

Action No.
1001.00132

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

BRENDA DAVIES

Plaintiff

- and -

**IKO INDUSTRIES LTD., IKO SALES LIMITED, CANROOF CORPORATION INC.,
GH INTERNATIONAL INC., BRAMCAL PRODUCTIONS INC.,
and I.G. MACHINE & FIBERS LTD.**

Defendants

A Class Proceeding pursuant to the
Class Proceedings Act, S.A. 2003, c.C-16.5

STATEMENT OF CLAIM

A. LITIGANTS

Plaintiff

1. The Plaintiff is an individual and resides in the City of Calgary, in the Province of Alberta. The Plaintiff files this action on behalf of herself and other persons in Alberta who purchased and installed asphalt shingles manufactured by the Defendants.

Defendants

2. The defendant, IKO Industries Ltd. is an Alberta corporation with its registered head office in Calgary, Alberta. IKO Industries Ltd. designs, manufactures, markets and sells

roofing materials in Alberta. IKO Industries Ltd.'s roofing materials are used in municipal, industrial, commercial and residential applications in Alberta.

3. IKO Industries Ltd. was, at all relevant times, engaged in the design, manufacture, marketing and sale of asphalt roofing shingles ("IKO Shingles"). IKO Shingles are composed of asphalt, natural fibres, filler, and mineral granules. IKO Shingles were sold under various trade names and were installed in homes and buildings in Alberta.
4. The defendant, IKO Sales Limited is an Alberta corporation with its registered head office in Calgary, Alberta. IKO Sales Limited was, at all relevant times, engaged in the design, manufacture, marketing and sale of IKO Shingles in Alberta.
5. The defendant, Canroof Corporation Inc. is an Ontario corporation, with its registered office in Brampton, Ontario. Canroof Corporation Inc. was, at all relevant times, engaged in the design, manufacture, marketing and sale of IKO Shingles in Alberta.
6. The defendant, GH International Inc. is an Ontario corporation, with its registered office in Mississauga, Ontario. GH International Inc. was, at all relevant times, engaged in the design, manufacture, marketing and sale of IKO Shingles in Alberta.
7. The defendant, Bramcal Production Inc., is an Ontario corporation, with its registered office in Brampton, Ontario. Bramcal Productions Inc. was, at all relevant times, engaged in the design, manufacture, marketing and sale of IKO Shingles in Alberta.
8. The defendant, I.G. Machine & Fibers Ltd. is an Ontario corporation, with its registered office in Calgary, Alberta and principal place of business in Brampton, Ontario. I.G. Machine & Fibers Ltd. was, at all relevant times, engaged in the design, manufacture, marketing and sale of IKO Shingles in Alberta.
9. The business of each of IKO Industries Ltd., IKO Sales Limited, Canroof Corporation Inc., GH International Inc., Bramcal Productions Inc., and I.G. Machine & Fibers Ltd. (collectively "IKO") is inextricably interwoven with that of the other and each is the agent of the other for the design, manufacture, marketing and sale of IKO Shingles.

10. Other IKO entities, including but not limited to IKO Manufacturing, Inc., IKO Pacific, Inc., IKO Chicago, Inc., Blair Rubber Company, Fibreteq LLC, Hyload Roofing Systems, Hyload Masonry Flashing System, MW/MB LLC, and IKO Midwest Inc., may have been involved in the design, manufacture, marketing and sale of IKO Shingles. The Defendants named herein are jointly and severally liable for the acts and liability of all IKO entities involved in the design, manufacture, marketing and sale of IKO Shingles.
11. IKO is a vertically integrated company. IKO manufactures or supplies all the components that go into its final products.
12. IKO has substantial business operations in Canada and, more specifically, in Alberta. The head offices of IKO Industries Ltd., IKO Sales Limited, and I.G. Machine & Fibers Ltd. are located in Calgary, Alberta. IKO has a manufacturing facility in Calgary, Alberta and a sales office in High River, Alberta.

BACKGROUND

13. Commencing in or around 1979 until present, IKO manufactured, warranted, advertised, marketed and sold IKO Shingles in Alberta that were not of merchantable quality or reasonably fit for their intended purpose, and that were prone to premature failure.
14. During the relevant period, IKO marketed, represented and warranted its IKO Shingles as durable products, and as offering long-lasting protection for a specified life ranging from 25 to 50 years, or in some cases, a lifetime. IKO's brochures contain representations that IKO Shingles are "[t]ime-tested and true" and "an excellent choice for exceptional roofing value". IKO's website states "Our company motto is 'Setting the Standard' and that's what we do; set the standard for quality, durability, and innovation."
15. Through advertising and through its authorized agents and sales representatives, IKO has represented and warranted that IKO Shingles have undergone extensive testing and that, based on the results of the research and tests, IKO Shingles were properly designed, developed and manufactured so as to operate adequately, reliably and as represented.

16. IKO and its authorized agents and sales representative made the above-described assertions, representations and warranties with the intent and purpose of inducing builders, roofing contractors, roofers, and consumers to purchased IKO Shingles for installation on homes, offices and other buildings.
17. IKO's various representations did not disclose that IKO Shingles were defective and prone to premature failure or that they would not last the entire warranty period.

THE DEFECTIVE NATURE OF IKO SHINGLES

18. IKO Shingles are prone to premature failure and are not suitable for use as exterior roofing products for the length of time advertised, marketed and warranted. IKO Shingles are prone to premature failure as a result of moisture invasion. IKO Shingles crack, curl, blister, split, warp, discolour, delaminate, blow off, and otherwise deteriorate prematurely. IKO Shingles do not perform in accordance with the reasonable expectation of consumers that they be durable and suitable for use as an exterior roofing product.
19. As a result of the defective nature of IKO Shingles, it is inevitable that homeowners and other property owners will be required to repair and eventually replace the IKO Shingles installed on their homes or other building structures at a substantial cost to the property owner and substantial damage to the property. In many circumstances, homeowners and other property owners will have to remove and replace all IKO Shingles on their roofs.
20. The damage caused by the defective IKO Shingles has included damage to the underlying felt, damage to structural roof components, damage to plaster and sheetrock, and damage to walls, ceilings, and structural components.
21. The Plaintiff alleges that IKO knew or ought to have known before and during the time it sold IKO Shingles that they were defective, not fit for use as exterior roofing products for the length of time advertised, marketed and warranted, and prone to premature failure.
22. IKO has received complaints and warranty claims from customers relating to the premature failure of IKO Shingles. As well, IKO customers have complained about the

defective nature and premature failure of their IKO Shingles on a host of internet websites.

23. Notwithstanding, IKO has not provided effective notice to customers about the defects. IKO has refused to repair defective roofs fully or repair the property damage caused by the premature failure of its product.
24. IKO's response to warranty claims is woefully inadequate under the circumstances. IKO limits recovery to the replacement costs of individual IKO Shingles and does not include any labour costs. Furthermore, in at least some cases, the recovery under the warranty is only available if the homeowner or property owner purchases replacement shingles manufactured by IKO.

THE PLAINTIFF'S IKO SHINGLES

25. In or around 1993, Ms. Davies purchased IKO Shingles for installation on her personal residence. The Plaintiff alleges that the IKO Shingles installed on her residence were manufactured by IKO in a facility located in Alberta.
26. Ms. Davies' IKO Shingles failed before the expiry of IKO's 25-year warranty period, as a result of the defects described herein. Ms. Davies' IKO Shingles have begun curling and falling apart (pieces of asphalt have fallen from Ms. Davies' roof, such that they will require replacement.

CONSUMER PROTECTION LEGISLATION

Canada Consumer Protection Legislation

27. The Plaintiff pleads and relies upon the *Competition Act*, R.S., 1985, c. C-34, s. 74.01, and pleads:
 - (a) a person engages in "reviewable conduct" who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(i) makes a representation to the public that is false or misleading in a material respect or (ii) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation.

Alberta Consumer Protection Legislation

28. The Plaintiff pleads and relies upon the *Fair Trading Act*, R.S.A. 2000, c. F-2, ss. 1 and 6, and pleads:
- (a) it is an unfair practice contrary to the *Fair Trading Act* for a supplier to do or say anything that might reasonably deceive or mislead a customer, to represent that goods are of a particular standard, quality, grade, style or model if they are not, or to make a representation about the performance, capability or length of life of the goods unless: (i) the representation is based on adequate and proper independent testing that was done before the representation was made, (ii) the testing substantiates the claim, and (iii) the representation accurately and fairly reflects the results of the testing. A supplier is defined to include, a person who, in the course of the person's business, manufactures, assembles or produces goods, or promotes the use or purchase of goods or services.

Breaches of the Consumer Protection Legislation

29. The Plaintiff pleads that IKO is in breach of the above-listed consumer legislation in that:
- (a) IKO engaged in "reviewable conduct" contrary to the *Competition Act* by:
- (i) making representations to the public that are false or misleading in a material respect; and

- (ii) making representations to the public in the form of a statement, warranty and guarantee of the performance, efficacy or length of life of IKO Shingles that was not based on an adequate and proper test thereof;
- (b) IKO engaged in an "unfair practice" contrary to the *Fair Trading Act* by:
- (i) making false, misleading and deceptive representations;
 - (ii) making representations that the IKO Shingles were of a particular standard and quality, which they were not; and
 - (iii) making representations about the performance, capability or length of life of IKO Shingles that were not based on adequate and proper independent testing that was done before the representations were made and that were not substantiated by the testing.

The representations were made with the intention that consumers, including the Plaintiff, would rely upon them and consumers, including the Plaintiff, reasonably relied on these representations when purchasing IKO Shingles.

NEGLIGENCE

30. The Plaintiff pleads that IKO owed to her and other persons in Alberta who are similarly situated the following duties of care and other duties:
- (a) to ensure that IKO Shingles were designed and manufactured properly and in a good and workmanlike manner;
 - (b) to properly research the proper design of IKO Shingles;

- (c) to engage in adequate pre-market testing of IKO Shingles;
 - (d) to accurately represent the nature and quality of IKO Shingles and to not conceal information regarding the defective nature of IKO Shingles;
 - (e) upon discovering IKO Shingles were defective and prone to premature failure, to promptly remove IKO Shingles from the marketplace, disclose the defects to the Plaintiff and other persons similarly situated, and take other appropriate remedial action; and
 - (f) to act in good faith towards the Plaintiff and other consumers in Alberta.
31. The Plaintiff pleads that IKO is in breach of its duties of care and other duties in that:
- (a) IKO Shingles were negligently designed and manufactured in a manner which, under normal conditions, usage and applications would cause IKO Shingles to fail prematurely;
 - (b) IKO failed to properly research the design of IKO Shingles;
 - (c) IKO failed to engage in adequate pre-market testing of IKO Shingles to detect the defects before warranting, advertising and marketing IKO Shingles as durable, suitable and long-lasting exterior roofing products;
 - (d) IKO failed to institute an effective products recall upon discovering the defects or the potential for the defects to occur;
 - (e) IKO failed to remedy and/or repair the defects upon discovering them;
 - (f) IKO acted recklessly in that it knew or ought to have known that IKO Shingles were defective and would fail prematurely when it marketed and sold IKO Shingles to Alberta consumers, including the Plaintiff;
 - (g) representations made by IKO, its authorized agents and sales representatives regarding IKO Shingles were false, misleading and deceptive and were not made

in good faith, honestly or truthfully in that IKO misrepresented various facts regarding the quality, reliability and character of IKO Shingles and failed to disclose the existence of the defects.

The misrepresentations were contained in various advertising, press releases, packaging, and correspondence from IKO. The misrepresentations were further reiterated and disseminated by IKO's authorized agents and sales representatives acting within the actual or ostensible scope of their authority; and

- (h) IKO did not act in good faith towards the Plaintiff or other consumers in Alberta, in that IKO designed, manufactured and marketed IKO Shingles that it knew or ought to have known were defective, and failed to disclose the defects to consumers.

WARRANTY

- 32. IKO expressly warranted that IKO Shingles would provide superior strength, durability, wind and weather resistance, and would be free of manufacturing defects such that they would last 25 to 50 years and, in some cases, a lifetime. This warranty was relied upon by the Plaintiff and other similarly situated persons in Alberta in purchasing IKO Shingles. IKO has refused and/or failed to honour the terms of its expressed warranty.
- 33. The Plaintiff pleads that to the extent that the warranty provided by IKO purports to limit the obligations of IKO it is invalid in that:
 - (a) the terms of the expressed warranty are unreasonable, unconscionable and were not agreed to by the Plaintiff or other similarly situated persons at the time that IKO Shingles were purchased; and
 - (b) IKO knew that IKO Shingles would fail before the expiry of the warranty period as a result of the defects, or in the alternative, acted recklessly or negligently in failing to ascertain this fact.

DAMAGES

34. As a result of the breaches as pleaded above, the Plaintiff and those other persons similarly situated have suffered loss and damages, the particulars of which include:
- (a) damages equivalent to the costs of repairing and/or removing and replacing IKO Shingles installed on homes, offices and other buildings. In many circumstances, this will require the removal and replacement of all IKO Shingles on their roofs. This will result in substantial damage and expense to the property owner;
 - (b) damages for future costs of repairing and/or removing and replacing IKO Shingles;
 - (c) damages equivalent to any expenses incurred as a result of the repair and/or removal and replacement of IKO Shingles;
 - (d) damages equivalent to the resultant, progressive property damage caused by the premature failure of IKO Shingles, including damage to the underlying felt, structural roof components, plaster, sheetrock, walls, and ceilings;
 - (e) damages equivalent to the diminution in the value of IKO Shingles;
 - (f) damages equivalent to the diminution in the value of the property owner's property;
 - (g) damages for overpayment for IKO Shingles, which contained a latent defect;
 - (h) damages including the full costs of any investigation in connection with this action; and
 - (i) damages as calculated pursuant to: *Competition Act*, R.S., 1985, c. C-34 and the *Fair Trading Act*, R.S.A. 200, c. F-2.

35. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wonton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the rights of the Plaintiff and the rights of others who are similarly situated, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.
36. The Plaintiff's damages have been suffered in the Province of Alberta.
37. The Plaintiff pleads and relies on the *Class Proceedings Act*, S.A. 2003, c.C-16.5
38. The Plaintiff pleads and relies on the *Competition Act*, R.S., 1985, c. C-34 and the *Fair Trading Act*, R.S.A. 200, c. F-2,
39. The Plaintiff states that she is representative of persons in Alberta who purchased IKO Shingles during the relevant time period.

VENUE AND TRIAL DURATION

40. The Plaintiff proposes that this action be tried at the City of Calgary, in the Province of Alberta.
41. The Plaintiff anticipates that the trial will not take in excess of 25 days.
42. Wherefore the Plaintiff claims on her own behalf and on behalf of the other class members against the Defendants:
 - a. general damages for conduct that is contrary to the *Competition Act*, R.S., 1985, c. C-34 and the *Fair Trading Act*, R.S.A. 200, c. F-2, in the amount of \$50,000,000.00;
 - b. general damages for negligence and negligent misrepresentation in the amount of \$50,000,000.00;
 - c. punitive and exemplary damages in the amount of \$2,000,000.00;
 - d. pre-judgement and post-judgement interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;

- e. costs of this action on a substantial indemnity basis; and
- f. such further and other relief as this Honourable Court may deem fit.

DATED at the City of Calgary in the Province of Alberta, this 4th day of January, 2010,
AND DELIVERED by DOCKEN & COMPANY, #900, 800-6th Avenue S.W. Calgary,
Alberta T2P 3G3, telephone (403) 269-3612, Attention: Clint Docken, Solicitors for the
Plaintiffs, whose address for service is in care of the said Solicitors.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta,
Judicial District of Calgary, Alberta, this 5 day of January, 2010.

K. MCAUSLAND



CLERK OF THE COURT

NOTICE TO DEFENDANT:

IKO INDUSTRIES LTD., IKO SALES LIMITED, CANROOF CORPORATION INC., GH INTERNATIONAL INC., BRAMCAL PRODUCTIONS INC., and I.G. MACHINE & FIBERS LTD.

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

ACTION NO.: 1001-00132

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

Between:

BRENDA DAVIES

Plaintiff

- and -

IKO INDUSTRIES LTD., IKO SALES LIMITED, CANROOF CORPORATION INC., GH INTERNATIONAL INC., BRAMCAL PRODUCTIONS INC., and I.G. MACHINE & FIBERS LTD.
Defendants

A Class Proceeding pursuant to the
Class Proceedings Act, S.A. 2003, c.C-16.5

STATEMENT OF CLAIM

This Statement of Claim is issued by

DOCKEN & COMPANY
Barristers & Solicitors
900, 800 - 6th Avenue SW
Calgary, Alberta T2P 3G3
and
Siskinds LLP
680 Waterloo Street
London, Ontario N6A 3V8

Solicitors for the Plaintiff and
whose address for service is in care of said
DOCKEN & COMPANY
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