driven more plywood mills out of business faster and resulted in lower average prices for consumers.

48. A number of significant acquisitions occurred during this time period. With the acquisition of MacMillan Bloedel for stock valued at $2.45 billion in June 1999, Weyerhaeuser added three OSB mills, a large OSB mill in Saskatchewan under construction, two plywood mills in Canada, and one plywood mill in Alabama (which it closed by 2004). This acquisition helped solidify Weyerhaeuser's position as the second largest OSB manufacturer and the third largest plywood manufacturer in North America.

49. On June 28, 1999, Louisiana-Pacific announced its plan to acquire Le Groupe Forex ("Forex") for $408 million in cash, plus the assumption of about $33.4 million in debt, and eventually acquired Forex for $512 million in cash, plus the assumption of debt. At the time, Forex was the largest Canadian OSB manufacturer and the fourth largest in North America. It

operated three OSB mills, with a combined annual capacity in excess of one billion square feet. Louisiana-Pacific paid more for this capacity than it would have paid if it had simply constructed new mills. Forex lost $1.5 million in 1997, had an operating income of $21.4 million in 1998, and had an operating income of $34 million for the first 6 months of 1999.

50. In January 2002, Weyerhaeuser acquired Willamette Industries ("Willamette") for $6.2 billion and the assumption of $1.7 billion in debt. Weyerhaeuser had launched its hostile tender offer on November 13, 2000. Fiercely independent Willamette fought the takeover for well over a year. Willamette executives taped a picture of Weyerhaeuser's CEO to a voodoo doll and jabbed pins into his face. Many of Willamette's nearly 15,000 employees began wearing buttons that read "Just Say No Wey." As a last-ditch effort to prevent the takeover, Willamette tried to acquire the wood products division of Georgia-Pacific, but those discussions collapsed. The assets Weyerhaeuser acquired included 7 plywood mills and 1 OSB mill. It was important to the ultimate success of the conspiracy to eliminate Willamette as a competitor in the structural panels market.

51. In April 2002, Nexfor (now known as Norbord) completed its acquisition of International Paper Company's three OSB mills in the south, located at Cordele, Georgia; Nacogdoches, Texas; and Jefferson, Texas. The purchase price was $250 million, and the three mills had a combined annual capacity in excess of one billion square feet.

52. On April 15, 2004, Ainsworth announced that it would acquire Boise Cascade's Barwick, Ontario OSB mill, which had a rated annual capacity of about 440 million square feet of production, for $175 million. On August 25, 2004, Ainsworth announced that it signed a definitive agreement to purchase Potlatch's OSB operations for $457.5 million, subject to adjustment for changes in working capital. Ainsworth thus acquired three OSB mills in

Minnesota, with an annual capacity of over 1.3 billion square feet. Like Louisiana-Pacific's Forex transaction, Ainsworth paid a huge premium for Boise Cascade's and Potlatch's OSB operations. An industry observer from Jaakko Poyry Consulting, Doug Parsonson, noted that [redacted] The only way for Ainsworth to recover its investment in these mills was for the conspiracy to continue to keep prices at supra-competitive levels. As events unfolded, the filing of the class actions in February 2006 disrupted the conspiracy, causing prices to drop. Later, the collapse of the housing market caused prices to drop even further, leading Ainsworth's creditors to take over the company.

II. THE DEFENDANTS FORM AND MAINTAIN AN UNLAWFUL CONSPIRACY

A. Addressing the Oversupply Problem Through Signaling

53. North American OSB capacity and production grew rapidly from its early days. In 1980, North American OSB panel production was 751 million square feet. A decade later, in 1990, this figure had grown to 7.6 billion square feet By 2001, OSB production had grown to 22 billion square feet. Total structural panel production grew from 31 billion square feet to 40.3 billion square feet from 1990 to 2000. As OSB production increased, plywood production decreased, although not at the same rates.

54. The rapid increase in OSB capacity and production during the 1990s resulted in excess capacity, as leading suppliers added plants in anticipation of further demand. As a result of the increased capacity, despite tremendous demand for structural panels, dealer and mill stocks of structural panels swelled. Market prices for OSB in 2001 averaged a rate that was slightly higher than in 1997. Low market prices for OSB and plywood continued into 2002.

55. Executives throughout the structural panels industry realized that oversupply was depressing both prices and profits, so they began explicitly to signal to each other the need to take corrective actions. On February 15, 2001, Mark Suwyn CEO of Louisiana-Pacific, extended an open invitation to collude to his competitors while speaking to them at a trade association conference:

> Other areas of cooperation may prove to be more difficult, but if we truly work together for the good of the industry we can improve our viability.
>
> I'm referring now, to the critical need for rational business practices. Like other industry sectors, we in building products need to develop more discipline. We know that volatility of pricing creates great uncertainty within the industry. We all wrestle with the problem, but we can't seem to bring it to resolution.
>
> Simply put, we need to be more aggressive in ensuring that we keep supply and demand in balance. It is crazy that a 5-8% drop in housing from record levels should cause lumber and panel prices to fall in half.
>
> But even attempting to deal with this long-term creates particular problems for Canadian operators. We know that if we curtail capacity beyond certain limits we put our tenure at risk . . . the old use it or lose it scenario, but surely we could work out a program with our various jurisdictions to protect our access to fibre. That being the case, we can eliminate one roadblock.
>
> * * * *
>
> As an active participant both here in Canada, as well as the US, <u>I am committed to working with fellow CEOs to find reasonable, workable solutions</u>. We at LP want to work with you to ensure that we thrive in these uncertain times. (Emphasis added.)

56. Just one week after Suwyn's speech, Russell Taylor, the widely-read publisher of *Wood Markets*, issued a press release that described the coordinated supply reduction efforts he expected to see:

> With the two largest OSB companies (Louisiana-Pacific and Weyerhaeuser) commanding half of North American production and the top four (including Georgia-Pacific and Nexfor) representing two-thirds of the industry, the potential exists of having market leadership from the dominant producers. "Like in the pulp and paper industry," commented Taylor, "planned or scheduled

> curtailments on an industry-wide basis may limit the downside on prices – this is a strategy sorely needed in the structural panel sector."
>
> A similar story holds for plywood producers: the top three (G-P, International Paper and Boise Cascade) represent 50% of industry production and the top five total two-thirds of output. From a strategic view-point, however, the top three OSB producers firms (L-P, Weyerhaeuser and G-P) control almost 60% of total OSB production and over 40% of all plywood production. <u>"These three firms," said Taylor, "are expected to lead the necessary rationalization of OSB and plywood capacity to reduce structural panel output in both products."</u> The outcome will be carefully watched by all in the industry! (Emphasis added.)

57. Russell Taylor continued to stress the need for curtailments in the March 2001 edition of the *Logging & Sawmilling Journal*:

> The erosion of lumber prices to 10 year lows in early 2001 has started to cause panic among lumber producers. OSB producers are facing a similar scenario as prices plunged at the start of 2001 to five year lows. While a diagnosis of the problem is very simple—too much supply chasing a slowing demand—<u>a prescription is much more complicated and it's likely to take most of this year to create some solutions. As a result, the outlook for lumber and panel products calls for continuing weak prices in the short terms until further and substantial supply curtailments occur in both lumber and structural panels to allow prices to move higher</u>. (Emphasis added.)

Concerted curtailments of production became part of the industry's chosen response of collusion.

58. In a news release dated April 2, 2001, Ainsworth's CEO Brian Ainsworth recognized the impact of oversupply on the OSB market, despite a strong market for housing in the United States:

> The deterioration in North American pricing for commodity products experienced during the third quarter of this year has continued into the fourth quarter [of 2000]. . . . U.S. housing starts, on an annualized basis, remain however strong, and what we are observing is the impact of an unbalanced supply/demand equation.

59. In August 2001, a banker told Louisiana-Pacific's CFO, Curt Stevens, that Louisiana-Pacific was "a fallen angel" and that something needed to be done about OSB prices. Other bankers used the same phrasing when communicating with Georgia-Pacific executives.

60. In 2001, representatives of the Royal Bank of Canada ("RBC") Capital Markets Group made a presentation to executives at Nexfor (now Norbord) regarding OSB. The RBC representatives told Norbord executives that the OSB industry had the opportunity to form a "cartel" similar to OPEC. The presentation explained that one major problem with cartels was the tendency of participants to "cheat," and that the OSB industry needed to develop means to stop any cheating. One Norbord executive later wrote in an e-mail that the ideas were "worth consideration." As events unfolded, the executives at Norbord did more than merely consider the idea of forming a cartel. They acted upon the advice of their investment bankers at RBC.

61. The following year, when reporting Ainsworth's financial results for the fourth quarter of 2001 and the full year 2001, CEO Brian Ainsworth in a news release dated February 18, 2002, commented on the problem of OSB oversupply:

> Our poor financial results directly reflect an accelerated deterioration in North American pricing in the fourth quarter from that experienced in the third quarter. . . . Despite the relatively robust North American residential construction market, excess structural panel capacity resulted in some of the lowest prices we've seen since 1997 for our company's oriented strand board (OSB) products.
>
> During the 2001 fourth quarter, the company's average OSB price declined by 20.6%, as compared to the 2001 third quarter, and by 16.5% when compared to the same period of 2000. For the full year of 2001 the company's average OSB price was down 21.8% from that realized in 2000.
>
> In response to the poor market conditions, a number of North American OSB and plywood producers curtailed production in the fourth quarter.
>
> * * * *
>
> OSB sales revenue in the 2001 fourth quarter was 10.0% greater than the same period of 2000, as a 35.8% increase in unit volume was partially offset by the 19.0% drop in average sales price.

62. In April 2002, Louisiana-Pacific executive Rick Frost, who became CEO of Louisiana-Pacific two years later, gave a speech to an industry trade association which was

published in a paper for the Forest Resources Association in which he also addressed the "problem" of over-capacity:

> Someone once said, '*We have met the enemy, and it is us*'. I think this is pretty true in the North American forest industry. We continue to oversupply the markets we serve. The results are disastrous. There is huge volatility and long periods of profit famine sprinkled with short periods of profit feasting. The demand for paper, pulp, and wood products has been steadily increasing over the last 15 years, but the supply increases have out-paced this growth.
>
> * * * *
>
> Nobody wants to be the first to reduce production because the others will just come in and steal their customers and their market share. And, the short term costs of downtime always look worse than just producing at a loss. What results is often referred to as a highly 'undisciplined' market segment. Too many suppliers producing too much product. The result is huge volatility and what you may feel as the "yo-yo" effect.

Frost then explained that consolidation was a partial solution to the problem of over-capacity:

> Consolidation allows fewer decision-makers to make the run/don't run and inventory level decisions. It reduces the amount of *'who blinks first'* being played in times of high inventories. When a decision is made to take downtime, the impact on the market is greater by a larger company. Theoretically, consolidation allows high market share companies to add discipline to the market, and theoretically, volatility should be diminished.
>
> Consolidation also allows for more discipline in the *'build/don't build'* decisions. Many market competitors announce expansions and new facilities to try to discourage other competitors from building as well. (Emphasis in original.)

63. Louisiana-Pacific continued to signal its competitors about addressing the "oversupply" problem during an analysts call on April 25, 2002. Bill Hebert of Louisiana-Pacific told the analysts that [redacted]

64. In September 2003, after the wave of consolidation, curtailments, and price-fixing (described below) drove prices to record levels, Louisiana-Pacific's Rick Frost congratulated the industry on the progress they had made so far. Louisiana-Pacific used an opportunity to speak at the UBS Global Paper Conference attended by the major players in the industry to craft a special message to other industry participants in the audience. Co-presenter Curt Stevens wrote in an internal email prior to the presentation, [redacted]

65. Rick Frost followed Stevens' advice exactly. At the presentation, [redacted] the [redacted] Looking to the future, Frost's presentation declared that [redacted] And although the entire industry anticipated more strong demand in the future, the presentation suggested that [redacted] In this speech, Frost spoke directly to his putative competitors, lauding their success and reminding them of the collective action that was necessary to achieve it.

B. The Big Three Lead the Conspiracy to Manipulate Supply

66. Thus, the expressed objectives of industry executives could be summarized as follows: (1) consolidation had laid the foundation for more cooperation; (2) curtail production in a coordinated fashion; (3) remove capacity from the market; (4) add little new capacity. With this strategy, supply could be controlled, and prices would then move upward.

67. As a first effort to create an effective conspiracy, the defendants coordinated mill shutdowns in order to remove capacity from the markets. In late 2001, the industry had attempted to achieve such "demand-capacity management" through a series of coordinated mill shutdowns. On June 28, 2001, Louisiana-Pacific, as the industry leader, announced that it would be taking "market-related downtime" at all its OSB mills for a period of one or two weeks, "depending on market conditions." Louisiana-Pacific made a similar announcement on September 20, 2001. In both cases, Louisiana-Pacific made these announcements with the full expectation that its leading competitors would respond to its signals and indicate their agreement by acting in a similar fashion. Otherwise, the shutdowns would have cost Louisiana-Pacific market share and customers, as Frost emphasized in April 2002. *See* Paragraph 62, *supra*. Without the assurance that competitors would follow suit, the actions of Louisiana-Pacific would have been against its economic self-interest.

68. Ainsworth, Potlatch, Norbord, International Paper, Georgia-Pacific and Weyerhaeuser understood Louisiana-Pacific's signals and responded shortly thereafter. All announced periods of downtime from three days to two weeks. Many of the defendants, like Louisiana-Pacific, blamed market conditions. For example, Weyerhaeuser announced that its Slave Lake OSB mill was being curtailed "to balance production and inventory with customer demand." International Paper, prior to being acquired by Nexfor (now Norbord) announced a

25% decrease in capacity at its OSB mills for the month of November 2001 due to "[p]oor market conditions." Georgia-Pacific curtailed its OSB mill in Woodland, Maine from December 21, 2001 until spring 2002, again citing "[m]arket conditions."

69. These curtailments in late 2001 caused prices for structural panels to increase during the first quarter of 2002. But the price increase did not last, as illustrated in the chart in Paragraph 32, *supra*. These short periods of curtailments simply did not remove enough capacity from the market to have lasting or substantial effects on pricing. However, industry participants, at a minimum, signaled to each other their understanding of the need for "discipline" in managing supply and their willingness to work together toward that common objective. The limited success of these curtailments also served notice that in order for the curtailments to have the intended effect, all of the major players needed to participate. Accordingly, these curtailments laid the groundwork for the 2002 capacity reductions – "idling" of OSB and plywood mills – by Louisiana-Pacific, Georgia-Pacific, Weyerhaeuser and others, as alleged below.

70. In late 2001, Louisiana-Pacific announced that it was idling its Montrose, Colorado OSB mill. Its CEO, Mark Suwyn, previously had told representatives of other companies that his plan for the Montrose mill was to close it down during the next industry downturn and not to sell it. That sharing of what would otherwise be confidential business information only set the stage for the conspiracy which would later unfold. Effective May 24, 2002, the Montrose mill was permanently closed. By that time, unlawful discussions had already begun with Georgia-Pacific about ways and means to reduce capacity within the structural panels industry.

71. By January 2002, Mark Suwyn of Louisiana-Pacific decided that it was time to take more direct action. At the Board of Directors meeting that month, he and investment bankers from Goldman Sachs presented a proposal to open serious discussions with Georgia-Pacific about acquiring the latter's wood products division. In an e-mail to Suwyn, in which he summarized his thoughts about the Board meeting, Rick Frost (who became CEO in late 2004, upon Suwyn's retirement at the peak of the market) noted that [redacted] Clearly, coordinated conduct was being contemplated. Although the two companies were not able to reach an agreement concerning the wood products division, the discussions provided ample opportunity to address their mutual interest in reducing supply.

72. During this same period, Louisiana-Pacific also began discussions with competitors regarding the possible sale or exchange of its four plywood mills in Louisiana and Texas, three of which it had identified in its 2002 budget [redacted] On May 30, 2002, Paul called Matheney back and proposed swapping Georgia-Pacific's OSB mill in Woodland, Maine for the four plywood mills.

73. After further discussions, Matheney and Paul, on behalf of Louisiana-Pacific and Georgia-Pacific, reached an express agreement to shut down capacity. This agreement, memorialized in a letter signed by both sides in mid-June 2002, stated that Louisiana-Pacific would "idle" two plywood mills--Bon Wier, Texas and Urania, Louisiana—as a condition of the closing. On July 19, 2002, Matheney and Paul further agreed that Georgia-Pacific would shut down the Maine OSB mill and sever all the employees prior to the closing. Matheney confirmed the oral conversation with a letter. The two then met face to face during the week of July 29, 2002, to "hash out" the final agreement. Incredibly, by the time the boards of both companies approved the deal in early August, no representatives of either company had visited or inspected the mills to be transferred to them. Indeed, each side reviewed only the barest financial data regarding the mills owned by the other.

74. In contrast to the transactions described in Paragraphs 48-52, *supra,* in which billions of square feet of capacity changed hands for a total of nearly $12 billion, this swap of mills between Georgia-Pacific and Louisiana-Pacific was the first in which shutdowns were explicitly undertaken as conditions of the transaction.

75. On August 6, 2002, Georgia-Pacific publicly announced that it had reached an agreement with Louisiana-Pacific to acquire four Louisiana-Pacific plywood manufacturing mills and one medium density fiberboard facility located in Louisiana and Texas, in exchange for its OSB mill at Woodland, Maine. The three idled mills—Bon Wier, Texas; Urania, Louisiana; and Woodland Maine—boasted annual rated capacities of approximately 200 million, 260 million, and 275 million square feet, respectively. Thus, in a single transaction, the two conspirators took nearly two percent of the total North American structural panels capacity off the market. This transaction was perhaps the single most important overt act of the conspiracy.

The two conspirators arrived at this deal pursuant to an unlawful agreement to manipulate supply, and neither company informed the public that they had reached an agreement to remove these three facilities from the market. Instead, Georgia-Pacific and Louisiana-Pacific separately announced that each was idling its own facilities.

76. As part of the continuing efforts by the conspirators to "rationalize" and manage supply and demand, while concealing their conspiracy from the public, Georgia-Pacific announced that: "The previously announced closure of the Bon Wier, Texas plant will occur and the plywood and medium density fiberboard plants at Urania, La. will be idled. These three idled facilities will remain in a position so they may be restarted as conditions dictate. Production at the Woodland, Maine OSB facility will be suspended next month. That plant will be transferred to LP in a position so it may be restarted if and when LP may determine." In fact, Georgia-Pacific did not restart the Bon Wier or Urania plywood mills, and in 2005 Louisiana-Pacific shut down the OSB mill in Woodland, Maine. Thus, the only visible consideration received by Louisiana-Pacific for this asset exchange was approximately two years of intermittent OSB production in Maine. The remainder of the consideration was the agreement to conspire and subsequent cooperation to manipulate supply.

77. During this same period, Louisiana-Pacific announced that labor negotiations concerning the retention of a defined benefit retirement plan had collapsed at its Chambord, Quebec OSB mill. The workers' strike began in May 2002 and lasted for 13 months. But Louisiana-Pacific's decision to allow the strike to continue was actually a deliberate effort to remove capacity from the market. In fact, the strike began at the same time that Matheney and Paul were discussing the mill swap and planned shutdowns, meaning both companies were already talking about planned capacity curtailments. Underscoring the artificial nature of the

strike, [redacted] Following this plan, the company made no offer to the union until shortly before the budgeted end of the curtailment. The fact that the terms of Louisiana-Pacific's agreement with the union exceeded the union's original demand further evidences that the desire to curtail, rather than a legitimate labor dispute, drove the Chambord shutdown. Furthermore, Louisiana-Pacific's self-interest in taking market share from plywood, given that prices for OSB were lower than the average variable costs of plywood, should have dictated that Chambord remain open. Removing Chambord's capacity, in excess of 400 million square feet, from the market aligned with the goals of the conspiracy but against the company's economic self-interest.

78. In April 2002, Bill Corbin of Weyerhaeuser had a private meeting with a Louisiana-Pacific executive during an industry trade association meeting, where upon information and belief the two discussed industry capacity issues, the need to remove supply from the market, and possible consolidation or other agreements between the two to resolve these issues.

79. Louisiana-Pacific continued to lead the way for other market participants in OSB and plywood to announce production curtailments. On May 22, 2002, Louisiana-Pacific announced that it would take an average of about six days of downtime at each of six OSB mills during the months of May and June, announcing at the same time that it faced "an uncertain outcome of union contract negotiations" at the Chambord mill. Weyerhaeuser on May 28, 2002 announced a week-long curtailment at its Hudson Bay, Saskatchewan OSB mill.

80. On June 4, 2002, Louisiana-Pacific announced downtime for two of its Louisiana plywood mills. On the same day, Boise Cascade announced that it would idle a plywood mill

during the week of July 1, 2002. One day later, Weyerhaeuser announced that two of its plywood mills would shut down on July 1 for a week. And the next day, June 6, 2002, Georgia-Pacific announced that 12 of its 16 plywood mills would shut down for the entire week of July 1.

81. Also on June 6, 2002, Tim Sullivan of the Georgia-Pacific distribution division reported to his boss Chuck McElrea (through McElrea's assistant Carol Reagin) that "mills continued to hold their prices firm as the OSB segment of the panel market awaits the outcome of the plywood curtailments, both pine and fir . . . . The OSB production problems, announced downtime and the LP strike had the effect of stopping the price fall, boosting and then stabilizing prices at their current levels. The plywood curtailments could possibly help maintain the current level of stability long enough to help the mills build the order files they so desperately need."

82. On June 14, 2002, Weyerhaeuser announced that its plywood mill in Foster, Oregon would also shut down on July 1 for a week. On June 18, 2002, Louisiana-Pacific announced that 13 of its 14 OSB mills would be suspended starting on July 1 in order "to adjust production to customer demand." Its other mill was the Chambord, Quebec mill, which was still shut down because of the strike. Then, on June 25, 2002, well after reaching its conspiratorial agreement with Georgia-Pacific to remove capacity from the market, Louisiana-Pacific announced that its plywood plant in Bon Wier, Texas, could close within 60 days. That same day, Hood and Weyerhaeuser both announced that they would curtail production at certain plywood mills during the week of July 1. These July 2002 curtailments removed over 100 million square feet of OSB and over 100 million square feet of plywood from the market. These shutdowns were either expressly or tacitly agreed upon by the conspirators, as part of an understanding that they would not poach on other companies' customers when they were curtailing their own mills.

83. The curtailment announcements continued. On July 26, 2002, Norbord announced it would shut down its OSB mill in Jefferson, Texas, during the week of August 5. On August 16, 2002, Ainsworth announced that its mill at 100 Mile House, British Columbia, would be shut down from September 23-27. On August 19, 2002, Norbord announced that it would curtail operations in Bemidji, Minnesota during the week of September 16. On August 20, 2002, Potlatch announced it would shut down its OSB sheathing line in Bemidji, Minnesota during the week of September 9. In September 2002, Louisiana-Pacific and Weyerhaeuser announced maintenance shutdowns for mills in Swan Valley, Manitoba and Sutton, West Virginia, respectively. In the meantime, on September 17, 2002, Georgia-Pacific announced the idling of two of the four plywood mills it had recently acquired from Louisiana-Pacific.

84. October 2002 was an especially busy month for curtailment announcements. On October 2, 2002, Potlatch announced a four-day shutdown at its Cook, Minnesota OSB mill. On October 10, 2002, Norbord announced plans to take 35 days of downtime, spread among six of its nine OSB mills, resulting in the cutback of about 40 million square feet of OSB production. On October 15, 2002, Ainsworth announced a week of downtime at its Grand Prairie, Alberta, OSB mill. That same day, Louisiana-Pacific announced that it would take 65-70 days of downtime among 12 of its 15 active North American OSB mills between late November and the end of the year. These announcements, coming on the heels of the July curtailments, were particularly surprising to Andy Trott, the President of Huber, who had never seen curtailments of this magnitude. On October 25, 2002, Weyerhaeuser announced plans to take downtime at six of its ten OSB mills during November and December, taking about 28 million square feet out of production.

85. Then, on November 15, 2002, Georgia-Pacific, pursuant to its agreement with Louisiana-Pacific and others to manipulate supply, announced that it would "idle" three additional plywood mills (Russellville, South Carolina; Gloster, Mississippi; and Talladega, Alabama), with a combined annual capacity of approximately 867 million square feet. The President of Georgia-Pacific, Lee Thomas, stated:

> We continue to actively balance production with current demand across our building products manufacturing businesses. Total downtime from our idled plywood facilities represents 25% of our company's plywood capacity. Suspending operations at selected facilities is necessary to address the recent decline in commercial and industrial market demand for these wood products.

86. This statement falsely described a decline in demand as the reason for idling the plywood mills. Georgia-Pacific continued to purchase large quantities of plywood from its "competitors" when it could have manufactured such plywood more cheaply in the idled mills. Furthermore, Georgia-Pacific had no intention of reopening most of these mills when demand increased, as demand did in 2003. Stock market analysts immediately noticed the potential impact of this announcement and issued improved ratings for Louisiana-Pacific, Georgia-Pacific and Weyerhaeuser. Downtime at the Louisville, Mississippi plywood plant would continue until January, and production continued to be suspended at Bon Weir, Texas and Urania, Louisiana. The Georgia-Pacific announcement that it was idling about 25% of its plywood capacity was even more surprising to Huber's Trott.

87. On March 4, 2003, Weyerhaeuser took a major step as its part in aid of the conspiracy. It announced the immediate closure of its plywood mill in Millport, Alabama. That closure removed an annual capacity of 224 million square feet from the market. Within days, Georgia-Pacific reopened the Talladega, Alabama plywood mill. This move—closing a Weyerhaeuser mill and immediately reopening a Georgia-Pacific mill—required coordination

and planning. These actions were undertaken pursuant to an express or tacit agreement in order to shift market shares back into alignment.

88. In the March 2003 issue of *Logging & Sawmilling Journal*, Russell Taylor also noted what the industry had done to reduce the supply of OSB:

> The supply/demand outlook for structural panels in 2003 points to small but steady improvements in demand, with limited increases in OSB capacity. . . . With only two new OSB plants scheduled for 2003 and no firm commitments yet for 2005, OSB operating rates and prices should improve modestly in 2003 and more rapidly in 2004. As we saw in 2002, an excess of supply can quickly push operating rates and prices lower, regardless of the market's strength (as the softwood lumber sector knows only too well). As in the second half of 2002, <u>effective supply management by the larger producers</u> during periods of slow demand will have a direct impact on price levels in 2003. (Emphasis added.)

89. On April 24, 2003, a meeting took place in San Diego between representatives of Louisiana-Pacific and lawyers representing litigants in a product liability matter. In casual conversation, one of the lawyers asked how Louisiana-Pacific was doing those days, noting that financially the company had been struggling. The Louisiana-Pacific paralegal present noted that the company had just posted its first profitable quarter in several years. In fact, Louisiana-Pacific had issued its press release regarding first quarter profits only the day before. The paralegal would have been present for the earnings conference call and any conversations that took place that day off the record would have been fresh in her mind. At the San Diego meeting, the lawyer then noted his understanding that Louisiana-Pacific had begun concentrating more of its efforts on the manufacture of OSB and that he recalled a situation of oversupply as having been a problem for Louisiana-Pacific. The paralegal then responded that things had been looking up, that the problem had related to certain producers continuing to produce too much OSB, and that recently Louisiana-Pacific had talked to one or more of these producers with the result that they had agreed to reduce their production and reduce the oversupply. She then added

that these steps had made it possible for Louisiana-Pacific to be profitable. The other Louisiana-Pacific representative, realizing the damaging nature of this admission, quickly interjected and claimed that, of course, there had been no agreement "because that would be an antitrust violation." The paralegal was left visibly chagrined.

90. In the August 2003 issue of *Wood Markets Monthly*, a respected industry observer noted the manufacturers' successful new approach:

> [t]he industry developed its own version of "managed trade," with some self-imposed curtailments to allow production to better balance with supply in the early part of the year. The result through the first five months of 2003 has seen U.S. OSB output at 3% below last year's levels and plywood 6.5% lower. Even Canadian OSB is just 1.6% higher than in 2002, with plywood off by 7%. The net result has been constrained OSB and plywood production, while housing starts have remained very strong. This has allowed 7/16" OSB prices to soar from the US$160s to the US$360/Msf—levels that have eclipsed the previous all-time OSB peak price achieved in the summer of 1999.

91. That industry observer did not note that the reason for the decreased production during the first five months of 2003 was the shutdowns, idlings and curtailments described above as part of the conspiracy to manipulate supply. Once those mills are excluded from the calculations, actual OSB and plywood production for the other mills increased for the first six months of 2003 over the total production from the same period in 2002.

92. In September of 2003, Rick Frost of Louisiana-Pacific gave the "customized" presentation that he and Curt Stevens had concocted to the industry at the UBS Global Paper Conference, praising their responsible actions in getting supply under control and laying the groundwork for the collusive actions to continue.

93. On December 5, 2003, Weyerhaeuser announced that it would shutter another plywood mill, located in Pine Hill, Alabama. This shutdown removed another 160 million square feet from the market. This closure came just as prices for OSB and plywood had set records. The only possible justifications for closing this mill when prices were at record levels

were to continue the conspiracy, again realign market shares, and push prices to an even higher level. Closing this mill at a time of record prices was against the independent economic interest of Weyerhaeuser.

94. The industry thus had developed its own version of "managed trade," as alleged above. Other industry observers noted the same dynamics. For example, Sam Sherrill, executive editor of Crow Publications, a forest products market research service, attributed the dramatic 2003 price increase to "discipline" among the OSB producers who in years past had been unable to cut production without competitors seeking to fill the gap. Sherrill further noted that few OSB mills had been brought on the market, which helped to keep supplies tight.

95. Even industry spokespersons used the same language. Charles Gordon, a spokesman for Nexfor, told the Akron Beacon Journal that OSB manufacturers were able to exercise "more discipline" in the marketplace than the much larger number of producers of other types of lumber. His statements were ironic, given the antitrust difficulties of the manufacturers of linerboard, plywood, corrugated containers, and other forest products over the years and the "discipline" they exercised.

96. All of the curtailments and shutdowns described in Paragraphs 73-93 above were either part of an express agreement to manipulate supply or, in a few cases, part of a tacit agreement to manipulate supply. At a minimum, the companies engaged in signaling their agreements through their public statements and coordinated shutdowns, as described in, *e.g.*, Paragraph 55, *supra*. By coordinating the curtailments, each company assured the others that it was not attempting to take customers or market share from the others, as Rick Frost had highlighted as a danger in his paper described in Paragraph 62, *supra*. In other words, the conspirators had become more "disciplined."

97. Smaller companies in the market noted the coordinated downtime and shutdowns. Richard Huff, then Vice-President of OSB for Tolko Industries, as part of the strategic planning exercise for the company in the latter half of 2003, [redacted]

A mid-2003 market recap from Potlatch similarly concluded [redacted] Real competition would have entailed producers with lower cash costs competing vigorously for business and market share by continuing to run their operations in times of slack demand and forcing less efficient operators out of business.

C. <u>The Big Three Lead the Conspiracy to Fix, Raise, Maintain, and Stabilize Prices</u>

98. Just as Georgia-Pacific, Louisiana-Pacific, and Weyerhaeuser led the conspiracy to manipulate supply in 2002 and 2003, those same three companies led the conspiracy to fix, raise, maintain, and stabilize prices. The conspirators operated through an established and open network of illegal communications, with the distribution divisions serving as the hubs of the conspiracy.

99. At Georgia-Pacific, Executive Vice-President Ronnie Paul headed Wood Products, which was divided into the manufacturing and distribution divisions. The manufacturing division included both OSB and plywood mills. That division had some large national accounts, such as Home Depot and Lowe's, as well as a few industrial accounts. But most of the OSB and plywood produced by the manufacturing division was "sold" to the distribution division, which during 2002 until May 2004 was headed by Chuck McElrea, who reported to Ronnie Paul.

100. The distribution division was roughly divided into groups of buyers and sellers. Larry Bradford headed up the group which procured structural panels during 2002 until May 2004. Tim Sullivan was the lead OSB buyer, and James Davis was the lead plywood buyer. At least six OSB buyers—Mary Woskoski, Jason Branton, Terry Van Balen, John Corn, Dan Storey and Amy Graydon—reported to Sullivan during the relevant years. Likewise, at least six plywood buyers—Greg Foster, David Ketron, George Wise, Larry Gallino, Jim Smith and Dan Storey—reported to Davis during the relevant years. To date, none of the custodial files for any of these individuals, other than Bradford and Sullivan (but not as employees of BlueLinx), have been produced.

101. It generally was unnecessary for the Georgia-Pacific buyers to solicit information on what prices the vendors were quoting for open market sales, the length of order files, or whether any particular mills were planning curtailments. Georgia-Pacific had contracts with various OSB and plywood manufacturers, under the terms of which Georgia-Pacific committed to purchase certain quantities of product on a regular basis throughout a given year. The price was determined by contract, with the price generally linked to the Random Lengths print price of the Friday or the second Friday before the order was placed. Thus, when Georgia-Pacific buyers

needed to place orders under any of these contracts, the only information they needed to convey to the vendors was the mix of product, the quantities of the products, and the destination(s) of the shipment.

102. Nonetheless, the Georgia-Pacific buyers daily called salespersons at other companies to inquire about prices being quoted for open market sales, the length of order files, whether any particular mills were planning curtailments, and other market intelligence, regardless of whether the individual buyer even intended to place an order that day. They then passed this information directly to the Georgia-Pacific sellers, who used the information to set their prices to buyers such as plaintiffs. The other manufacturers knew exactly how salespersons at Georgia-Pacific were using the information that they provided to the Georgia-Pacific buyers. [redacted] He also admitted that [redacted] they [redacted] So long as Georgia-Pacific did not use the information provided by the "competitor" manufacturers against them, the manufacturers either tacitly or explicitly agreed to keep providing this information. All manufacturers were interested in seeing prices move upward because profits rose accordingly. [redacted]

[redacted]

103. Larry Bradford described in greater detail how the price-fixing conspiracy worked. [redacted]

104. Bradford also named the salespersons at other companies with whom he regularly discussed pricing. At Louisiana-Pacific, he talked with Harold Stanton (OSB Vice-President and later Executive Vice-President), Linda Kaufman (National Sales Manager), Mike Wardlow (Regional Sales Manager), Bob Boyd (Regional Sales Manager) and Dick Natale (Kaufman's predecessor as National Sales Manager). At Slocan, he talked with Terry Upgaard, Sr. (Vice-President of Sales and Marketing) and Terry Upgaard, Jr. (a sales manager). At Ainsworth, he talked with Blair Magnuson (OSB Sales Manager), Bart Bender (General Manager of Sales) and Allen Ainsworth. At Tolko, he talked with Chris Grotterod (Sales Manager). At Norbord, he talked with Ross Commerford, Sue Cumming and Scott Stubbington. At Grant Forest, he talked with Peter Lynch. He also talked with representatives of Boise Cascade and Potlatch. Sullivan has specifically named Linda Kaufman at Louisiana-Pacific and Ross Commerford at Norbord as

salespersons with whom he communicated about pricing. Indeed, Sullivan once sent an e-mail to Ms. Kaufman, noting that "there are no secrets in this industry."

105. The conspiracy to fix, raise, maintain, and stabilize prices operated together with the conspiracy to curtail and manipulate supply. As an example, on May 23, 2002, Tim Sullivan sent an e-mail titled "production curtailment" at 8:50 a.m. to 67 different individuals within Georgia-Pacific, including all the OSB buyers, some plywood buyers and numerous people on the sales side, including such Regional Sales Managers as Brian Dooley, Mike Voelker, Bill Cosbey, Stacey Dobbins, Howard Nichols and Dennis Lapierre, as well as many of their subordinates. Sullivan reported about Boise and Louisiana-Pacific curtailment announcements, noting that the curtailments would remove at least 50 million square feet of OSB from the market and exclaiming "[t]his is what we have all been talking about!" At 11:48 a.m. on that same day, Sullivan happily reported to the same email list that "[a]ll OSB mills have firmed their numbers above mid-week," i.e., raised their prices to above Random Length's mid-week price report, in response to "the LP announcement." At 4:49 p.m. that same day, Sullivan emailed Carol Reagin, the secretary to the President of the distribution division Chuck McElrea, reporting that "LP's announcement of curtailments to come in June gave the market the spur it had been looking for..." and describing how the competition had raised prices and extended order files.

106. On June 18, 2002 at 9:16 a.m., Sullivan sent another e-mail to the same 67 Georgia-Pacific employees to report that Louisiana-Pacific was scheduling all of its OSB mills to go down during the week of July 1 "with the intent to reduce available supply." Of course, all of the companies discussed in Paragraph 79-84, *supra*, had the same shared intent.

107. Beginning on May 23, 2002, if not before, Sullivan sent regular e-mails summarizing the week's market activities to the secretary for the President of the distribution

division, Chuck McElrea, showing no copies to anyone else and thereby bypassing several layers of management. On information and belief, McElrea had ordered these reports so as to keep himself informed of the status of the information exchange taking place in the market every day. Later, during the period when the West Virginia Attorney General's antitrust investigation was active, as described in more detail below, Sullivan began to copy attorneys in the Georgia-Pacific Law Department on his regular reports. Thus, in-house counsel became aware of the information exchange that violated the antitrust laws and Georgia-Pacific's antitrust compliance policy and but the unlawful behavior continued.

108. Weyerhaeuser operated in a similar fashion as Georgia-Pacific. Executive Vice-President Bill Corbin had responsibility for wood products, both for manufacturing and distribution. About 90% of the structural panels produced by the company were "sold" to Weyerhaeuser Building Materials ("WBM"), the distribution arm of the company. Most of the OSB not sold to WBM went to other manufacturers in the form of webstock, which those manufacturers then used to produce engineered wood products, such as I-beams.

109. WBM also purchased large quantities of OSB and plywood from other manufacturers, as alleged in Paragraph 151-53, *infra*. Hot Springs Central Purchasing was responsible for most such purchases. Part of the declared mission of WBM's Panel Products Team was to "[b]uild strong alliances with Supplier Partners who share WBM's distribution strategy and goals." Pattie Ring was the Panel Purchasing Lead, with Adelia Lerz, Karen Palmer, Beth Hess and Joni Brinegar all Senior Product Managers reporting to her. Lerz and Brinegar each bought OSB and plywood. Palmer, Hess, and Tamara Cowart (a Product Manager) all handled plywood purchases. Each day, these Senior Product Managers and Product Managers called manufacturers (or received e-mails from them) to obtain price quotes,

regardless of whether they had any present intent to buy OSB or plywood. They also inquired about order files, whether mills were off the market, and whether curtailments were planned. They then passed all this information on to others within WBM, who daily used the information, just like the Georgia-Pacific sellers, to set prices. To date, none of the custodial files for any of these individuals, other than Patti Ring, have been produced.

110. Adelia Lerz, for example, created a spreadsheet on a regular basis with detailed information on OSB prices and ship dates, arranged just like the Georgia-Pacific whiteboard, with panel thicknesses across the top and vendors (including specific mills) to the left. She passed on her spreadsheet information to over 100 WBM employees, ranging from Region General Managers on down. Most of the recipients of her spreadsheets had sales responsibilities, and they used the information to set Weyerhaeuser prices so as to push prices upward and not compete vigorously. Her spreadsheets contained information about Norbord, Potlatch, Louisiana-Pacific, Grant Forest, Footner (the Grant Forest/Ainsworth joint venture), Boise Cascade, Ainsworth, and Tolko. Just as in their dealings with Georgia-Pacific, these companies provided sales price information and order file information to Weyerhaeuser, secure in the knowledge that this information would not be used against them. Just as with Georgia-Pacific, the majority of Weyerhaeuser's purchases from these vendors were based on contracts and not open market sales. Weyerhaeuser has not yet produced its contracts with plywood manufacturers or similar spreadsheets regarding its plywood purchases through Hot Springs Central Purchasing.

111. Louisiana-Pacific sold its distribution centers in 2002, and it conspired with competitors in a fashion somewhat different from Georgia-Pacific and Weyerhaeuser. Linda Kaufman, for example, kept home and mobile phone numbers for Roy Deans at Weyerhaeuser, as well as the mobile number for Larry Bradford at Georgia-Pacific, allowing her to contact them

at any time. And in addition to all the communications described above, its sales staff contacted salespersons directly at competitors to learn sensitive pricing and shipment information. [redacted] Custodial files for only three of these salespersons were searched and produced by Louisiana-Pacific in the class-action case.

112. In May 2004, Georgia-Pacific sold its distribution division, and the new company, BlueLinx, became a coconspirator. Chuck McElrea became the first CEO, and most of the employees of the distribution division became employees of the new company. The transition has been described by some of them as "seamless." As part of the transaction, Georgia-Pacific

entered into a five-year agreement to supply OSB and plywood at a substantial discount from Random Lengths prices. This "spread" formed part of the incentive for the acquiring entity to pay more to Georgia-Pacific for the distribution division. Contracts which the Georgia-Pacific distribution division had with other manufacturers to supply OSB and plywood were assigned to the new company. The employees of the new company stayed in their old Georgia-Pacific office space and, for a time, even continued to use their existing e-mail addresses within Georgia-Pacific.

113. Bradford, Sullivan, and Davis also became employees of BlueLinx, as did most, if not all, of their subordinates from Georgia-Pacific. They continued to operate as a part of the conspiracy in the same fashion as employees of BlueLinx as they had done as employees of Georgia-Pacific, as alleged in Paragraphs 98-107, *supra*.

114. BlueLinx was highly incentivized to raise structural panels prices. Since most of its product was bought and sold on contract, BlueLinx enjoyed built-in gains that multiplied as the price increased. For example, BlueLinx's contract with Georgia-Pacific allowed it to purchase OSB [redacted] off of Random Length's price. If BlueLinx resold the same product to its contract customers at a 2% discount – a common discount in the industry – BlueLinx would realize a [redacted] on every transaction. At a Random Lengths price of $200, BlueLinx would net [redacted] But at a Random Lengths price of $400, that amount [redacted] Thus, higher prices benefited BlueLinx, given the nature of its buying and selling arrangements.

115. Thus, in the event of rising prices in a particular week, BlueLinx buyers could place orders for either OSB or plywood and pay prices that had prevailed the week or two before. In the event of a down market, BlueLinx would tend to relax its buying and rely on its

inventories at its large distribution center warehouses spread throughout the country, while waiting for prices to stabilize or rise again.

116. Indeed, BlueLinx publicly acknowledged that rising structural products prices were key to profitability. In a press release discussing performance for the fourth quarter of 2005, when structural panels prices were, on average, higher than prices for the fourth quarter of 2004, BlueLinx also achieved higher profits::

> Gross profit for the fourth quarter was $140.4 million, compared with $101 million in the prior-year period. Gross margin was 10.6%, compared with 8.4% a year ago, reflecting growth in higher-margin specialty products and improved structural product margins.

117. The converse—falling structural panels prices leading to falling profits—was also true, as the new company acknowledged in its first 10-K, filed on March 22, 2005. In that report, BlueLinx compared its performance for the fourth quarter of 2004 with the performance of Georgia-Pacific's distribution division for the fourth quarter of 2003 in the following terms:

> Gross profit for the fourth quarter of fiscal 2004 was $101.4 million compared to $118.7 million in the prior year period [as Georgia-Pacific]. <u>The decline in gross profit is primarily due to the significant decline in structural product prices.</u> During fiscal 2004, from the end of the third quarter to their fourth quarter lows, prices for OSB declined by 31%, plywood declined by 38%, and lumber fell by 18%. Prices then staged a moderate recovery from Thanksgiving week through year-end, but on thin holiday volume and, therefore, provided limited favorable impact on fourth quarter gross margins. (Emphasis added.)

118. Management reiterated the linkage between declining structural panels prices and declining profits in its 10-K filed for the next fiscal year on February 24, 2006, stating that "[s]tructural sales including plywood, OSB, lumber, and metal rebar, were down $108 million or 3% from a year ago, as a 3% increase in unit volume was more than offset by lower plywood and OSB prices." Furthermore, the BlueLinx management commented that "[t]he decrease in gross profit of $48 million or 8.6%, compared to 2004 was driven primarily by a decline in structural

product margins from 8.5% in 2004 to 6.9% in fiscal 2005." In other words, the increased profitability of the last quarter of 2005 was erased by the decreased profitability of the preceding nine months.

119. At BlueLinx, approximately 60% of its sales were tied to structural products, which were largely OSB and plywood. Thus, the profitability of BlueLinx, with respect to its structural panels sales, depended on rising prices, as management repeatedly confirmed.

120. But as with any conspiracy – and as highlighted by the RBC presentation to Norbord in Paragraph 60, *supra* – the efficacy of the cartel is undermined by "cheating" members. In late July 2005, [redacted]

121. At about this same time, Norbord's Scott Stubbington spoke with [redacted]

122. After this discussion and agreement between [redacted] BlueLinx prices rose to the level desired by Norbord and Louisiana-Pacific. This cooperation helped to set the stage for the dramatic price increases which the conspirators engineered in the aftermath of Hurricane Katrina.

123. In short, employees of BlueLinx participated in the price-fixing conspiracy in the same manner in which they had participated as employees of Georgia-Pacific. The interests of BlueLinx were aligned with those of the manufacturing conspirators. In all cases, rising prices for structural panels were the key to rising profitability for all the companies.

D. The Contrast Between the Conspiracy and How Random Lengths Operated

124. As alleged in Paragraph 25, *supra*, Random Lengths collects historical data on structural panels prices and reports that information as an approximate average by region of past transactions on a regular basis. Random Lengths therefore describes its process to the public:

> Reported prices reflect sales from mills to their customers. Sales at the secondary level are not considered, although they may be discussed in the market summaries. With few exceptions, reported prices are representative of actual sales prices, not what mills have quoted, or what buyers think they can pay.
>
> * * * *
>
> [T]he determination of reported prices is not clouded by expectations or predictions. A price reported in Random Lengths is a benchmark of the price at which a product traded at the time of publication. <u>In a fast-moving market, prices will lag to a degree based on how quickly prices are changing.</u> Reported prices are intended to provide a snapshot, telling readers a lot, but not everything about the market.

125. Because of scandals in the energy market, where individuals at various companies gave false reports to a price reporting service in an attempt to manipulate energy prices, Random Lengths sought an opinion letter from counsel regarding the application of the antitrust laws to its own business. A law firm in Eugene, Oregon, provided that opinion in a letter dated March 7, 2003. The publisher, Jon Anderson, sent a copy of that opinion letter to Rusty Carroll of

Louisiana-Pacific on February 19, 2005, thereby waiving any attorney-client privilege that may have existed.

126. As part of the factual background undergirding his opinion, the lawyer described the practices of Random Lengths:

> You determine your reported prices from information you gather on past transactions, not pending or future transactions, and from information submitted to you by buyers and sellers via fax and e-mail. You gather information on past transactions by interviewing buyers and sellers in the market. You probe further when you receive unusual information, and attempt to resolve discrepancies between prices reported by buyers and sellers. Your reported price is not a mechanically computed average, but a judgment, based on the information gathered, of the market price. You do not report individual transactions (except in occasional circumstances you provide non-detailed reports of significant transactions whose price differs markedly (up or down) from the other prices reported to you), and you rarely disclose specific buyers and sellers, and then only when the identity of a party to a significant transaction is already public knowledge within the industry . . . . Your practice is to exclude transactions based on your reported prices when determining your reported prices. Some subscribers have encouraged you to change this practice, but you have refused to do so, in large part out of antitrust concerns. (Emphasis added.)

127. Random Lengths's price collection and reporting activity starkly contrasts with the defendants' exchange of price and other sensitive business information. Unlike Random Lengths, defendants shared information about: (a) pending and future transactions, or transactions that were just minutes or hours old; (b) individual transactions; and (c) identities of specific sellers, plus price, region, and order file terms. So while Random Length's own reporting treaded a fine line, the defendants' conspiratorial communications crossed over it.

128. The lawyer also identified for Random Lengths a number of factors which would indicate what he referred to as "Higher Antitrust Risk." These included situations where the exchange is between direct competitors. Random Lengths was not a competitor of any buyer or seller, but the defendants and their coconspirators clearly were direct competitors, exchanging price information. A second factor was whether a significant percentage of the market was

represented by the participants, as alleged in Paragraph 34, *supra*. Higher antitrust risks were also present in highly concentrated markets with fungible products and inelastic prices, as alleged in Paragraphs 34-44, *supra*. High barriers to entry also indicated higher risk, as alleged in Paragraph 37 and 42, *supra*. An exchange of data regarding future conduct, as alleged throughout this Complaint, also indicated higher antitrust risk. Participant-specific data, rather than aggregated data, also increased antitrust risk.

129. In other words, the Random Lengths attorney identified virtually all of the plus factors indicating that structural panels was an industry prone to conspiratorial conduct.

130. A substantial percentage of industry sales, perhaps as much as 50% of all transactions, are linked by contract to the published Random Lengths prices. For example, if a contract specifies a 2% discount off the Random Lengths price for a given product, then the purchaser pays the Random Lengths price in effect as of the date specified by the contract (usually a Friday or two before the order is placed), less the 2% discount. Thus, there is no bargaining about the individual transaction. When supplies are constricted, the mills favor those purchasers with the contracts linked to the Random Lengths prices. Purchasers without such contracts are left to bargain, and the mills then hold the upper hand in the bargaining process. They can quote a price above the prevailing Random Lengths price, knowing that the purchaser has relatively fewer options to "shop around" for a lower price. Once the desperate purchaser pays the higher price, then that higher price may be reported and picked up by the next Random Lengths report, thereby increasing price levels for contract purchasers.

131. The defendants, as well as many other market participants, receive the Random Lengths pricing updates on Wednesdays and Fridays of every week. Every Wednesday at 10 a.m. Pacific time, Random Lengths issues its "Midweek Market Report." Every Friday, the

"Random Lengths Weekly Report" is published and within that newsletter is a full "Lumber and Panel Market Report," which again includes OSB and plywood prices by size and region.

132. Indeed, the conspirators' mere reliance upon the historical data in the Random Lengths reports likely would not have been in violation of the antitrust laws, unless they had manipulated the reporting of price they information. The Random Lengths twice-weekly reported prices, which are crude averages and allow for some lag time, would have provided generally lawful information to the defendants. Instead, the conspirators elected to communicate directly with each other in violation of the antitrust laws, their company antitrust compliance policies, and the guidelines issued by the AF&PA, as alleged below. The defendants combined, conspired, or otherwise agreed to fix, raise, maintain, and stabilize prices at which their OSB and plywood was sold through explicit or tacit agreements to keep raising prices above the Random Lengths reported prices, using the excuse of tight supplies, in order to raise the prices at which contracts obligated many purchasers to pay.

E. The Ineffective Antitrust Training Programs Within the Industry

133. Most companies in the structural panels industry, including all of the defendants, had some form of written policy designed to prevent antitrust violations and conducted some form of antitrust training. However, as the descriptions of the conduct in this industry set out above show, the applicable rules were widely ignored and in many cases employees were encouraged and expected by management to engage in behavior that was expressly prohibited by the companies' own internal rules.

134. For example, in the early 2000s, Georgia-Pacific's in-house counsel gave specific training to the employees in its distribution division on a nearly annual basis so that those employees would understand the types of communications that were and were not permissible in

discussions with companies like Norbord, Weyerhaeuser, and Louisiana-Pacific, i.e. companies from whom Georgia-Pacific both bought structural panels and competed against in the sale of structural panels. [redacted]

135. [redacted]

136. Thus, Georgia-Pacific employees knew of the antitrust risks created by the company's and industry's practice of buying from competitors and they were fully aware what information could not legally be shared. Yet, individuals like Tim Sullivan admittedly crossed the line into illegality on a daily basis by in engaging in conversations wholly unrelated to legitimate purchase transactions and intended solely to gather information about competitors' pricing that could be used by the distribution division sales force and the supposed competitors to fix, raise, maintain, and stabilize prices.

137. Weyerhaeuser's "Antitrust Compliance Program," circa 1999, also specifically addressed "competitor transactions." Weyerhaeuser's employees were instructed that although

they were able to engage in purchase or sales transactions with competitors, "[t]he discussions with the competitor in the course of these good faith purchase and sale transactions must be strictly limited . . . to matters necessarily and directly related to the transaction at hand." Weyerhaeuser's employees likewise were counseled that "obtaining sensitive competitive information from competitors can create significant antitrust risks" and were instructed to always document the source of any market information to create a record that the information had come from a customer or third party (which was acceptable) rather than a competitor (which was not).

138. Weyerhaeuser's policy also set out a list of topics that should not be discussed with competitors, including pricing, specific cost information, customers, future plans (including plans for closures or temporary curtailments), inventory, and market conditions.

139. Weyerhaeuser's policy contained an Appendix A entitled, "Guidelines for Compliance with Final Judgment in United States v. Container Corporation of America, et al." The Appendix recounted that the United States Supreme Court had ruled that Weyerhaeuser previously "had violated the antitrust laws by exchanging on a continuing basis, information with respect to prices that had been charged identified customers for specific orders . . . ." The Appendix further explained: "The Court found that such an exchange of information eliminated a desirable uncertainty in the minds of the defendants in setting their prices, and accordingly tended to eliminate the price competition that might result from that uncertainty. It held that the exchange was improper even though there was no agreement among the companies as to prices to be charged." The Appendix provided guidance as to the meaning of the prohibitions set out in the Consent Order, which broadly proscribed the sharing of current and future pricing information with competitors.

140. Although Weyerhaeuser's policy made employees aware of the antitrust risks and the bounds of legal behavior, individuals like Adelia Lerz, Joni Brinegar, and Roy Deans violated the compliance rules and the law by soliciting daily pricing, market, and production information from competitors and then circulating that information within the company for the express purpose of fixing, raising, maintaining, or stabilizing prices. And they did so even though they knew it was wrong. For example, Roy Deans of Weyerhaeuser testified that he would not call Louisiana-Pacific employees directly to get competitive information because "it's against our training. It's illegal." Yet Deans and others at Weyerhaeuser routinely engaged in such communications. In a December 15, 2005 email to his bosses, Deans wrote, "I talked with my old LP Sales Office to see what their thoughts were on OSP OSB for next year for the Great Lakes Division. I wanted to get the straight skinny on this and new (sic) my old crew would do just that ...and they did."

141. Weyerhaeuser buyer Adelia Lerz, who was a primary gatherer and distributor of information from Weyerhaeuser's competitors, acknowledged that what she was doing was wrong, although not until 2006. In a January 9, 2006 e-mail chain, Lerz published within Weyerhaeuser general information about competitive prices and order files—without naming names. She received an immediate follow-up request on the prices of specific competitors on a specific product – information that heretofore had been freely provided. But this time Lerz responded: "I'm no longer able to put them [prices] out unless you are a contract account or you have intentions of buying from their mills." Unfortunately, Lerz' change in behavior came too late to prevent the harm caused to Plaintiffs.

142. Although Louisiana-Pacific's employees also engaged in daily conversations with competitors for the purported purpose of selling structural panels, its antitrust policy was generic,

and the company does not appear to have advised its employees of the specific antitrust risks inherent in these dealings. Louisiana-Pacific employees did receive some antitrust training in or about January 2003, as part of its effort to get off probation early for its environmental crimes at the Montrose, Colorado OSB mill. But that training did not specifically address the problems created by their daily communications with their competitors.

143. One Louisiana-Pacific employee, [redacted] was clearly aware of Louisiana-Pacific's antitrust policy and his own flagrant disregard of it.

144. As described in detail below, in November 2003, the defendants received subpoenas from the West Virginia Attorney General seeking information about possible collusion affecting the prices of structural panels. Those subpoenas caused in-house counsel and outside antitrust counsel for these companies to investigate behavior in the industry, and they found a significant degree of improper behavior. These findings came on the heels of some of these same companies having paid millions to settle the linerboard antitrust cases, which involved a very similar pattern of illegal behavior. Counsel realized that something needed to be done to curb the ongoing illegal behavior in the structural panels industry.

145. Thus in 2004, the General Counsel Committee of a major industry trade association, the American Forest and Paper Association ("AF&PA"), along with outside antitrust counsel from the Morgan Lewis law firm, began working on a comprehensive new set of

antitrust rules designed to clean up the industry. In-house counsel from Weyerhaeuser, Georgia-Pacific, and Louisiana-Pacific were involved in creating these rules.

146. In recommending the new rules to its board in October of 2004, the General Counsel Committee of the AF&PA advised that it "feels strongly that changes are needed in the behavior of companies in the industry to reduce the risks of antitrust litigation." The new rules were intended to be "the beginning of a change in culture and practices to make the industry less vulnerable to lawsuits." In urging that his management team adopt and follow these new rules in February of 2005, Weyerhaeuser's CEO admitted that at that point in time, most companies in the industry either "have not had antitrust guidelines or have had ineffective ones."

147. These new guidelines expressly addressed and proscribed the very conduct that counsel uncovered in the internal investigations resulting from West Virginia subpoenas and that gave rise to this lawsuit. For example, the industry recognized that the rampant signaling, as alleged in Paragraphs 54-95, *supra,* needed "changes." Thus, the AF&PA rules recognized that "public communications by companies have the potential to be challenged as improper communications between competitors" and can "be characterized as 'signaling' or an "invitation to collude.'" To address the signaling problem, the AF&PA imposed restrictions on announcements of future downtime ("only announce to the smallest audience that has a legitimate need to know"), presentations to analysts and other public announcements.

148. These rules provided very specific examples of statements that should NOT be made in public pronouncements:

- "The industry needs to show some discipline to get prices up."
- "We all need to recognize that there is too much capacity and we need to do something about it."
- "People need to take downtime if we are going to get out of the hole we are in."

- "No one is making money at today's prices."

Of course, these were exactly the types of public signals used by the defendants to effectuate the conspiracy described herein.

149. Obviously recognizing the antitrust risks inherently created by daily purchase and sale transactions between these supposed competitors, the AF&PA laid out clear restrictions on communications arising in the context of a purchase and sale transaction between competitors. First, "[a]ny communication with a competitor/supplier or competitor/customer must be in the context of a legitimate, good faith interest in buying and selling . . . . This is to be contrasted with a 'dummy' call where there is no interest in buying, but the call is made primarily to obtain market information." Second, "[a]ssuming that the first principle is met, the conversation should be strictly limited to matters directly necessary to complete the transaction at hand." Moreover, the rules directly stated that during these purchase and sale transactions the companies should "never exchange 'competitive intelligence'" including "discussions about general market trends, supply or demand, pricing, or other competitors" that is not related to the specific transaction.

150. These rules were adopted by the AF&PA and by the three manufacturer-defendants. The new rules were also copied by the National Hardwood Lumber Association and posted on its website. Although these rules were hailed as the dawn of a new day of antitrust compliance in the structural panels industry, the rules were really not new at all. As alleged above, Georgia-Pacific and Weyerhaeuser already had in place very similar antitrust compliance rules. The rules simply were not followed.

F. The Interlocking Relationships of the Big Three

151. Georgia-Pacific and Weyerhaeuser purchased huge quantities of structural panels from other members of the conspiracy, particularly from Louisiana-Pacific and Norbord, throughout the conspiracy period, rather than producing the same panels themselves at a lower cost. In 2002, Georgia-Pacific was actually [redacted]

152. Norbord also made substantial sales to [redacted]

153. These inter-company sales brought cohesion to the conspiracy and served two critical functions: (1) maintaining an artificially high price; and (2) curbing the influx of new supply onto the market. During the conspiracy, the manufacturer-defendants closed plants and curtailed production, citing oversupply and complaining of lack of demand. Yet Georgia-Pacific and Weyerhaeuser bought hundreds of millions of square feet of OSB from others and could have instead utilized idle capacity or developed new capacity to produce the same panels at a lower cost. But new production would have expanded supply and risked decreasing the price.

154. As another example of how interconnected Georgia-Pacific, Louisiana-Pacific, and Weyerhaeuser had become, [redacted]

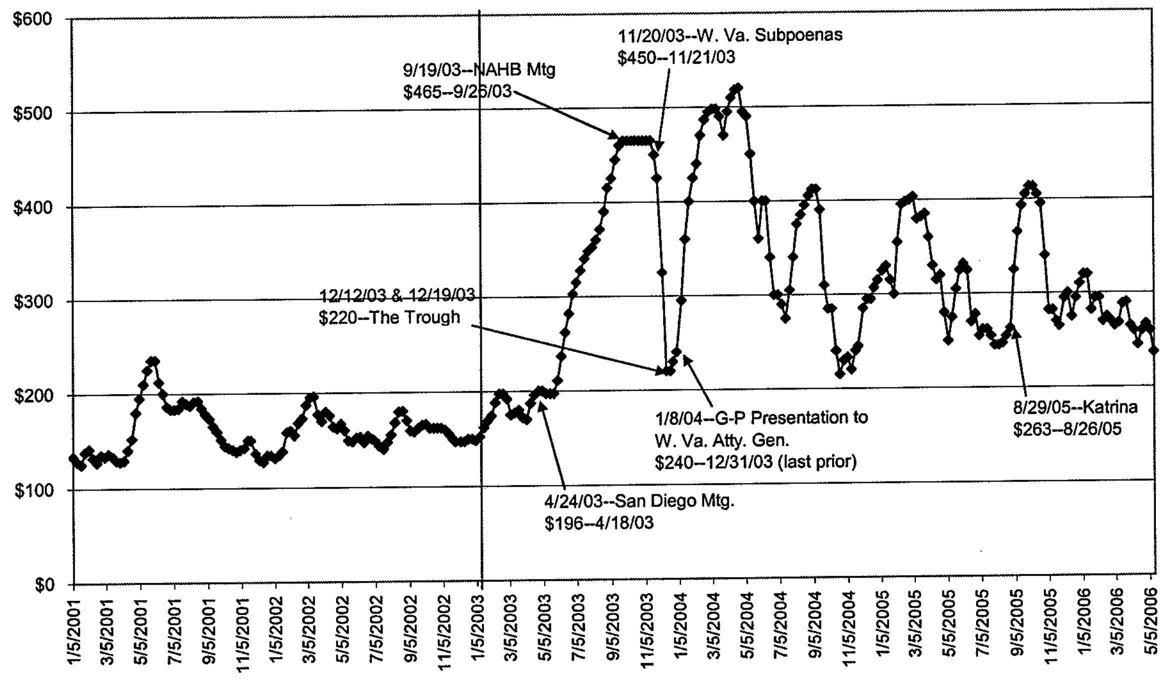
[redacted]

III. FORMULATING EXCUSES AND CONCEALING THE CONSPIRACY

A. <u>The September 2003 National Association of Home Builders Meeting</u>

155. As indicated in the chart below, which depicts the weekly North Central prices for 7/16" OSB, the price was $197 per thousand square feet on May 23, 2003. From that point, prices moved inexorably upward, reaching an all-time record high of $465 per thousand square feet on September 26, 2003. Prices for plywood also reached record highs. This unprecedented rise in structural panels sparked outrage among homebuilders nationwide.

Weekly Random Lengths Survey Data For OSB
($/1,000 sf 7/16" North Central Region)



156. In contrast, the structural panels manufacturers were ecstatic about the record prices. Linda Kaufman, National Sales Manager of Louisiana-Pacific, exulted in an e-mail [redacted]

157. On September 8, 2003, James R. Rayburn from Jackson, Mississippi, the First Vice President of the National Association of Home Builders ("NAHB"), an organization with 211,000 member-firms employing nearly 8 million workers nationwide, sent letters to many of the leading structural panels manufacturers, including Norbord, Louisiana-Pacific, and Georgia-Pacific. Rayburn pointedly remarked on the high prices of structural panels:

[redacted]

158. When key customers began expressing anger about prices, the conspirators grew concerned that their unlawful actions would be discovered. They began communicating with each other about this concern and came up with a plan of how to address it.

159. Norbord and Louisiana-Pacific made plans to send high-ranking executives to speak at the Boston meeting. Georgia-Pacific made plans to send a non-speaking representative or representatives [redacted]

160. Meanwhile, Hurricane Isabel was gathering strength in the Atlantic Ocean, reaching peak winds of 165 mph on September 11. [redacted] Although it began to weaken, Hurricane Isabel made landfall on the Outer Banks of North Carolina on September 18. Six million people in the

Carolinas and the Middle Atlantic States lost power, and damage was estimated at over $3.6 billion. Hurricane Isabel was the costliest and deadliest hurricane of the 2003 season. At a time when the conspirators worried that they had driven prices too high, this devastating hurricane gave the structural panels industry a timely excuse they needed to freeze prices.

161. Rick Frost, Executive Vice-President of Louisiana-Pacific, and Peter Wijnbergen, Norbord's Senior Vice-President, Marketing, Sales and Logistics, showed up for the meeting on September 19 in Boston. Frost made his "customized" presentation at the UBS conference only a day or two before, as alleged in Paragraphs 64-65, *supra,* and [redacted] This statement, of course, was a code for the supply manipulation that had occurred within the industry.

162. [redacted]

[redacted]

163. Frost later sent an e-mail back to the top executives at Louisiana-Pacific, including CEO Mark Suwyn, CFO Curt Stevens, OSB VP Harold Stanton, and Executive VP Joe Kastelic. Frost claimed [redacted]

164. The rest of the structural panels industry got the message within one week through their channels and agreed to fix and maintain prices at or near the current (frozen) level. Prices stayed at the all-time record high levels for eight consecutive weeks. The false excuses and the promise of no more price increases had thrown the home builders off the scent. The conspirators had successfully evaded detection.

B. The West Virginia Attorney General's Investigation

165. The freeze at record levels orchestrated by defendants was working as planned, and the defendants fully expected to be able to maintain these articificially stabilized prices for weeks to come. As Louisiana-Pacific's Mike Wardlow wrote [redacted]

166. However, their extraordinary run came to an abrupt halt in November when the conspirators were confronted with a more direct and serious threat of exposure. On November 20, 2003, the West Virginia Attorney General launched an antitrust investigation and issued subpoenas to Georgia-Pacific, Louisiana-Pacific, Weyerhaeuser and Norbord, at a minimum.

Each of these four companies received its subpoena either on November 20 by fax or by letter on November 21. Word spread immediately throughout the companies of the investigation. [redacted]

167. Panic ensued and prices plummeted once the companies learned of the investigation, as the conspirators temporarily ceased their regular exchanges of pricing and other market information with each other. For example, at Norbord prices for new orders on November 20 for 7/16" OSB ranged within a relatively tight bracket [redacted] For new orders on Monday, November 24, Norbord quoted prices as low [redacted] Some of the databases produced by other companies, such as Georgia-Pacific, for example, do not show the date of the order, so it is impossible to determine from the database exactly what happened to Georgia-Pacific's pricing quotes on Monday, November 24. However, Georgia-Pacific, in a 2005 letter to the United States International Trade Commission, signed by David Paterson, then Executive Vice President of Building Products, falsely claimed that the enormous drops in plywood and OSB pricing in November and December 2003 were simply a "seasonal event." But in fact, without the daily exchange of price information, defendants faced

what the *Container Corp.* Court described as the "desirable uncertainty in the minds of the defendants in setting their prices."

168. Among the documents sought by the subpoenas from the West Virginia Attorney General were documents "relating to any meeting, visit, conversation, discussion, correspondence, or other communication of any kind, formal or informal, written, oral or electronic, with any manufacturer or distributor of OSB or with any distributor, relating to another manufacturer's pricing or production of OSB." Likewise, the subpoena sought documents "relating to any agreement, arrangement or understanding, whether actual or proposed, express or implied, (i) between you and any other OSB manufacturer relating to the pricing or production of OSB, or (ii) between you and a distributor related to another manufacturer's pricing of OSB." These requests required the production of e-mails and other correspondence among and between the companies, as well as the spreadsheets and other reports compiled of other manufacturers' pricing and order file length, as described in this Amended Complaint.

169. As would be expected, each of the recipients of the subpoenas hired counsel to begin negotiations with the Office of the Attorney General of West Virginia. Each company contended that the subpoena was burdensome and sought to limit its scope and to eliminate the requirement to produce documents responsive to the documents described in the preceding paragraph. And, as set out below, they were largely successful.

170. Each company also appeared through counsel to present their case to the Attorney General's staff lawyers. [redacted]

[redacted] Georgia-Pacific omitted any discussion or explanation of the mills idled, curtailed, or closed due to the conspiracy to manipulate supply. [redacted]

171. [redacted]

172. [redacted]

[redacted] This statement, of course, was only partially correct, since plywood had been the only product ordered. [redacted]

173. But Louisiana-Pacific failed to inform the Attorney General that the supply of structural panels had been manipulated by it and the others and that such manipulation was, far and away, the major cause of the price increases. Louisiana-Pacific failed to point out that [redacted] Louisiana-Pacific also failed to point out that decreased production in the first half of 2003, as compared to the first half of 2002, was solely attributable to the idled, curtailed, or closed mills described above as part of the conspiracy to manipulate supply. Once those mills are accounted for, OSB and plywood production actually rose overall at the remaining mills in the first half of 2003, as compared to the first half of 2002.

174. Louisiana-Pacific [redacted] However, since the company carefully omitted a true explanation for the idled, curtailed, and closed mills, the company misled the Attorney General.

175. Finally, [redacted] but covered up the fact that its salespersons regularly, if not daily, communicated with competitors as part of the conspiracy [redacted]

176. The manufacturer-defendants also succeeded in convincing the Attorney General that they should not be required to comply fully with the subpoenas. As a result, they were able to avoid producing documents that would have revealed the conspiracy to the Attorney General.

177. As it became more and more clear that the companies would succeed in their shared goal of covering up the conspiracy, the conspirators returned to their usual ways of sharing pricing information on a regular, if not daily, basis. As indicated in the chart contained in Paragraph 155, prices climbed steadily upward, reaching a new all-time high for OSB of $520 per thousand square feet on April 23, 2004. By April 2004, the West Virginia Attorney General had been completely misled and closed his investigation.

C. <u>Other Efforts to Cover Up the Conspiracy</u>

178. As structural panels prices rose during the summer of 2003, the frequency of questions from customers increased, and the companies needed to develop a strategy for responding. As one example, on August 29, 2003, an e-mail was sent out to members of the Georgia-Pacific Distribution Division on behalf of Steve Hardin, then Vice-President of Sales (and later the Executive Vice-President of BlueLinx). The e-mail contained talking points for salespersons to use in responding to customers. Hardin claimed that prices were high and demand was outstripping supply because, in part, the United States had "bought large quantities of product to rebuild Iraq." He also offered what would become standard excuses of wet weather in the East and fires in the West. *See* Paragraphs 170, *supra*. Hardin then informed the members of the distribution division that its inventory "is not nearly as much as we would prefer" and the division would therefore do very little open market transactions. Hardin did not mention the obvious solution—reopening some of the idled plywood mills to increase the supply of structural panels—[redacted]

179. Pete Correll, the Chairman and CEO of Georgia-Pacific, made public announcements in an effort to conceal the conspiracy. When residents of Urania noted that

plywood prices had been rising in the latter part of 2003 and in 2004, they inquired as to why Georgia-Pacific did not reopen the "idled" mill in Urania and sell more plywood at the high prices, which would undoubtedly be profitable. Pete Correll provided the following excuse: "Because the company no longer owns forests, it must buy logs to make plywood." This was a misleading excuse for not reopening the Urania mill, since Georgia-Pacific (and other manufacturers) had embarked on an ambitious plan to divest themselves of timberlands precisely because it had become more profitable, not less, to "buy logs" than to "own[] forests." Manufacturers regularly purchased logs to feed mills and facilitate production.

180. Correll had used similar excuses before. In an article published on September 19, 2003, the same day Rick Frost of Louisiana-Pacific and Peter Wijnbergen were making their promises to the NAHB members to freeze prices at an all-time record high, the Atlanta Journal-Constitution quoted Correll as saying that Georgia-Pacific had no plans to restart its four idled plywood mills (Russellville, SC; Gloster, MS; Bon Weir, TX; and Urania, LA) "despite record-high prices" for plywood. Correll claimed that a wet winter made it hard to harvest logs to make plywood, thereby decreasing supply. Of course, he did not compare the production of those Georgia-Pacific plywood mills which had been operating in both 2002 and 2003, because production actually increased overall in the first half of 2003. The article went on to quote Correll as saying that the decision not to restart the plywood mills "is a wood price issue." The article stated, "[b]ecause the company no longer owns forests, it must buy logs to make plywood, he told analysts and investors at the UBS Global Paper and Forest Products Conference in New York." Amazingly, the September 19 article in the Journal-Constitution also claimed that "[a]s demand and prices rise, the opportunity for Georgia-Pacific to make a profit decreases." This

statement, of course, was absolutely false. In fact, quite the opposite was true: higher prices and demand led directly to higher profits.

IV. THE ASTOUNDING RESULTS OF THE CONSPIRACY

181. The results of the conspiracy proved remarkable, as explained by Russell Taylor in the November 2004 edition of the *Logging and Sawmill Journal*: "Over the past eighteen months, Oriented Strand Board (OSB) has become the darling of the wood products industry, as prices cracked the US $200 per thousand square feet mark on the 7/16" back in April 2003 – and have stayed above this level ever since. Prices peaked at U.S. $520 per thousand square feet, <u>a staggering $400 over the break even costs of many mills.</u>" (Emphasis added.)

182. Louisiana-Pacific's OSB Marketing Director Jim McGovern described the market circumstances that led to the price increases: "It was almost like a perfect storm. Channel inventories were really light, there was a pent-up demand for housing, and supply was really lean." Louisiana-Pacific and the other defendants communicated, conspired, and agreed to create the "perfect-storm" of inventory and supply conditions.

183. The rising OSB prices had their intended effect on defendants. One of the most notable recoveries was posted at Louisiana-Pacific, which struggled with debt and low product prices in 2002. The company had been going through an extensive restructuring, which culminated in a concentration on OSB manufacturing about the same time that the OSB market embarked on the record price run. Louisiana-Pacific reported 2003 net income of $288.5 million, or $2.63 per share, on net sales of $2.3 billion. That compares to 2002's loss of $62 million, or 59 cents per share, on sales of $1.6 billion. The surging profits expanded Louisiana-

Pacific's cash position to $926 million at the end of 2003, compared to $148 million the previous year.

184. The record price levels predictably spawned record profits as well. In 2003, Louisiana-Pacific reported a staggering 723% increase in operating profits for its OSB segment over 2002. 2003 Louisiana-Pacific Form 10-K at 22. Its OSB segment reported $502.9 million in operating profits for 2003 versus a mere $61 million in 2002. *Id.* An increase in average net selling price of 70% provided the basis for this gargantuan increase in Louisiana-Pacific's OSB operating profits. *Id.* Louisiana-Pacific falsely attributed the huge increase in profits to "unusually poor weather conditions."

185. OSB accounts for the majority of sales for Louisiana-Pacific: "OSB accounted for about 61% of our sales in 2004, 59% in 2003 and 47% in 2002, and we expect OSB sales to continue to account for a substantial portion of our revenues and profits in the future." Louisiana-Pacific's Form 10-K for the period ending December 31, 2004 ("2004 Louisiana-Pacific Form 10-K") at 34.

186. In 2004, Louisiana-Pacific reported another huge increase of 65% in operating profits for its OSB segment, which reflected a total increase in Louisiana-Pacific's OSB operating profits of nearly 800% over the course of the first two years of the conspiracy. 2004 Louisiana-Pacific Form 10-K at 20. Similarly, Louisiana-Pacific's average net selling price again jumped another 27%, resulting in a total average price increase of approximately 97% over that same two year period. *Id.*

187. During the first six months of 2004, as compared to the first six months of 2003, Louisiana-Pacific reported a price increase for its "commodity" OSB of 154%, despite a significant decrease in "commodity" OSB sales volume. Louisiana-Pacific Corp., "Louisiana-

Pacific Corporation Q2 2004 Results July 28, 2004" Slideshow Presentation at 9, *available at* http://media.corporate-ir.net/media_files/NYS/LPX/presentations/Q204earningspresentation.pdf. A comparison of this same time period by Louisiana-Pacific reveals an incredible increase in profit from OSB sales of over 1000 percent. *Id.* at 7.

188. As Louisiana-Pacific concedes, this significant price increase is attributable to "increased demand within a shortened time span when inventories were low and industry capacity was limited." 2003 Louisiana-Pacific Form 10-K at 22.

189. In 2003, Georgia-Pacific reported an increase of average selling prices for OSB of 74% "due to strong growth in residential housing starts in the second half of 2003, <u>combined with low inventories in the distribution channels.</u>" Georgia-Pacific's Form 10-K for the period ending December 31, 2003 ("2003 GP Form 10-K") at 26 (emphasis added). In the same document, describing this same period, Georgia-Pacific explained how those "low inventories in the distribution channels" came to be: "Due to excess production capacity in the building products manufacturing industry, [Georgia-Pacific] closed or indefinitely curtailed production at certain facilities in our structural panels . . . businesses during 2003." *Id.*

190. Just as Louisiana-Pacific reported tremendous increases in profits, Georgia-Pacific nearly tripled its operating profits form 2002 to 2003 "primarily due to increases in selling prices for plywood and oriented strand board of 15% and 74%, respectively, when compared with the prior year [2002]. Prices increased due to a strong pick up in residential housing starts in the second half of 2003, combined with low inventories in the distribution channels." 2003 GP Form 10-K, at 18. This tremendous increase in OSB selling prices occurred in 2003 despite a 13% decline in sales volume from 2002. Georgia-Pacific's Form 10-K for the period ending December 31, 2004 at 26.

191. Likewise, Weyerhaeuser reported:

> Contribution to earnings in 2003 was favorably impacted by price increases in structural panels due to strong demand and restricted supply. Low dealer inventories early in the year, coupled with no major new capacity added by the industry in 2003, served to create significant upward pressure on OSB and plywood prices in the second half of 2003.

Weyerhaeuser's Form 10-K, December 31, 2003 at 32.

192. Similarly, Ainsworth also reported huge single year price increases:

> Driven by historically low interest rates and pent-up demand, the housing construction market in North America was exceptionally robust throughout 2003. The year saw the highest number of U.S. housing starts recorded in 25 years. As a result, Ainsworth's average OSB price was 45.8% higher than 2002. North American OSB benchmark prices peaked at a record high in October, and after a brief price drop in December new records were again reached early in 2004.

Ainsworth 2003 Annual Report at 4.

193. The conspiracy continued to operate after the year 2004 and into the years 2005 and 2006, with members of the conspiracy either continuing to communicate regarding the agreements to fix, maintain, and stabilize prices at anti-competitive levels or to individually maintain prices at such anti-competitive levels such that the momentum of the conspiracy continued to inflict damages upon the Plaintiffs.

194. As a direct result of the defendants' conspiracy, Plaintiffs sustained antitrust injuries during 2003. Prices for OSB and plywood rose dramatically, especially in the second half of 2003. Such damages continued at least through the end of February 2006, when the antitrust class actions were first filed.

195. Plaintiffs have completed (and shared with the defendants as part of Plaintiffs' Initial Disclosures) preliminary damages estimates, using a multiple regression model, with a benchmark developed from prices before and after the conspiracy. The results indicate that of the total price Plaintiffs paid for OSB (after adjusting for transportation, discounts, rebates, and

(in the case of Bailey Lumber's assignment from LMC) service charges) between June 16, 2003 and February 28, 2006, approximately 25% represented an overcharge above a competitive price. In other words, the overcharge was fully one-third (.25/.75) of the competitive price. Because plywood started at a higher benchmark level, the model calculated slightly lower percentage overcharges for plywood. These overcharges represent the damages Plaintiffs seek. The preliminary model indicates that the overcharges for the two Plaintiffs for OSB and plywood during the time period specified above are on the order of $175 million. The regression model results indicated that the major independent variables (such as the natural log of dealer stocks lagged one month, the natural log of demand in the form of residential housing starts, the natural log of industry average cash costs, and the natural log of quantity) in the model were highly statistically significant. The model produced R-squared values in excess of 85% for OSB and 82% for plywood; t-values in excess of 2 for the major independent variables; and p-values less than 0.0001 for the major independent variables. In other words, the model explains over 85% of the variability in pricing for OSB and over 82% for plywood. Plaintiffs expect to revise the modeling as more data is obtained.

196. When the class-action lawsuits were filed, the conspirators fairly quickly ceased their efforts to fix prices, although the momentum of the conspiracy kept already-placed orders at relatively high, uncompetitive prices for a while. The conspirators either knew that they should cease their unlawful activities or were instructed to cease such unlawful activities by corporate superiors or attorneys. Some of the conspirators felt a real loss of personal friendships built up over the years of trading information about prices, order files, and other sensitive business information. For example, on March 31, 2006, Joni Brinegar of Weyerhaeuser sent an e-mail to Mary Cook of Louisiana-Pacific, asking for information about shipment dates, concluding with

the plaintive remark that "[w]e miss you." Mary Cook responded in like fashion: "I miss you guys also."

COUNT I

197. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-196 above, as if fully set forth herein.

198. In response to market conditions, and in an effort to stem declining prices and artificially inflate the prices of structural panels, including OSB at a minimum, beginning at least as early as June of 2002, the exact date being presently unknown to Plaintiffs, and continuing into later years, the defendants and their co-conspirators (a complete listing and identity of said conspirators being presently unknown to Plaintiffs) engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act. This combination and conspiracy represented a per se violation of the Sherman Act and had the purpose and effect of fixing, raising, maintaining and stabilizing the prices of structural panels, including OSB at a minimum, at artificially high, non-competitive levels in the United States.

199. For the purpose of effectuating the aforesaid combination and conspiracy, defendants and their coconspirators:

(a) agreed among themselves to fix, raise, maintain, and stabilize the prices of structural panels, including OSB at a minimum, in the United States;

(b) agreed among themselves to restrict the supply of structural panels, including OSB at a minimum, by implementing and coordinating certain actions such as production curtailments, plant shutdowns, postponing the introduction of new capacity, etc.;

(c) agreed among themselves to implement and coordinate increases in the prices of structural panels, including OSB at a minimum, in the United States; and

(d) agreed among themselves to purchase structural panels from each other, rather than to compete through increasing their manufacturing capacity, and to share price and other market information with each other above and beyond the sharing of information needed simply to sell product to each other.

200. To the extent that the defendants may not have reached agreements to fix, raise, maintain, and stabilize the prices of plywood in the United States, their illegal agreements to fix, raise, maintain, and stabilize the prices of OSB and to restrict the supply of OSB created an "umbrella effect" for plywood prices (and likely for Huber's AdvanTech™ product, marketed as a substitute for plywood) to rise to anti-competitive levels. Accordingly, because of the reasonably interchangeable status of OSB and plywood, the Plaintiffs would have been damaged by such "umbrella effect" just as if the defendants had directly conspired regarding plywood. However, it appears that the agreements to remove plywood capacity from the market and to fix, maintain, and stabilize plywood prices had the direct effect of raising both OSB and plywood prices to the plaintiffs.

201. Plaintiffs collectively purchased a substantial quantity of the total amount of OSB sold in the United States during the relevant years. Likewise, plaintiffs collectively purchased a substantial quantity of the total amount of plywood sold in the United States during the relevant years.

202. As a direct and proximate result of the combination and conspiracy alleged herein, the plaintiffs collectively have suffered antitrust damages to their businesses and property, amounting to millions of dollars of damages within this judicial district alone and

likely over a hundred million dollars nationwide, all in amounts to be proven at trial. Such damages came in the form of overcharges, namely paying prices higher than what they would have paid for structural panels, including OSB at a minimum, in the absence of such combination and conspiracy. Such damages became significant not later than the beginning of June 2003, when the supply constraints coordinated by the defendants had a substantial, upward effect on prices for OSB and plywood. As alleged in Paragraph 195, *supra*, Plaintiffs' preliminary damages modeling, which is subject to change as more data and information are received, indicates that their collective overcharges are approximately $175,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a trial by jury and judgment against defendants as follows:

(a) following the jury trial, a judgment against the defendants, jointly and severally, in accordance with the jury's findings regarding the scope, extent, and duration of the conspiracy, for three times the damages awarded by the jury;

(b) a judgment against the defendants, jointly and severally, in accordance with the jury's findings regarding the members of the conspiracy, for an award of the Plaintiffs' costs and reasonable attorneys' fees;

(c) a declaratory judgment that the unlawful combination and conspiracy alleged herein was in fact in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

(d) an injunction against repeated violations of the antitrust laws of the United States, upon such terms as the Court finds just, but including an order under appropriate state and federal laws either debarring the liable defendants from government contracting or requiring the notification of all state and federal entities with statutes or regulations providing for the potential debarment of contractors for violations of the antitrust laws; and

(e) for such other and further relief as the nature of the case may require or as may seem just and proper to the Court.

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Certificate of Service

I hereby certify that on September 16, 2009, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record, and I hereby certify that I have mailed by United States Postal Service the document to all non-ECF participants.

/s/ Ronald G. Peresich
Ronald G. Peresich