

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MADAM JUSTICE HOY) TUESDAY, THE 4TH
) DAY OF DECEMBER, 2007

BETWEEN:

AXIOM PLASTICS INC.

Plaintiff

- and -

E.I. DU PONT CANADA COMPANY

Defendant



Proceeding under the *Class Proceedings Act, 1992*

ORDER (CERTIFICATION)

THIS MOTION made by the plaintiff for an Order certifying this action as a class proceeding and providing for Notice to the class was heard on June 11, 12 and 13, 2007 at 361 University Avenue, Toronto, Ontario.

ON READING the affidavits of Perry Rizzo sworn March 9, 2006 and October 5, 2006; the affidavits of Rocco Di Serio sworn March 9, 2006, August 31, 2006, and October 27, 2006; the affidavit of Margaret Sanderson sworn October 3, 2006; the affidavit of H.C. (Chul) Lee sworn July 24, 2006; the affidavits of Kathryn Parke sworn July 24, 2006 and January 24, 2007; the affidavits of James Hughes sworn July 25, 2006 and January 26, 2007; the affidavit of Eric C. Beyeler sworn January 15, 2007; the transcripts of the cross-examinations of: James Hughes conducted on February 5, 2007; H.C. (Chul) Lee conducted on February 7, 2007; Eric C. Beyeler conducted on February 9,

2007; David Genier conducted on March 9, 2007; Perry Rizzo conducted on March 20, 21 and April 12, 2007; Rocco Di Serio conducted on March 21, 2007, and Margaret Sanderson conducted on April 12, 2007; filed, and on hearing the submissions of counsel for the plaintiff and the defendant,

1. **THIS COURT ORDERS AND DECLARES** that this action be maintained as a class proceeding with respect to the common issues set out in paragraph 3 hereof on behalf of the following class (hereinafter “the Class”):

All purchasers in Canada between January 2000 and August 27, 2007 (the “Class Period”) of engineering resins for an automotive application from E. I. DuPont Canada Company and/or its predecessor DuPont Canada Inc. (collectively or individually “DuPont Canada”) or its authorized Canadian distributors, who were required by a customer to use a DuPont engineering resin in the automotive application, excluding the following companies and their associates and affiliates: DuPont Canada, Ashland Canada Inc., Canada Colors and Chemicals Ltd., Magna International Inc., Multimatic Inc., Omron Dual Tech Automotive Electronics Inc., and PolyOne Canada Inc.

2. **THIS COURT ORDERS** that Axiom Plastics Inc. be and hereby is appointed as the representative plaintiff on behalf of the class.

3. **THIS COURT ORDERS** that the following issues are common issues for this proceeding,:

(a) For purposes of this paragraph of the Order, “CUPS System” means DuPont Canada’s arrangements with its distributors whereby, when a distributor supplies resins to a customer whom DuPont Canada has agreed shall be entitled to acquire resins at a price less than DuPont Canada’s list price or who asks the distributor for a price less than DuPont Canada’s list price, a distributor may ask DuPont Canada to reduce the price paid by the distributor in the first instance, and if DuPont Canada agrees, then, after the distributor

completes the sale to its customer, DuPont Canada provides a credit to its distributor referred to as a "Credit Upon Proof of Sale";

(b) During the Class Period, did DuPont Canada, by way of its "CUPS system", conspire, combine, agree or arrange with DuPont Canada's authorized distributors to enhance unreasonably the price of engineering resins charged to members of the Class (the "Class Members"), contrary to s. 45(1)(b) of the *Competition Act*?

(c) During the Class Period, did DuPont Canada, by way of its "CUPS system", conspire, combine, agree or arrange with DuPont Canada's authorized distributors to prevent or lessen, unduly, competition in the sale or supply of engineering resins to Class Members, contrary to s. 45(1)(c) of the *Competition Act*?

(d) During the Class Period, did DuPont Canada, by way of its "CUPS system", conspire, combine, agree or arrange with DuPont Canada's authorized distributors to otherwise restrain or injure competition unduly contrary to s. 45(1)(d) of the *Competition Act*?

(e) During the Class Period, did DuPont Canada, by way of its "CUPS system", directly or indirectly enter into agreements and/or engage in other conduct and practices to attempt to influence upward, or to discourage the reduction of prices at which engineering resins are sold, supplied or offered to be supplied, to Class Members, contrary to s. 61(1) of the *Competition Act*?

(f) During the Class Period, did DuPont Canada, by way of its "CUPS system", enter into a tortious conspiracy with DuPont Canada's Canadian distributors?

- (g) If so, is the defendant liable for damages and how are such damages to be computed?
 - (h) During the Class Period, was DuPont Canada enriched and did the Class Members suffer a corresponding deprivation by way of its CUPS system, and was there any juristic reason or justification for the defendant's enrichment?
 - (i) If so, what restitutionary payment should be made by DuPont Canada to the Class Members, and how is such restitutionary payment to be computed?
 - (j) Should the Court award an aggregate assessment of monetary relief on behalf of some or all Class Members? If so, what is the amount of the aggregate assessment and how should the Class Members share in the award?
 - (k) Does the conduct of DuPont Canada justify an award of exemplary or punitive damages? If so, what amount of punitive damages is to be awarded?
4. **THIS COURT ORDERS** that the Plan of Proceeding attached hereto as Schedule "A" be and is hereby approved, but nothing in the Plan of Proceeding shall detract from the parties' substantive or procedural rights, claims or defences in respect of the action.
5. **THIS COURT ORDERS** the defendant shall provide to the solicitors for the class a list (the "List of Purchasers") containing the names, last known addresses, email addresses and contact person, to the extent known, of each purchaser in Canada who at any time during the Class Period purchased DuPont engineering resin for an automotive application from the defendant or any of its authorized distributors.

6. **THIS COURT ORDERS** that the defendant shall request all necessary documentation from its authorized distributors in order to provide to the solicitors for the class the information required under paragraph 5 hereof.
7. **THIS COURT ORDERS** that Notice to the class in the form attached hereto as Schedule "B" (the "Notice") be and is hereby approved.
8. **THIS COURT ORDERS** that the Notice shall be sent and communicated to the class members in the following manner:
 - (a) the Notice shall be sent by pre-paid regular mail and email (if the email address is known) to all purchasers on the List of Purchasers, within 15 days of the receipt of the List of Purchasers;
 - (b) the Notice shall be posted forthwith on the following website: www.dupont-automotiveresins-classaction.ca maintained by the solicitors for the class;
 - (c) the Notice shall be advertised in the classified sections of the next issues of *Canadian Plastics* and/or *Plastics in Canada* following entry of this Order.
9. **THIS COURT ORDERS** that the cost of disseminating the Notice in the manner provided in the preceding paragraph shall in the first instance be paid by the plaintiff.
10. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering to Sotos LLP the Opt-Out Coupon attached to the Notice or some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon on or before the following deadlines:

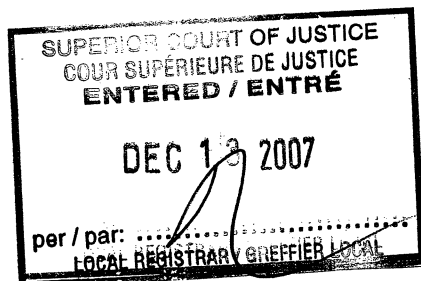
(a) for each class member on the List of Purchasers, on or before the 45th day following the date on which the Notice is sent by mail to the address shown on the List of Purchasers;
or

(b) for each class member whose current name or address is not shown or is not correctly shown on the List of Purchasers, on or before the 30th day following the date of the last publication pursuant to paragraph 8(c) hereof.

11. **THIS COURT ORDERS** that a class member may not opt out of the class proceeding after the expiry of the deadlines set out in paragraph 10 hereof.

12. **THIS COURT ORDERS** that Sotos LLP serve on the defendant and file with the court, within 7 days of the end of the last the deadline set out in paragraph 10 hereof, an affidavit exhibiting a list of persons who have opted out of the action and attaching copies of all Opt-Out Coupons received from Class Members.

13. **THIS COURT ORDERS** that the plaintiff's costs of this motion be paid by the defendant in the amount of \$290,000 inclusive of fees, disbursements and taxes, by December 21, 2007.



E.M.G. Moquin,
Registrar, Superior Court of Justice

Schedule "A" to Certification Order
PLAINTIFF'S AMENDED PLAN OF PROCEEDING
PURSUANT TO S. 5(1)(e)(ii) OF THE CLASS PROCEEDINGS ACT, 1992
(Post-Certification)

Introduction

1. This action was certified as a class proceeding on August 27, 2007. The Plaintiff asserts that the defendant, E. I. DuPont Canada Company and/or DuPont Canada Inc. (collectively or individually "DuPont Canada") unlawfully fixed and maintained and otherwise conspired with respect to the price of its engineering resins purchased by the class members during the period from January 2000 to August 27, 2007. Specifically, it is alleged that DuPont Canada engaged in certain activities with its authorized distributors by way of the "CUPS System", as defined in paragraph 3(a) of the Certification Order, which violated sections 45(1)(b), (c) and (d) and section 61(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended ("*Competition Act*"), and that the class members are entitled to recover damages as a result thereof pursuant to section 36 of the *Competition Act* in addition to damages for civil conspiracy, restitution and unjust enrichment. The Plaintiff also seeks punitive, exemplary and aggravated damages in relation to this conduct.
2. This Plan of Proceeding sets out a method proposed by the Plaintiff to advance the proceeding on behalf of the Class and of notifying class members of the proceeding.
3. DuPont Canada denies the allegations in this action and does not necessarily agree with any portion of this Plan of Proceeding.
4. The substantive and procedural rights of the parties are not affected by this Plan of Proceeding. Except as set forth in the order certifying this action as a class action, the court has not dealt with any of the matters referred to in its Plan of Proceeding.

Overview of Plan of Proceeding

5. [Intentionally deleted]
6. The Plaintiff asserts there are a number of elements common to all of the causes of action pleaded: first, a conspiracy, combination, agreement or arrangement; second, an enhancement or maintenance of prices or lessening of competition; and third, (except with respect to the price maintenance allegations (s. 61 CA) which is a *per se* offence) an element of unreasonableness, undueness, unlawfulness or lack of justification.
7. The Plaintiff asserts that, because of the similarity of these claims, and because they all arise out of a system created and implemented by DuPont Canada with its distributors in Canada and its affiliates outside Canada, a Litigation Plan which focuses on the documents in the possession and control of DuPont Canada, its distributors and affiliates, and examinations for discovery of DuPont Canada and, if necessary, its distributors, offers a cost-effective and efficient way to advance this proceeding on behalf of the class.

8. This Plan provides the procedural means by which the Plaintiff plans to move this action forward toward resolution. Where it states the Plaintiff's position, or the way in which the Plaintiff or Class Counsel intend to prove elements of the asserted causes of action, damages, loss or deprivation, the approval of this Plan does not amount to a determination of that position and the Defendant is entitled to contest the Plaintiff's procedural and substantive positions.

DuPont Canada Engineering Resins

9. DuPont Canada is a supplier of specialized engineering resins (or polymers) to the automotive industry. The engineering resins sold by DuPont Canada are manufactured by its affiliates around the world.

10. The statement of claim alleges that DuPont Canada is a dominant supplier of engineering resins to the automotive industry and that its resins are used in OEM automotive parts programs. DuPont Canada distributes these resins through direct sales to class members as well as through three authorized distributors in Canada: Canada Colors and Chemicals Limited ("Canada Colors"), Ashland Canada Inc, which operates as General Polymers ("General Polymers") and PolyOne Distribution Canada Ltd. ("PolyOne").

Defendant's Undertaking in respect of Conduct Preceding July 2003

11. 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 ("Global 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. ("DCI") was a publicly traded company until July 2003 and was subsequently wound up. As a result of a signed Undertaking in this proceeding, DuPont Canada has irrevocably agreed to stand liable for, and make good on any amount for which DCI would otherwise be liable in this proceeding, as if all references to DuPont Canada in the Statement of Claim or subsequent pleadings mean and include DCI. Accordingly, references to DuPont Canada herein include DCI unless the context otherwise requires.

12. The Plaintiff's position is that all relevant documents in DuPont Canada's, Global DuPont's and DCI's power, possession or control must be fully produced by DuPont Canada. If DuPont Canada resists such production, the plaintiff will move for an order under Rule 30.02(4) of the Rules of Civil Procedure.

Composition of the Class

13. The certified Class is defined in paragraph 1 of the Certification Order. The class definition, subject to court approval concurrently with the approval of this Plan, is:

All purchasers in Canada between January 2000 and August 27, 2007 (the "Class Period") of engineering resins for an automotive application from E. I. DuPont Canada Company and/or its predecessor DuPont Canada Inc. (collectively or individually "DuPont Canada") or its authorized Canadian distributors, who were required by a customer to use a DuPont engineering resin in the automotive application, excluding the following companies and their associates and affiliates:

DuPont Canada, Ashland Canada Inc., Canada Colors and Chemicals Ltd., Magna International Inc., Multimatic Inc., Omron Dual Tech Automotive Electronics Inc., and PolyOne Canada Inc.

14. The Class consists entirely of businesses or former businesses. There are not believed to be any natural persons in the Class. Each class member is or was a manufacturer of plastic parts. Because of the emphasis in the class definition on the automotive industry, it is expected that most class members are located in Ontario and Quebec, primarily in and around southern Ontario.

15. The plaintiff estimates that there are approximately 200 members in the Class. Class members will be readily communicated with by direct correspondence to addresses disclosed in the records of DuPont Canada and its authorized distributors (as discussed more fully below), and the publication of the Notice to the Class in industry publications.

Communication with Members of the Class

16. The solicitors for the plaintiff, Sotos LLP, have established links on their firm's website for this class proceeding. Current information on the status of the action is posted there and will be updated regularly. Copies of publicly filed court documents, court decisions, notices and other information related to the class proceeding will be accessible from the website. E-mail contacts are also available on the website.

Identifying Class Members

17. Upon the entry of the Certification Order, DuPont Canada will provide to Class counsel a list ("List of Purchasers") containing the names, last known addresses, email addresses and contact person, to the extent known, of each purchaser in Canada who at any time during the Class Period purchased DuPont engineering resin for an automotive application from the defendant or any of its authorized distributors.

18. DuPont Canada will be required to request all necessary documentation from its authorized distributors in order to compile such list. The Plaintiff asserts that during the certification motion, Canada Colours confirmed that it maintains records of all purchasers of DuPont Canada resin for automotive applications including the particular programs, parts and applications for which those resins are purchased; and the Plaintiff asserts that DuPont Canada's evidence confirmed that it receives sales reports containing that information from its distributors on a monthly basis.

19. The Plaintiff will request DuPont Canada to advise Class Counsel of the identity of members or potential members of the Class whom it believes may be insolvent. Class Counsel will conduct a bankruptcy search on the names of each class member and will send the Notice directly to the trustee in bankruptcy or receiver.

Form of Notice

20. Class Counsel will provide Notice to the Class (the "Notice") in the form attached as Schedule "B" to the Certification Order.

Service and Publication of Notice

i. Direct Correspondence

21. Within 15 days of the receipt of the List of Purchasers, Class Counsel intends to send the Notice directly to all class members identified on the List of Purchasers by regular mail and email (if email address is provided) in accordance with paragraph 8 of the Certification Order.

22. In addition, Class Counsel intends to send the Notice to any purchaser listed on the list at Tab 4 of the plaintiff's Compendium on the certification motion, if any such purchaser is not also on the List of Purchasers and provided that such purchaser is not specifically excluded under the definition of the Class.

ii. Publication in Trade Press

23. In order to reach class members which have moved, reorganized, made an assignment in bankruptcy, changed names etc., Class Counsel intend to publish the Notice in the classified section of one or two of the leading publications serving the Canadian plastics industry: *Canadian Plastics* and *Plastics in Canada*. *Canadian Plastics* magazine has a circulation of 10,300 including approximately 3000 injection moulders. Class Counsel intend to ensure that the Notice is published in the next issue following court approval of the notice. *Plastics in Canada* is a tabloid publication with a circulation of 10,500. Plaintiff's counsel will ensure that the Notice is published in the next issue following court approval of the notice.

24. The Plaintiff shall in the first instance pay for the publication in one or both of those magazines.

25. Provided that the trade publications agree to publish the Notice, Class Counsel believe that this will reach the vast majority of potential class members and, accordingly, it is not necessary to publish the Notice in general circulation newspapers.

(iii) Press Release

26. Plaintiff's counsel will issue a press release containing the Notice within 5 days of the entry of the Certification Order.

(iv) Websites

27. Notice shall be published on the firm website of Sotos LLP within 5 days of the filing of the Certification Order and on the website www.dupont-automotiveresins-classaction.ca.

Opting-Out

28. The opt-out period for each class member on the List of Purchasers shall be 45 days following the date on which notices are sent by mail or email (whichever is later).

29. The opt-out period for each class member whose current name or address is not shown or is not correctly shown on the List of Purchasers shall be 30 days following the date of the last publication in the trade press in accordance with paragraph 25 hereof, or the last publication in daily newspaper in accordance with paragraph 28 hereof as the case may be.

30. Sotos LLP will serve on the defendant and file with the court, within 7 days of the end of the last opt-out period, an affidavit exhibiting a list of persons who have opted out of the action and attaching copies of all Opt-Out Coupons received from class members.

Status Reports after publication of the Notice of Certification

31. In addition to responding to individual inquiries, Class Counsel will continue to update the web pages dedicated to this proceeding. The email contacts provided on the web pages will remain in effect until the class action is finally resolved.

Initial Affidavit of Documents

32. The Plaintiff proposes that thirty days following the entry of the Certification Order, DuPont Canada shall deliver an initial Affidavit of Documents and associated productions with the following documents in Schedule "A":

- (a) an electronic spreadsheet containing the following details of purchases of DuPont Canada engineering resins, either directly from DuPont Canada or through an authorized distributor, during the Class Period:
 - a. the identity of the end purchasers (i.e. moulders);
 - b. the programs, applications, and parts for which the resins were purchased;
 - c. the volumes and dates of purchases made by the moulders; and
 - d. if sold by an authorized distributor, the prices which the authorized distributor paid for the resin ("buy prices"), the support price agreed upon by DuPont Canada and the distributor and the actual price paid by the moulder to the distributor;
- (b) a list of all applications, programs and parts during the Class Period for which DuPont Canada engineering resins were specified by any automotive customer in Canada, to the knowledge, information or belief of DuPont Canada, and if any other supplier's resins were also specified for the same application, program or part, a list of which other supplier's resins were specified;
- (c) all documents relating to the CUPS system;

- (d) all DuPont Canada price lists during the Class Period and during the one year before the commencement of the Class Period and communications regarding same;
- (e) all documents submitted by the authorized distributors to DuPont Canada with respect to sales of DuPont Canada engineering resins during the Class Period;
- (f) all documents evidencing DuPont Canada's efforts to verify the details of distributors' sales, including prices to moulders, during the Class Period;
- (g) all documents evidencing communications between DuPont Canada and the authorized distributors regarding requests for price support, and price support given, on sales of engineered resins to class members during the Class Period.

Complete Affidavits of Documents

33. The Plaintiff proposes that the parties will exchange complete Affidavit of Documents and productions within 60 days of the entry of the Certification Order. Documents will be exchanged electronically, in formats agreeable to counsel, together with all necessary passwords to open password-protected files. Hard copies will be provided upon request.

34. The Plaintiff submits that DuPont Canada's Affidavit of Documents must include all documents with a semblance of relevance including but not limited to:

- (a) all documents showing the engineering resins sold, and the prices at which those engineering resins were sold, by DuPont Canada's distributors, DuPont Canada's affiliated companies and authorized distributors in Europe, the United States, Latin America and Asia, during the Class Period;
- (b) all documents showing the list prices, buy prices and support prices for DuPont Canada's engineering resins sold by DuPont Canada's affiliates through their distributors, if sales were made through distributors, in Europe, the United States, Latin America and Asia during the Class Period;
- (c) all documents in DuPont Canada's power, possession or control showing prices available from, or sales of competitive engineering resins by, sources other than DuPont Canada or its authorized distributors to purchasers in Canada including brokers, foreign distributors and DuPont Canada's affiliates during the Class Period; and
- (d) all documents in DuPont Canada's power, possession and control relating to alternative sources of supply of engineering resins in Canada during the Class Period, and the efforts of DuPont Canada or its affiliates to restrict alternative sources of supply of engineering resins into Canada.

Documents of DuPont Canada's Authorized Distributors

35. The Plaintiff proposes that, immediately after approval of this Plan by the Court, DuPont Canada shall advise its authorized distributors of this proceeding and shall request that its authorized distributors preserve all records concerning the purchase and sale of resins through the CUPS system and all records of communications with DuPont Canada regarding the CUPS system. Class Counsel is aware that Canada Colors has divided the relevant previously unified business unit into "sales" and "marketing" and DuPont Canada will request that both units maintain their records.

36. The Plaintiff proposes that DuPont Canada shall request that its distributors produce their records which are relevant to this action. In addition, to the extent necessary, Class Counsel will also communicate with DuPont Canada's distributors with respect to access to those documents. In the event that DuPont Canada and the distributors do not make voluntary production of documents in their possession, or in the event that the distributors are unwilling to discuss the facts relating to this action with Class Counsel, Class Counsel will move for production and/or discovery of the authorized distributors under Rules 30.10 and 31.10.

Documents of DuPont Canada Affiliates out of this Jurisdiction

37. Failing production by DuPont Canada of all relevant records of its affiliates, the Plaintiff intends to bring a motion under Rule 30.02(4) for the disclosure of all relevant documents in the possession of DuPont Canada's affiliates.

Document Management

38. The Plaintiff anticipates that this proceeding will be conducted based largely on electronic documents. Plaintiff's counsel proposes managing the productions with a document management system and will provide its documents to defendant's counsel in formats compatible with such document management programs. Documents received in hard copy only will be scanned and stored electronically. Productions will be indexed electronically and summarized as necessary.

Examinations for Discovery

39. The Plaintiff proposes that on a date to be agreed by counsel or set by the Court a DuPont Canada representative will be produced for an initial examination for discovery; that the initial examination be set for three consecutive days and be based on the initial Affidavit of Documents of DuPont Canada and that further days be scheduled for the continued examination for discovery of DuPont Canada as needed.

40. In the event that DuPont Canada's representative is unable to provide full and complete answers to the questions posed on examination for discovery, the Plaintiff intends to make a motion to the Court for an order under Rule 31.03(2)(b) permitting the examination of more than one representative of the defendant. If necessary, the plaintiff may also make a motion to the Court for leave to examine non-parties.

41. The Plaintiff proposes that the parties will conduct and complete examinations for discovery of each other within five months of the delivery of their complete Affidavits of Documents.

42. The Plaintiff proposes that the parties will complete any motions arising from discovery or production within one month of completion of examinations for discovery.

43. The issues to be addressed in the examination for discovery are set forth in the trial of common issues, referred to below.

Pre-Trial Preparation

44. The Plaintiff expects that the representative plaintiff will be called to give evidence as witness at the trial of the common issues. It is not known whether other class members will be required to give evidence. The parties will have a better sense of the witnesses they intend to call after the completion of discovery.

45. The Plaintiff proposes to lead expert evidence from an economist and possibly other experts if Class Counsel deems necessary following the completion of the discovery process.

46. The Plaintiff proposes that, four months before trial, the parties will exchange expert reports, if any, and that within one month of the delivery of expert reports, each party shall be entitled to examine for discovery the experts of the other party, such examinations not to exceed one day.

47. The Plaintiff proposes that, three months prior to trial, the parties shall exchange signed witness statements setting forth substantially all of the evidence of all of the witnesses, other than expert witnesses, that a party intends to call, and that the witness statements may be used by an opposing party at trial.

48. The Plaintiff proposes that, forty five days prior to trial, a pre-trial conference shall be held. In preparation for the pre-trial conference, counsel shall agree upon and file:

- (a) One Joint Book of Documents for use at trial in hard copy and electronic format;
- (b) Joint Compendium of significant documents and discovery readings, for use at trial in hard copy and electronic format;
- (c) Witness Lists, stating the order in which witnesses will be called and the anticipated length of evidence;
- (d) Joint Brief of Authorities for use at trial in hard copy and electronic format;
- (e) The identification of anticipated pre-trial motions and/or evidentiary issues to be dealt with during the trial, and a statement as to whether a *voir dire* will be required;
- (f) pre-trial memoranda, including a statement confirming the completion of all items required at the case conference; and
- (g) the delivery of Requests to Admit, and *Evidence Act* notices, if any, with respect to documents not agreed upon;

49. The Plaintiff proposes that a second pre-trial conference shall be held 15 days before trial to confirm time estimates, and to address any remaining pre-trial motions and/or evidentiary issues.

Trial of Common Issues: Evidence

50. The Plaintiff proposes that the trial of the common issues will take place within six months of the completion of examinations for discovery. A summary of the way in which Class Counsel intends to prove each of the requisite elements of the *Competition Act* offences is set out below.

(A) *Competition Act*, s. 61

51. Section 61 prohibits a company from attempting, whether by agreement, threat, promise or like means, to influence upwards, or discourage the reduction of, the price charged or offered by another person for goods or services. Such conduct is sometimes referred to as “price maintenance”.

52. For conduct to be contrary to s. 61, the following four ingredients must be shown:

(i) A person is engaged in business of producing or supplying a product

53. DuPont Canada admits that it is engaged in the business of manufacturing and/or distributing engineering resins and selling them to class members.

(ii) that person, directly or indirectly, attempts to influence upward, or to discourage the reduction of, the price at which another person supplies or offers to supply a product within Canada

54. The Plaintiff proposes that evidence of what prices would otherwise have been (i.e. the “but-for” prices) will be given through the plaintiff and will be derived from DuPont Canada’s documents and the documents of DuPont Canada’s foreign affiliates and their distributors, all of which will show the prices at which DuPont Canada’s affiliates were selling the same resins during the Class Period. Other relevant evidence may also be derived from other class members, brokers, and prices shown on the Tier 1 Agreements.

55. The Plaintiff will also rely on the deemed presumptions in sections 61(3) and (4) of the *Competition Act*.

(iii) the attempt to influence or discourage is by agreement, threat, promise or any like means

56. The Plaintiff proposes that evidence of this element will fall into two categories. First will be the documents relevant to the agreement of DuPont Canada and the authorized distributors to participate in the CUPS System. Those documents will include daily communications regarding authorized support prices, monthly reports from distributors, and the other documents inherent in any business system such as the CUPS System.

57. Class Counsel will tender the transcript of the evidence given by an employee of Canada Colors and tendered on the certification motion. If necessary, the Canada Colors’ employees will be called as witnesses to testify to the same effect. The Plaintiff asserts that this evidence will also demonstrate a substantial overcharging to class members through the unlawful influence or discouragement of DuPont Canada.

58. Second, the Plaintiff will tender the evidence relied upon at the certification hearing, including conversations with senior DuPont Canada employees, to demonstrate how DuPont Canada:

- influenced upwards the price of resin through its CUPS system;
- discouraged and effectively prohibited the reduction of the price at which its distributors supplied resin through the CUPS system;
- entered into agreements or arrangements with its authorized distributors pursuant to which the authorized distributors would sell DuPont Canada engineering resins to Canadian moulders at prices fixed by DuPont Canada; and
- obtained the authorized distributors' "agreement" by effectively dictating the resell price for engineering resins.

59. The Plaintiff proposes that agreements between DuPont Canada and certain Tier 1 manufacturers (the "Tier 1 Agreements") will be tendered into evidence to demonstrate that class members were required to use DuPont Canada engineering resins, and that the prices of those resins were enhanced and maintained. The Tier 1 Agreements will also be relied upon as evidence of price maintenance by DuPont Canada vis-à-vis its authorized distributors, as DuPont Canada could not commit to sell to the moulders at the "moulder price" without the complicity of the authorized distributors or, alternatively, without otherwise forcing the authorized distributors to comply.

60. The Plaintiff asserts that to the extent of similarities between the "moulder prices" stipulated in the Tier 1 Agreements and the actual prices charged to the moulders through the CUPS System, the Tier 1 Agreements may be evidence of the implementation of the price maintenance, whether directly or indirectly. The Tier 1 Agreements should be admitted into evidence at trial on consent, but if not, they will be proven through the examination for discovery of DuPont Canada.

61. Lastly, the correlation between the prices and resins sold through the CUPS System to the prices of resins sold to class members by DuPont Canada directly will be adduced to establish that the CUPS System influenced upward the prices at which resins were sold by DuPont Canada directly.

(iv) the person to whom the influence or discouragement is directed is engaged in business in Canada

62. DuPont Canada admits that its three authorized distributors are engaged in business in Canada.

(B) *Competition Act, s. 45(1)*

63. Section 45(1) prohibits a company from conspiring, combining, agreeing or arranging with another person to unreasonably enhance the price of a product, or to unduly prevent or lessen competition in supply of a product or to otherwise restrain or injure competition unduly.

Section 45(1)(b)

64. There are three elements to s. 45(1)(b) of the Act:

(i) a conspiracy, combination, agreement or arrangement entered into by the defendant and other persons

65. The Plaintiff asserts that the distributor agreements between DuPont Canada and its distributors, the CUPS System, and the documents including the Tier 1 Agreements that underlie the CUPS System evidence the conspiracy, combination, agreement or arrangement between DuPont Canada and other persons. These agreements will be proven either on consent or through the discovery of DuPont Canada.

(ii) an enhancement of the price of a product flowing from the conspiracy, combination, agreement or arrangement

66. Similar evidence to that to be adduced in support of the price maintenance allegations will be adduced to prove this element.

(iii) the enhancement of the price is unreasonable

67. Unreasonableness may relate to either the manner or the amount of the enhancement.

68. Insofar as the manner of the enhancement is concerned, prices can be unreasonably enhanced by anti-competitive conduct, including by limiting supply. Class Counsel proposes to lead evidence to demonstrate that DuPont Canada monitored moulders' resin purchasers through detailed information received from its distributors, Tier 1 manufacturers and its own investigations, and engaged in a systematic campaign to "dry up" or "shut down" alternate supply of engineering resins and to cause Tier 1 manufacturers to force moulders to buy DuPont Canada engineering resins only from DuPont Canada or its authorized distributors. The Plaintiff asserts that the Tier 1 Agreements and the planning documents which preceded them, and the internal reports which relate to them, will be relevant to this issue.

69. Class Counsel also propose that further evidence will include the statements of senior DuPont Canada employees, the evidence of brokers, class members, DuPont Canada's distributors, and evidence of DuPont Canada's efforts in this regard to be obtained through the discovery process. The statements of Tier 1 manufacturer Intier Automotive Inc. also impugn DuPont Canada's conduct and specifically detail DuPont Canada's efforts to control market prices of engineering resins and shut down potential competitively priced suppliers. The relevant personnel from Intier may be called as witnesses at trial if necessary. The Plaintiff may rely on legal presumptions contained in s. 69 of the *Competition Act*.

70. Class Counsel may also lead evidence of DuPont Canada's conduct once it learned that moulders were purchasing DuPont Canada resins from other sources, including the retaliatory action taken by DuPont Canada directly, and indirectly, through a Tier 1 supplier, to curtail the purchase of competitively-priced engineering resins.

Section 45(1)(c)

71. There are three elements in a claim under s. 45(1)(c) of the *Competition Act*:

(i) conspiracy, combination, agreement or arrangement

72. As with Section 45(1)(b) of the *Competition Act*, the distributor agreements between DuPont Canada and its distributors, the CUPS System, and the documents including the Tier 1 Agreements that underlie the CUPS System evidence the agreement or arrangement between DuPont Canada and its authorized distributors.

(ii) to prevent or lessen competition in the supply of a product

73. As with the comparable elements in section 45(1)(b) of the *Competition Act*, Class Counsel will tender to the trial judge documents relating to the establishment and operation of the CUPS System. Those documents will demonstrate that DuPont Canada effectively fixed the prices paid by the class members and restrained class members and authorized distributors from negotiating lower prices. The evidence outlined above in subsection (iii) of the section 45(1)(b) analysis will prove the manner in which DuPont Canada lessened competition from other sources of supply, including brokers and its own affiliates.

(iii) the prevention or lessening was "undue"

74. The Plaintiff proposes to tender to the trial judge evidence of the market power, behaviour and intent of DuPont Canada, to demonstrate that the prevention or lessening of competition was "undue".

75. Through the examination for discovery of DuPont Canada, and the documents in the possession of DuPont Canada, its distributors and affiliates, the Plaintiff proposes to tender to the trial judge evidence to demonstrate that:

- (a) DuPont Canada sought to achieve, maintain and enhance market power in the relevant market;
- (b) DuPont Canada and its affiliates took steps to ensure that DuPont Canada resins are available in Canada exclusively through DuPont Canada and its distributors, and that DuPont Canada's own record, as well as the evidence of brokers and class members, demonstrates that DuPont Canada aggressively acted to shut down any competition in Canada; and
- (c) DuPont Canada used the information obtained through the CUPS System and through the Tier 1 Agreements to monitor the purchases of moulders and to discipline moulders who purchased from alternative sources and to shut down those sources.

76. The Plaintiff proposes to tender evidence obtained on discovery of DuPont Canada, and expert evidence as to DuPont Canada's market share and market power.

77. In addition, the Plaintiff proposes to lead evidence of Axiom's employees to demonstrate how DuPont Canada acted, together with its distributors and Tier 1 suppliers, to force Axiom to purchase at fixed prices, to force disclosure of low price suppliers, to punish Axiom for failure to buy DuPont Canada engineering resins from DuPont Canada and its distributors, and to falsely frame its conduct as addressing quality issues.

Section 45(1)(d)

78. Section 45(1)(d) of the Act makes it an offence to agree to “otherwise restrain or injure competition unduly”. The Plaintiff proposes that evidence outlined under Sections 61, 45(1)(b) and (c) will be relevant to a violation of Section 45(1)(d) as well.

Civil Conspiracy

79. For purposes of this Plan of Proceeding, there are two relevant parts to a civil conspiracy committed through “unlawful means”. The first is the agreement between the conspiring parties. Agreements between DuPont Canada and its distributors are acknowledged and are thereby established in the same fashion as it was for Sections 45(1)(b) and 45(1)(c) of the *Competition Act*.

80. The second branch, the “unlawful means” arises from the same conduct which the Plaintiff alleges is in breach of Part VI of the *Competition Act*, referred to above and the aiding and abetting by DuPont Canada of the violation of section 61 of the *Competition Act* by Tier 1 manufacturers. Accordingly, the Plaintiff intends to tender the same facts referred to above in support of the claim of civil conspiracy.

Unjust Enrichment

81. The three elements of unjust enrichment are:

- (i) the enrichment of DuPont Canada;
- (ii) the corresponding deprivation of the plaintiff; and
- (iii) the absence of a juristic reason for the enrichment.

82. The Plaintiff intends to prove the enrichment of DuPont Canada and the deprivation of the class members through the evidence referred to above in relation to Sections 61 and 45 of the *Act*. The Plaintiff asserts that the same evidence that demonstrates that prices were fixed, maintained, and enhanced unreasonably, or resulted from the undue lessening or injuring of competition, will demonstrate these elements of this claim.

83. Similarly, the Plaintiff asserts that the absence of a juristic reason for the enrichment will flow from the proof of the unlawful nature of the conduct of DuPont Canada.

Loss, Damages and Deprivation

84. This section of the Plan addresses the way in which the Plaintiff will advance the proof of loss, damages and the element of deprivation.

85. The Plaintiff asserts that the loss and deprivation will be established if it is shown that class members were forced to pay inflated prices, denied savings on their largest input cost, denied access to competitive sources of supply and financially penalized during the Class Period.

86. The overcharge resulting from the wrongful conduct will be determined, the Plaintiff asserts, by the difference between actual prices and the prices that would have existed but for the wrongful conduct (“but-for prices”). On the certification motion, the Plaintiff tendered expert evidence that various widely-accepted methodologies for estimating but-for prices could be applied in the present case. After gathering the requisite evidence through the discovery process, and consultation with the expert, the methodology best suited to the facts will be selected by the Plaintiff.

87. To the extent that production, discovery and the state of the evidence and proceedings permit, the Plaintiff asserts that punitive, exemplary and aggravated damages and interest can be determined at the common issues trial.

88. The Plaintiff asserts that each class member is entitled to be paid a share of the damages, including punitive damages, exemplary and aggravated damages, assessed against the defendants plus interest less costs and expenses. A class member’s share will be calculated by determining the amount of the member’s claim and determining its *pro-rata* percentage of the total of all the class members’ claims.

Individual Damages Assessment Procedure

89. If the common issues are resolved in favour of the Class, including the measure and amount of the payment by the defendant to the class members, the plaintiff does not anticipate any need for a further hearing with respect to the distribution of the amounts recovered.

90. Individual issues with respect to damages may arise if the Court determines that damages cannot be assessed in the aggregate and distributed on a *pro-rata* basis or if following such an assessment individual Class Members dispute their damages awards. In the event that these individual issues arise, the Plaintiff proposes that the Court implement and oversee a damages assessment procedure, outlined below, to be presided over by the common issues trial judge or a hearings officer as designated by the common issues trial judge. If the Court assesses damages on a class-wide basis for part of the Class only, the damages assessment procedure will be implemented for the remainder of the Class and/or distribution.

91. Class Counsel intend to provide to each class member and the Court an assessment of that member’s damages based on the member’s purchases and the “but for” prices. The member may dispute the assessment. The common issues trial judge will be asked to approve the methodology, which will be advanced through the plaintiff’s expert(s), for use by the trial judge hearings officer to adjudicate the individual damages issues.

92. The Plaintiff anticipates that the Court may give notice to Class Members concerning the trial of individual issues, and to advise Class Members concerning the costs implications of pursuing their individual claims, if necessary.

93. The Plaintiff proposes that Class Members will file claims and provide any further evidence required in support of their claims. The trial judge or hearings officer will adjudicate the claims

94. The Plaintiff anticipates that any class member required to file a claim which does not file a claim before the claims bar date will not be eligible to participate in the damages assessment procedure.

95. If deemed necessary or desirable, the Plaintiff anticipates that the Court may appoint counsel to assist class members in this process. The Plaintiff proposes that the fees for this counsel will be subject to the direction of the Court and paid by DuPont Canada.

96. The Plaintiff proposes that the amount or amounts awarded, or settlement funds will be paid to the solicitors for the plaintiff and will be distributed by them in the manner and amounts approved by the Court.

Final Determination of the Common Issues

97. Assuming that the common issues are resolved in favour of the Class, the Plaintiff anticipates that the Court will settle the form and content of the notice of resolution of the common issues within 10 days from the release of the Reasons for Judgment.

98. The Plaintiff proposes that the Court will set a date, which the plaintiff proposes to be within 10 days of the entry of the judgment on the common issues, by which date the plaintiff or defendant (or both) will be required to deliver the notice of resolution to all class members.

Mediation and Settlement

99. The Plaintiff anticipates that the parties will conduct settlement negotiations from time to time, as circumstances dictate.

100. Following the examination for discovery and the exchange of expert reports, and assuming that no mediation proceedings are then underway, the plaintiff will propose that the parties select a mediator to mediate the issues in this action.

The Plaintiff's Proposed Summary of Schedule to Trial

Step	Timing
DuPont Canada will provide the List of Purchasers.	Upon entry of Certification Order
DuPont Canada will advise Class Counsel of the identity of members of the Class who may be insolvent.	Upon entry of Certification Order
DuPont Canada will advise its authorized distributors of the existence of this Proceeding	Upon entry of Certification Order

and request that the distributors preserve all relevant records	
Notice will be posted on Sotos LLP web site	Within 5 days of entry of Certification Order
Press Release of Class Counsel	Within 5 days of entry of Certification Order
Class Counsel will send the Notice to potential members of the Class	15 days following receipt of the List of Purchasers
Publication in trade press	Earliest publication opportunity
Opt-Out Period Expires	45 days from date of mailing of Notice to Class Members or, for any Class Members who do not receive a mailing, 30 days following the date of the last publication in the trade press or daily newspaper
Sotos LLP to provide list of opt-outs to Court	Within 7 days of expiry of last opt-out period
DuPont Canada will deliver an initial Affidavit of Documents and associated productions	30 days following entry of the Certification Order
Parties will exchange complete Affidavits of Documents	60 days following entry of the Certification Order
Examination for Discovery of DuPont Canada will begin	Date agreed to by counsel or set by the Court.
Completion of Examinations for Discovery of Parties	Within 5 months of delivery of Affidavits of Documents
Completion of any motions arising from Examinations for Discovery or production	Within 1 month of completion of Examinations for Discovery
Parties will exchange expert reports	4 months before trial
Parties shall, if desired, examine for discovery the experts	Within one month of delivery of expert reports
Exchange of signed witness statements	3 months prior to trial
Pre-trial conference	45 days prior to trial
Second pre-trial conference	15 days prior to trial
Trial of common issues	Within 6 months of completion of examinations for discovery of parties

Schedule "B" to Certification Order

Court File No.: 05-CV-302358CP

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

AXIOM PLASTICS INC.

Plaintiff

- and -

E.I. DU PONT CANADA COMPANY

Defendant

Proceeding under the *Class Proceedings Act, 1992*

[Coat of Arms]

Notice published under the *Class Proceedings Act, 1992*

If your company purchased DuPont engineering resins for use in an automotive application, a class action lawsuit may affect your rights.

A court authorized this notice. This is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	Stay in this lawsuit. Await the outcome. By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you give up any rights to sue DuPont separately about the same legal claims in this lawsuit.
ASK TO BE EXCLUDED	Get out of this lawsuit. Get no benefits from it. If you ask to be excluded and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue DuPont separately about the same legal claims in this lawsuit.

- Your options are explained in this notice. To ask to be excluded, you must act before [45 days after notice is served on Class], 2007
- Lawyers for the Class must prove the claims against DuPont at a trial. If money or benefits are obtained, you will be notified about how to ask for a share
- **Any questions? Read on and visit www.dupont-automotiveresins-classaction.ca**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

If your company purchased DuPont engineering resins for use in an automotive application, and you were required by a customer to use DuPont engineering resins in such automotive application, a class action lawsuit may affect your rights. A lawsuit against E.I. DuPont Canada Company ("DuPont Canada") has been certified by the Court as a class action which may entitle you to obtain monies to compensate you for various alleged wrongdoing by DuPont Canada.

This notice is published by Order of the Honourable Madam Justice Hoy of the Superior Court of Justice and explains:

- The lawsuit;
- Being included in or opting out of the lawsuit;
- Possible financial consequences of the lawsuit; and
- Other matters.

The Lawsuit: Axiom Plastics Inc. of Aurora, Ontario has sued DuPont Canada for alleged breaches of the *Competition Act*, R.S.C. 1985, c. C-34 ("*Competition Act*") in relation to the manner in which prices of DuPont engineering resins are established. DuPont's engineering resins include resins sold under the names: Delrin, Zytel, Zytel HTN, Minlon, Hytrel, Rynite, and Crastin.

The plaintiff claims that DuPont Canada has conspired with its authorized distributors by way of a "Credit Upon Proof of Sale" system (the "CUPS system") in order to enhance and maintain the price of engineering resins sold to moulders which manufacture parts for the automotive industry. The lawsuit covers certain sales of resins to moulders directly by DuPont Canada and indirectly through DuPont Canada's three authorized distributors: Canada Colors and Chemicals Limited, Ashland Canada Inc, which operates as General Polymers and PolyOne Distribution Canada Ltd. DuPont Canada denies the plaintiffs' claim and no court has ruled on whether the claim will succeed at trial.

The Class members: In this lawsuit, the Court has ordered that the plaintiffs may represent a Class consisting of entities described as follows:

All purchasers in Canada between January 2000 and August 27, 2007 (the "Class Period") of engineering resins for an automotive application from E. I. DuPont Canada Company and/or its predecessor DuPont Canada Inc. (collectively or individually "DuPont Canada") or its authorized Canadian distributors, who were required by a customer to use a DuPont engineering resin in the automotive application, excluding the following companies and their associates and affiliates: DuPont Canada, Ashland Canada Inc., Canada Colors and Chemicals Ltd., Magna International Inc., Multimatic Inc., Omron Dual Tech Automotive Electronics Inc., and PolyOne Canada Inc.

On August 27, 2007 the Ontario Superior Court of Justice granted an order allowing the plaintiffs to represent this class, subject to each class member's right to opt out if the class member does not wish to be included in the lawsuit.

How to be included in the Class: You do not need to do anything to “join” the Class. If you fall within the definition set out above, then you will automatically be included in the Class unless you opt out of the Class.

How to be excluded from the Class: To opt out of the Class you must fill out the coupon attached to this Notice and send it to Sotos LLP, the solicitors for the Class. The deadline for opting out is [45 days after notice is served on Class], 2007. If your written request to opt out is not received by that date, you will remain a member of the Class.

Consequences of opting out: If you opt out of the Class, you will not be included any further in this lawsuit.

Possible financial consequences of the lawsuit: If the class action is successful in showing that DuPont Canada unlawfully enhanced or maintained the prices of engineering resins, the court may determine how much the affected Class Members should receive and may make such determination on a global basis.

It is expected at the present time that this determination will require minimal if any direct participation by the Class Members.

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. For example, you may have to demonstrate that you were required to use DuPont resin.

If individual hearings are necessary to determine the amount of a Class Member’s entitlement, Class Counsel agree to represent individual Class Members on a contingent fee basis subject to terms which will be approved by the Court. Notice will likely be given to Class Members concerning the participation in any individual hearings, if necessary, and any costs implications of participating in those hearings.

If the class action lawsuit is not successful, the Class Members will not be responsible for any legal costs and will not have any other financial obligations because of the class action lawsuit.

Whether or not the class action lawsuit is successful, all Class Members who do not opt out of the class action will be bound by the judgment. This means, for example, that after this lawsuit is over a Class Member could not start its own lawsuit against DuPont Canada for the same claim.

Other matters: The plaintiffs have retained the law firms of Sotos LLP www.sotosllp.com and McCarthy Tétrault LLP www.mccarthy.ca to represent the Class in this lawsuit. The law firms will be paid legal fees only if the lawsuit is successful. The representative plaintiff has agreed that the law firms’ fees will be 25% of the amount recovered plus disbursements, in addition to any costs the defendant is required to pay. The retainer agreement and any fees charged 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, telephone (416) 977-0007, fax (416) 977-0717 email: dsterns@sotosllp.com
- McCarthy Tétrault LLP, Barristers and Solicitors, Suite 4700, Toronto-Dominion Bank Tower, Toronto-Dominion Centre, Toronto, Ontario M5K 1E6, attention: Jonathan C. Lisus, telephone (416) 601-7848, fax (416) 601-8246 email: jlisus@mccarthy.ca
- Or go to www.dupont-automotiveresins-classaction.ca for further information and to download the statement of claim and other court papers in this action, including the Reasons for Decision and Order of Madam Justice Hoy dated August 27, 2007.

PLEASE DO NOT CALL Madam Justice Hoy or the Registrar of the court. They will not be able to answer your questions about the lawsuit.

December 4, 2007

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 DuPont class action.

Signature

Name of Company:
please print

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before [30 *days after Notice served*], 2007.

AXIOM PLASTICS INC.

Plaintiff

-and-

E.I. DU PONT CANADA COMPANY

Defendant

Court File No.: 05-CV-302358CP

Ontario

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

**ORDER
(CERTIFICATION)**

SOTOS LLP	MCCARTHY TETRAULT
Suite 1250	Suite 4700
180 Dundas Street West	Toronto-Dominion Centre
Toronto, Ontario	Toronto, Ontario
M5G 1Z8	M5K 1E6
John Sotos	Thomas G. Heintzman, Q.C.
LSUC # 197071	LSUC # 11014T
David Sterns	Jonathan C. Lisus
LSUC # 36274J	LSUC #32952H

Tel.: (416) 977-0007 Tel: (416) 601-7627
Fax: (416) 977-0717 Fax: (416) 601-8246
Solicitors for the Plaintiff Counsel to Sotos LLP