

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**405341 ONTARIO LIMITED**

Plaintiff

- and -

**MIDAS CANADA INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**[Coat of Arms]**

Notice published under the *Class Proceedings Act, 1992*

**TO ALL CANADIAN MIDAS FRANCHISEES**

If you operated a Midas franchisee in Canada under a Midas Franchise and Trade Mark Agreement on both July 11, 2003 and May 31, 2007 this Notice will be important to you. A legal claim against Midas Canada Inc. (“Midas”) has been certified as a Class Proceeding (the “Class Proceeding”) by the Ontario Superior Court of Justice. The Class Proceeding will deal with claims alleged against Midas which, if proven, could entitle you to various relief including a monetary payment.

This Notice is published by Order of the Ontario Superior Court of Justice dated March 26, 2009 (the “Certification Order”) and deals with:

1. Nature of the Class Proceeding and Common Issues;
2. Inclusion In/Opting Out of the Class Proceeding;
3. Possible Financial Consequences of the Class Proceeding; and
4. Ancillary Matters.

## **1. Nature of the Class Proceeding and Common Issues**

405341 Ontario Limited (the “Representative Plaintiff”) commenced an action against Midas by having a Statement of Claim (“Claim”) issued on behalf of a class that the Ontario Superior Court of Justice defined in the Certification Order as:

All corporations, partnerships and individuals carrying on business in Canada as a franchisee on both July 11, 2003 and May 31, 2007 under a Midas Franchise and Trade Mark Agreement.

The Representative Plaintiff claims damages and other relief for breach of the duty of good faith and fair dealing and for unjust enrichment. A demand is also made for punitive damages. Midas has denied the allegations in the Claim and defended the proceeding.

This action has been certified as a class proceeding by the Court and will proceed to trial to determine the following common issues:

- A. Did Midas breach its obligations to the class members by reason of a common law duty to exercise its rights under the Franchise Agreement honestly, fairly and in good faith, or its statutory duties of fair dealing, by terminating the Midas product supply system and substituting and implementing the Uni-Select agreement, including, without limitation, by:
  - a. retaining the full 10 per cent royalty after it ceased to sell automotive products and accessories (“Products”) to class members;
  - b. negotiating and receiving rebates, allowances or other consideration from third-party suppliers of products on account of the class members’ purchases of Products; or
  - c. funding its warranty obligations, in whole or in part, through rebates provided by third-party suppliers of Products?
- B. If a breach of the duty of good faith is proved, has Midas been unjustly enriched at the class members’ expense by retaining the full 10 per cent royalty after it ceased to sell Products to class members?
- C. In the event that Midas breached any of its contractual or statutory duties referred to in A., what is the appropriate measure of the damages, if any, to which members of the class are entitled?
- D. Are the class members entitled to either or each of:

- a. a rebate of part of the royalties paid by them after Midas ceased to sell Products to class members, and, if so, in what amount; and
  - b. an abatement of royalties to be paid by them in the future and, if so, in what amount?
- E. Are the class members entitled to declaratory or injunctive relief in respect of all, or any, of the breaches referred to in A. that are found to have occurred, including an order for an accounting or audit of rebates and allowances received by Midas from third party suppliers of Products and amounts expended by Midas in discharging its warranty obligations?
- F. Should Midas be required to pay punitive, exemplary or aggravated damages to the class members? If so, what is the amount of such damages?

## **2. Inclusion In / Opting Out of the Class**

### **A. Automatic inclusion in the Class**

If you carried on business in Canada as a franchisee on both July 11, 2003 and May 31, 2007 under a Midas Franchise and Trade Mark Agreement, then you are automatically included in the Class. No steps are necessary to “join” the Class.

### **B. How to be excluded from the Class**

If you do **not** wish to be included in the Class, you must fill out the attached coupon and send it to Sotos LLP, the lawyers for the Class, using the enclosed self-addressed stamped envelope, or alternatively, send Sotos LLP an email, or some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon. The deadline for opting out is September 26, 2009, which is 60 days after the date on this notice. If your written request to opt out is not received by that date, you will remain a member of the Class.

### **C. Consequences of opting out**

If you opt out of the Class, you will not be affected by any decision the Court makes on the common issues.

## **3. Possible Financial Consequences of the Class Proceeding**

In determining the common issues in the Certification Order, the Court will decide whether Midas should pay any monies to the Class Members, and if so, how much the affected Class Members should receive. The Court may also order an abatement or reduction in future royalties payable by Class Members under their Franchise Agreements.

Class Members may be required to participate in some stages of the lawsuit, particularly in the distribution of monies, if any are awarded. The determination of how any recovery should be distributed to each individual Class Member will be made either by the Court or by a process to be supervised and sanctioned by the Court. Some individual participation may be required by Class Members in determining the amount of money to which the Class Member is entitled during this stage of the process.

If the Class Proceeding is not successful, Class Members will not be responsible for any legal costs nor face any other financial obligations arising from the proceedings.

Whether or not the Class Proceeding is successful, all Class Members who do not opt out will be bound by the judgment. This means, for example, that after the Class Proceeding has concluded a Class Member cannot start its own individual claim against Midas based on the same or similar allegations.

#### **4. Ancillary matters**

The Representative Plaintiff has retained the law firm of Sotos LLP to represent the Class in the Class Proceeding. The law firm will be paid legal fees only if the Class Proceeding is successful. The Representative Plaintiff has agreed that the law firm's fees will be 25% of the amount recovered plus disbursements, in addition to any costs Midas is required to pay. The Class Proceeding Fund, which has provided disbursement funding for this lawsuit, will be entitled to 10% of the net amount recovered. The retainer agreement and any fees charged by class counsel must be approved by the Court.

For further information about the class action lawsuit you may contact:

Sotos LLP, Barristers and Solicitors, Suite 1250, 180 Dundas St. West, Toronto, Ontario M5G 1Z8, attention: David Sterns (dsterns@sotosllp.com) or Allan D.J. Dick (adjdick@sotosllp.com), telephone (416) 977-0007, fax (416) 977-0717.

The statement of claim and other court papers in this action, including the Order of the Ontario Superior Court of Justice dated March 26, 2009, are available for inspection at the Ontario Superior Court of Justice, 393 University Avenue, 10<sup>th</sup> Floor, Toronto, Ontario M5G 2J6 and on Sotos LLP's website [www.sotosllp.com/classactions.asp](http://www.sotosllp.com/classactions.asp).

**PLEASE DO NOT CALL** the Ontario Superior Court of Justice or the Registrar of the Court. They will not be able to answer your questions about the lawsuit.

July 28, 2009

**OPT OUT COUPON**

TO:

**SOTOS LLP**

Barristers and Solicitors  
Suite 1250  
180 Dundas Street West  
Toronto, Ontario M5G 1Z8

Attention: David Sterns

Facsimile: (416) 977-0717

I wish to opt out of the Midas Canada class action lawsuit.

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Signature

Name of Company:  
please print

Store No:

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before September 26, 2009.