

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

AXIOM PLASTICS INC.

Plaintiff

- and -

E.I. DU PONT CANADA COMPANY

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF DEFENCE

1. The defendant E.I. du Pont Canada Company (“DuPont Canada”) admits the allegations contained in paragraphs 5, 6 and 7 of the statement of claim.
2. DuPont Canada has no knowledge of the allegations contained in paragraphs 2, 3 and 11 of the statement of claim.
3. DuPont Canada denies the allegations contained in the remaining paragraphs of the statement of claim, except as hereinafter expressly admitted.

DuPont Canada

4. DuPont Canada is a Nova Scotia unlimited company formed in 2003, which has its registered office in the City of Halifax, Nova Scotia. DuPont Canada is a subsidiary of E.I. du Pont de Nemours and Company (“DuPont”), a company incorporated under the laws of Delaware, in the United States of America. DuPont Canada did not carry on business prior to 2003. The former DuPont Canada Inc. was a publicly traded company until July, 2003.

5. DuPont Canada is a diversified sciences company. Through its Engineering Polymers Business Unit, DuPont Canada develops, manufactures and supplies various engineering resins, which include numerous types and grades of nylons, polyesters, copolyesters, acetal resins and other plastics. These engineering products are used in a wide variety of automotive and non-automotive applications.

6. The engineering resins sold by DuPont Canada which are regularly used in the automotive industry include various nylon based resins, acetal resins, and polyester and copolyester resins. DuPont Canada sells multiple grades of each of these engineering resins within each of its product families. Some of these have a number of different generations with different properties and compositions. Each of these products, which number over 200, have sold at differing and varying prices during the period since 2000, the subject period of the allegations in the statement of claim.

The Allegations by Axiom

7. The plaintiff Axiom Plastics Inc. (“Axiom”) alleges that DuPont Canada has breached the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Competition Act*” or the “*Act*”) and engaged in unlawful and tortious conspiracies in the conduct of its engineering polymers business. Contrary to the allegations in the statement of claim, DuPont Canada has conducted itself lawfully and in compliance with the requirements of the *Competition Act* and has not engaged in unlawful and tortious conspiracies. Rather, DuPont Canada has acted in a manner consistent with lawfully promoting its own business and properly achieving its own business objectives in accord with accepted lawful business practices.

8. Axiom also alleges that DuPont Canada has engaged in threats and deception in furtherance of a conspiracy to inflict harm on Axiom and members of the proposed class. DuPont Canada's dealings with Tier 2 manufacturers have been proper and lawful and it has not engaged in compulsion, threats, coercion, intimidation or price manipulation as alleged. In particular, in its limited dealings with Axiom, DuPont Canada has acted in a proper and lawful manner.

9. Axiom's true complaint appears to be that it cannot achieve the profitability that it desires in what it has described as an intensely price-sensitive and difficult business environment, in which it faces constant pressure from its customers to reduce the price of their parts over time. Axiom further complains that failure by it or other moulders to provide such price reductions to their customers can lead to termination of supply agreements.

10. Many of the allegations made by Axiom are general and unparticularized. Further, they relate specifically to Axiom and are not applicable to other members of the proposed class. In addition, many of the allegations made in this proceeding are the same or similar to allegations made by Axiom in separate individual proceedings it has commenced against Intier Automotive Inc. ("Intier") seeking damages for breach of contract.

11. DuPont Canada is not responsible for the business environment in which Axiom has chosen to operate or for Axiom's desired level of profitability and is not responsible for Axiom's concerns about its customers.

The Automotive Supply Chain

12. The automotive supply chain is comprised of the original equipment manufacturer ("OEM") at the top and several "tiers" of manufacturers below who directly or indirectly supply

the OEMs through these tiers. Tier 1 manufacturers supply parts and assemblies directly to OEMs. Tier 2 manufacturers supply automotive parts to Tier 1 manufacturers for incorporation into the products the Tier 1 manufacturers supply to the OEMs. Tier 3 manufacturers supply parts to Tier 2 manufacturers for use in the parts supplied to the Tier 1 suppliers. There may also from time to time be Tier 4 suppliers who manufacture parts for supply to Tier 3 manufacturers.

13. The automotive supply chain is characterized by intense competition between the OEMs and in turn intense competition and continual pressure for price/cost reductions throughout each of the tiers that supply them.

14. Manufacturers are not restricted to operating at one level of the supply chain and may operate simultaneously or at different times at different tiers of the supply chain, depending on what product they are manufacturing and to whom it is to be supplied.

Sales by DuPont Canada of Engineering Resins

15. DuPont Canada sells numerous products including engineering polymers directly or indirectly through its distribution network to over 200 entities in the automotive supply chain as well as to non-automotive customers. DuPont Canada sells its engineering resins directly to numerous companies that operate at various levels in the supply chain. It also sells engineering resins to three Canadian companies that are authorized distributors of its products. These authorized Canadian distributors, Ashland Canada Inc. (“Ashland”), PolyOne Distribution Canada Limited (“PolyOne”) and Canada Colors and Chemicals Limited (“Canada Colors”), sell engineering resins they have purchased from DuPont Canada and other suppliers to numerous customers that operate at the various levels of the automotive supply chain as well as to non-automotive customers.

16. The plaintiff Axiom has at various times purchased DuPont engineering resins through two of DuPont Canada's authorized distributors, Canada Colors and PolyOne. Axiom does not purchase from Ashland or directly from DuPont Canada.

Alleged Breaches of the Competition Act

17. DuPont denies the breaches of the *Competition Act* alleged in the statement of claim. Specifically, DuPont Canada denies the allegations that it has conspired, combined, agreed or arranged with others to:

- (i) enhance unreasonably the price of engineering resins charged to members of the proposed class, contrary to s. 45(1)(b) of the *Act*;
- (ii) prevent or lessen, unduly, competition in the sale or supply of engineering resins to members of the proposed class, contrary to s. 45(1)(c) of the *Act*;
or
- (iii) otherwise restrain or injure competition unduly, contrary to s. 45(1)(d) of the *Act*.

18. DuPont Canada also denies that it has entered into agreements or engaged in other conduct and practices to attempt to influence upward or discourage the reduction of prices at which engineering resins are sold, supplied or offered to be supplied contrary to s. 61(1) of the *Act* as alleged.

No price enhancement conspiracy (s. 45(1) (b))

19. DuPont Canada has not engaged in a price enhancement conspiracy, combination, agreement or arrangement with Magna International Inc. or any of its affiliates or any other Tier 1 manufacturer as alleged in paragraphs 13-20 of the statement of claim. In particular:

- (a) DuPont Canada did not require Tier 2 plastics moulders to use DuPont engineering resins as alleged. DuPont Canada has from time to time entered into various lawful contractual arrangements with Tier 1 manufacturers pursuant to which manufacturers have agreed to specify or give favoured status to various specified engineering resins sold by DuPont Canada on the basis that such resins provide the level of quality and physical properties that meet the needs of the OEMs.

By way of these agreements, DuPont Canada gives comfort to the Tier 1 manufacturer that specifying or giving favoured status to DuPont Canada resin will not result in higher materials costs. It is critical to Tier 1 manufacturers that raw materials pricing, including resin pricing, remains competitive, as Tier 1 manufacturers compete vigorously to supply OEMs. This comfort is derived by: (i) specifying in some instances that DuPont Canada will not sell above a certain price either directly or via distributors to moulders; and, (ii) through rebates to the Tier 1 manufacturer.

DuPont Canada provides additional services, at no additional cost, to the Tier 1 manufacturers including design assistance, assembly consultation, processing/manufacturing support and material selection. Such agreements are

desirable to the Tier 1 manufacturers as they derive considerable benefit from obtaining raw materials of the desired properties at a favourable price, as well as access to DuPont Canada know-how and technology, which provide the Tier 1 manufacturer with a competitive edge. Tier 2 moulders thereby enjoy the benefit of receiving a moulder price for a specified period of time determined on the basis of factors including the overall volume of resins to be used by a Tier 1 manufacturer supplied by all moulders and by having access to DuPont Canada know-how and technology, either directly from DuPont Canada or via the Tier 1 manufacturer;

- (b) DuPont Canada did not fix or maintain so-called “Conspiracy Prices” which Tier 2 manufacturers pay as alleged. DuPont Canada denies the existence of any such “Conspiracy Prices”;
- (c) DuPont Canada did not secretly remit “kickbacks” in return for involvement by Tier 1 manufacturers in a conspiracy as alleged. DuPont Canada pays various legitimate rebates to various Tier 1 manufacturers based on varying lawful criteria and formulae. Rebates are paid in exchange for specification or preferential status given by Tier 1 manufacturers to DuPont engineering polymers, not in return for participation in or enforcement of a conspiracy;
- (d) DuPont Canada did not improperly require Tier 1 manufacturers to monitor Tier 2 manufacturers’ purchase volumes and report to DuPont Canada any moulder suspected of buying from a non-authorized source. In accordance with normal business practice DuPont Canada does not pay rebates on product not purchased

from it or its authorized distributors. DuPont Canada therefore lawfully obtains data from some Tier 1 manufacturers in support of rebate claims made to it to verify those claims. DuPont Canada also properly seeks to ensure that any DuPont Canada resin used by manufacturers is authentic and from authorized sources. DuPont Canada does not require Tier 1 manufacturers to report Tier 2 manufacturers to it that may not be purchasing from an authorized source.

Agreements with Tier 1 Suppliers

20. OEMs create specifications for the materials used in parts supplied to them to ensure part integrity and functionality consistent with the parts approved by the OEM prior to production launch. These specifications may specify a particular brand of resin or list the minimum physical properties the resin must meet. OEMs also maintain lists of resins that they have previously approved or certified for use in their parts.

21. Tier 1 manufacturers qualify to supply OEMs for a particular parts program through a production part approval process known as “PPAP”. As part of this process, if no express specification of the OEM applies, a Tier 1 manufacturer seeking to qualify with an OEM will either specify a particular brand of resin it intends to use or list the physical properties the resin will have. Tier 1 manufacturers also maintain lists of resins that they have previously had approved or certified for use by moulders in production of parts for them.

22. Tier 1 manufacturers seek competitive raw material pricing and resins which provide the level of quality and physical properties that meet the needs of the OEMs. They also seek access to DuPont Canada know-how and technology including part design assistance, assembly consultation, processing/manufacturing support and assistance with material selection.

DuPont Canada, like other competing suppliers, seeks to have its resins specified by OEMs or Tier 1 manufacturers. Accordingly, DuPont Canada may agree to enter into various types of agreements with Tier 1 suppliers pursuant to which they agree to specify or grant favoured status to engineering resins purchased from DuPont Canada or its authorized distributors where no OEM directive on resin to be used exists. These agreements have differing terms and provisions.

23. Such agreements may also include a specified preferential moulder price that DuPont Canada agrees it will extend to moulders supplying to a particular Tier 1 manufacturer in respect of particular parts programs. This moulder price is provided to the moulder directly or through a discount to DuPont Canada's authorized distributor which the distributor then passes on to the purchaser. The moulder thereby enjoys the benefit of a moulder price for a specified period of time determined on the basis of factors including the overall volume of resins to be used by a Tier 1 manufacturer supplied by all moulders. The Tier 2 moulder also benefits from access to DuPont Canada know-how and technology. The specified moulder price does not restrict DuPont Canada or its authorized distributor from charging less for that engineering resin.

24. Some of these agreements also include provision for rebates to the Tier 1 manufacturer that are payable on the basis of specified criteria. Rebates are generally calculated on the basis of the amount of DuPont Canada resin used by the Tier 1 manufacturer, including resin used by moulders supplying parts to that Tier 1 supplier. The existence of rebates is known in the industry including being known to members of the moulding community and to Axiom in particular. Some agreements, such as those between Intier and DuPont Canada, expressly dictate that while the agreements themselves are confidential, the existence of the rebates are to be disclosed by the Tier 1 manufacturer to its moulders.

25. Payment of rebates is made in respect of purchases of DuPont engineering resins on the basis of the criteria and formulae contained in the applicable rebate agreement. DuPont Canada requires the Tier 1 manufacturer to provide documentation of its use of specified resins in support of any rebate request and verifies the information provided by the Tier 1 manufacturer against its own records of sales of engineering resins and records provided by its authorized distributors.

Unauthorized Sales of Resins

26. DuPont Canada denies that it engaged in a systematic campaign to eliminate or cut off the supply of resins in furtherance of fixing and maintaining so-called “Conspiracy Prices” as alleged.

27. OEMs and Tier 1 manufacturers seek to avoid downtime in their supply chain and the potential costs and liability associated with vehicle recalls. As a result, they insist on rigorous quality control for parts supplied to them and they enforce strict safety standards. In particular, OEMs require their suppliers to use the approved resins and to maintain records to certify that the materials they used met the requisite specifications. In addition, should the location of manufacture of the resin be changed, the OEM requires proof prior to approval that the same resin produced in a different location meets the same specification requirements and the parts must go through the PPAP process again.

28. A manufacturer seeking to demonstrate that the engineering resin it has purchased is authentic DuPont resin from an authorized source will therefore ask DuPont Canada to provide a certification letter. DuPont Canada provides certification letters to direct purchasers of its product and to its authorized distributors, who then provide the certification letters to their

ultimate customers. These certification letters include lot numbers and detailed information about the source of the resins. Certification letters enable DuPont Canada to trace any lot of engineering resin in the event of any issue with the material and provide the OEM, the Tier 1 manufacturer and DuPont Canada with assurance that the engineering resins supplied directly to customers or through its authorized distributors have the properties claimed. Without these certifications, DuPont Canada offers no warranties with respect to the resin purchased, unless it can be otherwise documented that the resin was purchased through an authorized source.

29. From time to time, DuPont Canada becomes aware of companies other than its authorized distributors supplying or purporting to supply DuPont engineering resins. These “brokers” are not authorized distributors of DuPont engineering resins.

30. DuPont Canada is entitled to and does act to ensure the integrity of the network for distribution of DuPont resins throughout Canada. DuPont Canada has regional responsibility for supplying and servicing engineering resin customers in Canada, which it does directly and through its authorized distributors. DuPont Canada invests significant time and effort in development of know-how and technology and it and its distributors invest significant time and effort in customer service, product support and market development.

31. The material sold by unauthorized sources may not be authentic and could include poor, second quality or “off-spec” material, other material “re-bagged” in DuPont packaging or re-sold material. DuPont Canada does not warrant, provide support for or pay rebates on resins purchased outside the authorized distribution chain, the source and quality of which is unknown.

32. For these reasons DuPont Canada attempts to determine the source of any possible unauthorized purchases and will, where appropriate and lawful, attempt to prevent unauthorized sales of DuPont engineering resins in the area served by DuPont Canada.

33. DuPont Canada denies that it has engaged in compulsion, threats, coercion, intimidation or price manipulation as alleged in paragraph 14 of the statement of claim or that it has entered into agreements with Tier 1 manufacturers to do so.

Authorized Distributors

34. DuPont Canada denies that it has entered into conspiracies, combinations, agreements, or arrangements with any of its authorized distributors to unreasonably enhance the prices of engineering resins and denies that its prices are unreasonably enhanced. DuPont Canada further denies that it agreed with any distributor that it would sell DuPont Canada resins at so called "Conspiracy Prices" or that it would monitor Tier 2 manufacturers' purchases and report manufacturers suspected of purchasing from a source other than DuPont Canada or the authorized distributor.

35. DuPont Canada has separate, lawful agreements with each of its distributors, which are authorized to sell certain engineering resins from DuPont Canada. DuPont Canada provides suggested list or resale prices to its distributors for these products. There is no restriction by DuPont Canada that precludes distributors from selling for less than the suggested prices. DuPont Canada does not direct distributors as to the ultimate price charged or take any action to determine if distributors sell below list prices or discipline or punish distributors who do so.

36. DuPont Canada may also provide distributors with discounts. DuPont Canada considers provision of discounts to distributors on the basis of volume and related factors which, if granted, the distributor then passes on to its customers. In order to determine whether to provide a discount to its distributor, DuPont Canada requires information from its distributor including the purchase volume involved. Such discounts are commonly referred to as “price support” to the distributor. The distributor is not restricted by these discounts and may sell DuPont products for less than the supported price without interference from DuPont Canada.

37. DuPont Canada also provides distributors with discounts with respect to specific programs for particular manufacturers, which may be the subject of agreements between DuPont Canada and Tier 1 manufacturers. To determine if such a discount is available, DuPont Canada also requires information with respect to the ultimate manufacturer.

38. DuPont Canada receives information from its authorized distributors about sales of DuPont resin including the ultimate customer, the volume and the product which enables it to track sales and calculate credits owing to DuPont Canada’s distributors. The information may also be used to verify the resin purchases reported by Tier 1 manufacturers for the purpose of rebates.

Alleged Acts

39. DuPont Canada specifically denies it has engaged in any of the acts described in paragraph 18 of the statement of claim and denies the allegations set out therein. In particular, DuPont Canada:

- (a) did not meet and correspond with Tier 1 manufacturers as alleged to fix and maintain prices and track volume of sales of engineering resins sold to Tier 2

manufacturers. DuPont Canada entered into various lawful contractual arrangements with Tier 1 manufacturers as described above, and obtained information regarding volume of sales for the purpose of payment of rebates pursuant to such agreements;

- (b) did not distribute lists to its authorized Canadian distributors setting out so called “Conspiracy Prices”. DuPont Canada provided price lists to its distributors and provided discounts to those prices based on volume of purchases and related factors. At all times distributors were and are free to sell for less regardless of any list or suggested retail prices;
- (c) did not meet or correspond with its distributors to enforce compliance with so called “Conspiracy Prices”. At all times distributors were not precluded from selling for lower prices, and at no time has DuPont Canada taken any action to determine if distributors sold below list prices or discipline or punish distributors who do so;
- (d) did not use surveillance or surreptitious means to monitor the purchases of engineering resins by Tier 2 manufacturers as alleged;
- (e) did not use threats, coercion, intimidation or deception on members of the proposed class as alleged; and,
- (f) did not take steps to conceal a conspiracy by agreeing with Tier 1 manufacturers to keep agreements confidential and not disclose “kickbacks”. The existence of rebates is known in the moulding community and to Axiom in particular. Some of

the agreements, such as those between Intier and DuPont Canada, contained explicit requirements that the Tier 1 manufacturers disclose the rebates to their moulders.

Allegations Regarding Axiom

40. DuPont Canada denies the allegations in paragraph 19 of the statement of claim with respect to Axiom and specifically denies it carried out the acts alleged therein. In particular, DuPont Canada:

- (a) did not enter into a conspiracy with respect to prices or communicate with Canada Colors with respect to so called “Conspiracy Prices”. At all times it is open to Canada Colors to sell for less than any suggested or list price communicated to it by DuPont Canada and DuPont Canada has not sought to ensure prices are maintained by Canada Colors;
- (b) did not provide “kickbacks” to Intier or withdraw “kickbacks” from Intier. DuPont Canada paid rebates to divisions of Intier pursuant to various agreements in the amounts that the volume of resin purchased for use in Intier’s parts supported in accordance with the agreements between the parties.

In or about the summer of 2002, DuPont Canada declined to pay Intier the full amount of a rebate it had claimed, on the basis that the amount claimed was not supported by the volume of engineering resins purchased from DuPont Canada for use in parts supplied to Windo-Motion, a division of Intier. In particular, the volume of parts that Axiom had supplied to Windo-Motion and the corresponding resin volume used in conversion of these parts did not match the volume

purchased from DuPont Canada or its distributors. The rebate was paid to Intier only on the amount supported by DuPont Canada's records.

DuPont Canada also expressed concern to Intier that the resin it was using in parts supplied to OEMs appeared to be from an unauthorized source, and as a result not certified DuPont resin. Thereafter Axiom provided what purported to be certification letters to Intier, which were forwarded to DuPont Canada. These letters did not contain the information that proper certification letters would include and some data appeared to have been copied from certifications provided to Axiom in respect of previous purchases they had made;

- (c) did not threaten economic punishment to Axiom in concert with Intier or otherwise as alleged. On December 11, 2002 Ms Parke met with Axiom at Axiom's request. At the meeting representatives of Axiom asserted that the engineering resin they had supplied to Windo-Motion was DuPont resin, but declined to disclose the source from which they had purchased the resin. Ms Parke provided Axiom with information about DuPont Canada's distribution system and its concerns about the integrity of the distribution system and the need to ensure that Tier 1 manufacturers were supplied with only certified DuPont resin to ensure the quality of the resin. Ms Parke indicated that DuPont Canada would process the full rebate to Intier upon receipt of certification letters demonstrating that the resins supplied by Axiom were certified DuPont resins. At no time then or thereafter did Ms Parke threaten any economic punishment to Axiom in concert with Intier or otherwise;

- (d) did not use threats, coercion or deception to attempt to force Axiom to disclose its supplier or threaten Axiom with economic harm if it did not do so. Ms Parke and Mr. Beyeler met with Axiom on or about January 10, 2003, again at Axiom's request to attempt to resolve Axiom's concerns about its dispute with Intier. Axiom declined to advise where they had purchased the resin that they claimed was DuPont Canada resin. Ms Parke again indicated that DuPont Canada would process the full rebate to Intier upon receipt of certification letters demonstrating that the resins supplied by Axiom were certified DuPont Canada resins. At no time then or thereafter did Ms Parke or Mr. Beyeler use threats, coercion or deception or threaten Axiom with economic harm if it did not disclose its source of supply;
- (e) did not arrange with Intier for payments due to Axiom to be withheld. DuPont Canada was not party to and did not participate in any decision by Intier to withhold payments to Axiom; and,
- (f) did not at any time communicate with Intier regarding termination of Axiom's supply contracts with Intier with a view to forcing Axiom out of business. DuPont Canada did not participate in any decision by Intier to terminate supply contracts with Axiom.

41. DuPont Canada specifically denies that it has engaged in a conspiracy to unreasonably enhance prices of DuPont engineering resins contrary to s. 45 (1)(b) as alleged in paragraph 20 of the statement of claim.

Alleged Preventing, Lessening, Restraining or Injuring Competition (Sections 45(1)(c) and (d) of the *Competition Act*)

42. DuPont Canada denies that it has conspired, combined, agreed or arranged to prevent, lessen, restrain or injure, unduly, competition in the sale or supply of engineering resins to the members of the proposed class contrary to section 45(1)(c) and denies that it engaged in a conspiracy to otherwise restrain or injure competition unduly pursuant to section 45(1)(d) of the *Competition Act* as alleged.

43. DuPont Canada relies on paragraphs 19 to 40 above in respect of these allegations.

Alleged Price Maintenance

44. DuPont Canada denies that it has engaged in price maintenance contrary to Section 61(1) of the *Competition Act* as alleged. Specifically DuPont Canada did not enter into agreements, written or oral, with its authorized Canadian distributors or engage in threats, promises or other like conduct with respect to its distributors to require them to supply or offer to supply engineering resins to manufacturers at so-called “Conspiracy Prices” as alleged or to discourage the distributors from reducing the prices of DuPont engineering resins as alleged.

45. DuPont Canada relies on paragraphs 19 to 40 above in respect of these allegations.

Civil Conspiracy

46. DuPont Canada has not entered into unlawful or tortious conspiracies with its authorized Canadian distributors or the Tier 1 manufacturers with the predominant purpose or effect of injuring the plaintiff and other members of the proposed class by unlawful or unjustified

means. As set out above, DuPont Canada denies that it engaged in unlawful acts as described in the statement of claim or engaged in conduct contrary to the *Competition Act* as alleged in the statement of claim.

47. DuPont Canada specifically denies that it engaged in conduct contrary to the *Criminal Code* R.S.C. 1985, c. C-46 as alleged in the statement of claim.

48. DuPont Canada relies on paragraphs 19 to 40 above in respect of these allegations.

Unjust Enrichment

49. DuPont Canada denies that it was unjustly enriched or that the plaintiff suffered a corresponding deprivation. If DuPont Canada was enriched, and if the plaintiffs suffered a corresponding deprivation, it was as a result of lawful competition by DuPont Canada in the marketplace and accordingly any such enrichment or deprivation was as a result of a valid juristic reason.

50. DuPont Canada further denies that its conduct is unlawful, unjustifiable or contrary to its own Business Conduct Guide as alleged.

51. DuPont Canada relies on paragraphs 19 to 40 above in respect of these allegations.

Damages

52. DuPont Canada denies that the plaintiff or members of the proposed class have suffered damages as alleged. DuPont Canada further denies that the plaintiff is entitled to an accounting or judgment against DuPont Canada.

53. Should the plaintiff be found to have suffered any damages, such damages are excessive and remote and are not losses for which DuPont Canada is in law responsible. Further, and in the alternative, the plaintiff has failed to take all or any reasonable steps to mitigate its damages.

54. DuPont Canada specifically denies it has engaged in the conduct alleged in paragraph 30 of the statement of claim or that it had the knowledge alleged therein.

55. DuPont Canada denies that the plaintiff or any Tier 2 manufacturers are entitled to punitive, exemplary or aggravated damages as claimed.

56. DuPont Canada states that the claims by Axiom are statute barred. DuPont Canada pleads and relies on the limitation periods set out in s.36 of the *Competition Act* and the *Limitations Act, 2002*, S.O. 2002, c.24.

57. This is a defence to the claims made by the plaintiff. DuPont Canada denies that this is a proper case for certification under the *Class Proceedings Act, 1992*, S.O. 1992, c.6. In the event that this proceeding is certified as a class proceeding, DuPont Canada reserves the right to: (i) amend its statement of defence to respond to the claims of all class members in the event this proceeding is certified as a class proceeding; and (ii) rely upon limitation periods set out in the legislation of the provinces and territories other than Ontario.

58. The plaintiff Axiom has made serious and unfounded allegations against DuPont Canada and DuPont Canada requests that this action be dismissed with substantial indemnity costs.

June 12, 2006

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- and -

E.I. DU PONT CANADA COMPANY

Plaintiff

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Court File No. 05-CV-302358 CP

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Proceeding commenced in Toronto

STATEMENT OF DEFENCE

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