

CV-12-449 23300CP

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

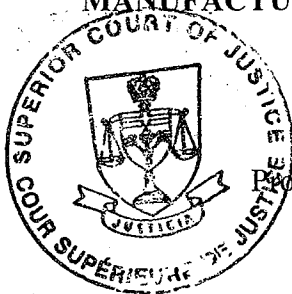
**SHERIDAN CHEVROLET CADILLAC LTD. and  
PICKERING AUTO MALL LTD.**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO  
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC.  
and DOE CORPORATION Nos 1 to 10**

Defendants



Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: March 19, 2012

Issued by: Soparia  
Local Registrar

M. Sagaria  
Registrar

Address of Court Office:  
Superior Court of Justice  
393 University Ave., 10<sup>th</sup> Floor  
Toronto, ON M5G 1E6

**TO: DENSO CORPORATION  
1-1, Showa-cho,  
Kariya, Aichi, 448-8661, Japan**

**AND TO: DENSO INTERNATIONAL AMERICA INC.  
24777 Denso Dr.  
Southfield, MI 48033**

**AND TO: DENSO MANUFACTURING CANADA, INC.  
900 Southgate Drive  
Guelph, ON N1L 1K1**

**AND TO: DENSO SALES CANADA, INC.  
195 Brunel Road  
Mississauga, ON L4Z 1X3**

**CLAIM**

1. The plaintiffs claim on their own behalf and on behalf of other members of the proposed class:

- (a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price for Electronic Control Units and Heater Control Panels sold in Canada during the Class Period;
- (b) A declaration that the defendants did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Electronic Control Units and Heater Control Panels were supplied in Canada during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$100,000,000:
  - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 ("*Competition Act*");
  - (ii) for civil conspiracy; and
  - (iii) for unjust enrichment;
- (d) An injunction, interlocutory and permanent, enjoining the defendants, their affiliates, successors, transferees and assignees and officers, directors, partners, agents and employees thereof, from maintaining or renewing the conduct, conspiracies, agreements or arrangements alleged herein, or from entering into

any other conduct, conspiracies, agreements or arrangements having a similar purpose or effect;

- (e) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;
- (f) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*Courts of Justice Act*"), as amended;
- (g) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (h) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (i) Such further and other relief as this Honourable Court deems just.

### **Summary of Claim**

2. This lawsuit centres on a conspiracy by the defendants, who supply electronic control units ("**Electronic Control Units**") and heater control panels ("**Heater Control Panels**") used in automobiles, to fix, maintain, increase and control the prices, rig bids and allocate the market and customers in Canada and elsewhere for those products. The conspiracy was in effect from January 1, 2000 to a time known only to the defendants, but no earlier than March 1, 2010 (the "**Class Period**"), and targeted the Canadian automotive industry, raising prices to all members of the proposed class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and the proposed class paid artificially inflated prices for automobiles containing Electronic Control Units and

Heater Control Panels manufactured, marketed or sold by the defendants during the Class Period and have thereby suffered losses and damages.

### **The Parties**

4. The plaintiff, Sheridan Chevrolet Cadillac Ltd. ("**Sheridan**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited ("**GMCL**") from 1977 to 2009.

5. The plaintiff, Pickering Auto Mall Ltd. ("**Pickering**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.

6. The plaintiffs seek to represent the following class (the "**Proposed Class**"):

All entities that carried on business in Canada at any time from January 1, 2000 to the date of issuance of this statement of claim that purchased directly from an automotive manufacturer an automobile containing an Electronic Control Unit or Heater Control Panel manufactured, marketed or sold by one the defendants or any of their affiliates.

Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

7. The Proposed Class consists primarily of automotive dealers in Canada. The precise number of members of the Proposed Class is not known but estimated to be several thousand.

8. The defendant, Denso Corporation ("**Denso Corp**"), is a Japanese corporation. Denso manufactured, marketed, sold and distributed either directly or indirectly through its predecessors, affiliates and subsidiaries, including the defendants, Denso International America

Inc. ("**Denso International**"), Denso Manufacturing Canada, Inc. ("**Denso Manufacturing**") and Denso Sales Canada, Inc. ("**Denso Sales**"), Electronic Control Units and Heater Control Panels that were purchased in Canada during the Class Period.

9. Denso International is incorporated under the laws of the State of Delaware in the United States of America and has its principal place of business in Southfield, Michigan. Denso International is owned and controlled by Denso Corp.

10. Denso Manufacturing is incorporated under the laws of Ontario and carries on business as a manufacturer of heating ventilation and air conditioning units, radiators, condensers, engine fans and cooling modules used in automobiles. Denso Manufacturing is owned and controlled by Denso Corp.

11. Denso Sales is a Canadian company incorporated under the federal laws of Canada and carries on business as a sales and distribution office for automotive parts manufactured by Denso and its affiliates and subsidiaries. Denso Sales is owned and controlled by Denso Corp.

12. Denso Corp, Denso International, Denso Manufacturing and Denso Sales are collectively referred to herein as "**Denso.**"

13. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, and individuals, the identities of which are presently unknown, including senior executives and employees of Denso, have participated as co-conspirators with Denso in the unlawful conduct alleged in this statement of claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the unlawful conduct.

14. The defendants, Doe Corporation Nos 1 to 10, are corporations, the identities of which are presently unknown to the plaintiffs, that participated as co-conspirators with Denso in the unlawful conduct alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the unlawful conduct alleged herein. Hereafter, "**Doe Corporations**" shall refer to one or more of the Doe Corporation Nos 1 to 10.

15. Denso and Doe Corporations are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

16. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

### **The Electronic Control Units and Heater Control Panels Industry**

17. An Electronic Control Unit is an embedded system that controls one or more of the electronic systems or subsystems in a motor vehicle. Electronic Control Units are in-vehicle computers that control the power supply to certain electrical components and system, such as transmissions, smart key systems, mirrors, lighting and security systems.

18. A Heater Control Panel is located in the centre console of an automobile. It consists of operational panels incorporating buttons and switches which control the temperature of the interior environment of a vehicle.

19. Electronic Control Units and Heater Control Panels are installed by automobile original equipment manufacturers (“OEMs”) in new cars as part of the automotive manufacturing process. They are also installed in cars to replace worn out, defective or damaged Electronic Control Units or Heater Control Panels.

20. For new cars, OEMs – mostly large automotive manufacturers such as General Motors, Honda, Chrysler, Toyota and others – purchase Electronic Control Units and Heater Control Panels directly from Denso. Electronic Control Units and Heater Control Panels may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called “Tier Manufacturers” in the industry. A Tier I manufacturer supplies Electronic Control Units and Heater Control Panels directly to an OEM.

21. When purchasing Electronic Control Units and Heater Control Panels and related products, OEMs issue Requests for Quotation (“RFQs”) to automotive parts suppliers. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. OEMs usually award the business to a selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the bidding process begins approximately three years before the start of production of a new model.

22. The plaintiffs and members of the Proposed Class purchased Electronic Control Units and Heater Control Panels indirectly from Denso and Doe Corporations. During the Class Period, Denso and Doe Corporations supplied Electronic Control Units and Heater Control Panels to OEMs for installation in vehicles manufactured and sold in Canada and elsewhere. Denso and Doe Corporations manufactured Electronic Control Units and Heater Control Panels:

(a) in North America for installation in vehicles manufactured in North America and sold in



Canada, (b) in Japan for export to North America and installation in vehicles manufactured in North America and sold in Canada, and (c) in Japan for installation in vehicles manufactured in Japan for export to and sale in Canada.

23. Denso and Doe Corporations intended as a result of their unlawful conspiracy to inflate the prices for cars sold to automotive dealers in Canada and elsewhere.

24. Denso unlawfully conspired with Doe Corporations to agree upon and manipulate prices for Electronic Control Units and Heater Control Panels and to mislead and conceal their anti-competitive behaviour from OEMs and automotive dealers. Denso and Doe Corporations knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Electronic Control Units and Heater Control Panels would be sold to OEMs from the price that would otherwise be charged on a competitive basis. By charging inflated prices to OEMs, Denso and Doe Corporations knew that their unlawful scheme and conspiracy would injure the plaintiffs and all members of the Proposed Class. Denso and Doe Corporations were aware that increasing the cost of Electronic Control Units and Heater Control Panels to OEMs would inflate the prices at which OEMs would sell automobiles to the plaintiffs and all members of the Proposed Class.

25. Denso is one of the largest manufacturers and suppliers of Electronic Control Units and Heater Control Panels in Canada and the world. Denso's customers include General Motors, Chrysler, Ford, BMW, Mercedes-Benz, Hyundai, Kia, Toyota, Honda, Subaru, Mazda, Hino, Suzuki, Mitsubishi, Nissan and Toyota.

### **Investigations into International Cartel and Resulting Fines**

26. A globally coordinated investigation into collusion in the automotive parts industry is underway in the United States of America, Europe, and Japan.

27. Several automobile parts suppliers, including Denso, have been the subject of information requests or search warrants by competition authorities in Japan, Europe or the United States of America in relation to the international investigation.

28. The United States Department of Justice (“**USDOJ**”) is conducting an investigation of potential collusion in the Electronic Control Units and Heater Control Panels industries affecting the North American automotive market.

29. On January 30, 2012, the USDOJ announced that Denso agreed to pay a \$78 million fine relating to its unlawful participation in price-fixing and bid-rigging conspiracies involving Electronic Control Units and Heater Control Panels.

30. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Electronic Control Units and Heater Control Panels in the United States of America and Canada, including Ontario.

**Plaintiffs Purchased Vehicles Containing Electronic Control Units and Heater Control Panels Manufactured and Sold by Defendants**

31. Sheridan purchased for resale during the Class Period the following brands of vehicles manufactured by General Motors of Canada Limited (“GMCL”) or its affiliates: Chevrolet, Oldsmobile and Cadillac.

32. Sheridan also purchased for resale vehicles during the Class Period manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company and Daewoo Motor Co.

33. Pickering purchased for resale during the Class Period the following brands of vehicles manufactured by GMCL or its affiliates: Isuzu, Saab and Saturn.

34. Pickering also purchased for resale during the Class Period vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG and Subaru Canada Inc.

35. The vehicles purchased by Sheridan and Pickering were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States of America, Japan and other parts of the world.

36. Sheridan and Pickering purchased vehicles containing Electronic Control Units and Heater Control Panels manufactured and sold by Denso and Doe Corporations that were the subject of the conspiracy described herein.

**Breaches of Part VI of *Competition Act***

37. From January 2000 until at least March 2010, Denso and Doe Corporations engaged in a conspiracy to rig bids for and to fix, maintain, increase or control the prices of Electronic Control Units and Heater Control Panels sold to customers in Canada and elsewhere.

38. Denso and Doe Corporations carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in the United States of America, Canada, Japan and elsewhere to discuss the bids and price quotations for Electronic Control Units and Heater Control Panels to be submitted to OEMs selling automobiles in Canada and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, on bids and price quotations for Electronic Control Units and Heater Control Panels to be submitted to OEMs in Canada and elsewhere;
- (c) agreeing on the prices to be charged and to control discounts for Electronic Control Units and Heater Control Panels in Canada and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Electronic Control Units and Heater Control Panels sold to OEMs in Canada and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by OEMs in Canada and elsewhere;

- (f) submitting bids, price quotations, and price adjustments to OEMs in Canada and elsewhere in accordance with the agreements reached;
- (g) selling Electronic Control Units and Heater Control Panels to OEMs in Canada and elsewhere at collusive and supra-competitive prices;
- (h) accepting payment for Electronic Control Units and Heater Control Panels sold to OEMs in Canada and elsewhere at collusive and supra-competitive prices;
- (i) engaging in meetings, conversations, and communications in the United States, Canada, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (j) employing measures to keep their conduct secret, including but not limited to using code names and meeting at private residences or remote locations; and
- (k) preventing or lessening, unduly, competition in the market in Canada in the production, manufacture, sale or distribution of Electronic Control Units and Heater Control Panels in Canada.

39. As a result of this international bid-rigging and price-fixing conspiracy, OEMs paid supra-competitive prices for Electronic Control Units and Heater Control Panels installed in vehicles sold to members of the Proposed Class and, as a result, sold automobiles to the members of the Proposed Class at inflated costs.

40. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs claim losses and damages under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

41. Such conduct further constituted an offence under section 61(1) of the *Competition Act* for the period from January 1, 2000 until the repeal of that section on March 12, 2009. The plaintiffs claim damages under section 36(1) of the *Competition Act* in respect of conduct contrary to section 61(1) of the *Competition Act* for the period from January 1, 2000 to March 12, 2009.

### **Civil Conspiracy**

42. Denso entered into agreements with Doe Corporations and other unnamed co-conspirators to use unlawful means which resulted in losses and damages, including special damages, to the plaintiffs and members of the Proposed Class. The unlawful means include the following:

- (a) entering into agreements to rig bids and fix, maintain, increase or control prices of Electronic Control Units and Heater Control Panels sold to customers in Canada and elsewhere in contravention of sections 45(1), 46(1), 47(1) and (during the period in which it was in force) 61(1) of the *Competition Act*;
- (b) entering into agreements to rig bids and fix, maintain, increase or control prices of Electronic Control Units and Heater Control Panels sold to customers in Canada and elsewhere in contravention of the laws of the United States of America, Japan and other countries; and
- (c) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code* R.S.C. 1985, c. C-46.

43. In furtherance of the conspiracy, Denso, Doe Corporations, their respective servants, agents and unnamed co-conspirators carried out the acts described in paragraph 42 above.

44. Denso, Doe Corporations and unnamed co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class by requiring them to pay artificially high prices for Electronic Control Units and Heater Control Panels, and to illegally increase their profits on the sale of Electronic Control Units and Heater Control Panels.

45. Denso, Doe Corporations and unnamed co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, Denso, Doe Corporations and unnamed co-conspirators knew in the circumstances their unlawful acts would likely cause injury.

### **Unjust Enrichment**

46. As a result of their conduct, Denso and Doe Corporations benefited from a significant enhancement of their sales volumes, profits and market share. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for vehicles containing Electronic Control Units and Heater Control Panels. There is no juristic reason or justification for Denso's and Doe Corporations' enrichment, as such conduct is unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place and is tortious and unjustifiable.

47. It would be inequitable for Denso and Doe Corporations to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

48. The plaintiffs and the members of the Proposed Class are entitled to the amount of Denso's and Doe Corporations' ill-gotten gains resulting from their unlawful and inequitable conduct.

### **Damages**

49. Denso and Doe Corporations' conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Electronic Control Units and Heater Control Panels sold to OEMs selling vehicles to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Electronic Control Units and Heater Control Panels have been fixed, maintained, increased or controlled at artificially inflated levels for resale as a component of a vehicle sold to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada; and
- (c) the plaintiffs and members of the Proposed Class have been deprived of free and open competition for Electronic Control Units and Heater Control Panels in Ontario and the rest of Canada.

50. Electronic Control Units and Heater Control Panels are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Electronic Control Units and Heater Control Panels follow a traceable chain of distribution from Denso and Doe Corporations to OEMs (or alternatively to the Tier Manufacturers and then to OEMs) and from OEMs to the plaintiffs and the members of the Proposed Class. Costs



attributable to Electronic Control Units and Heater Control Panels can be traced through OEMs to the plaintiffs and the members of the Proposed Class.

51. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses to their businesses by virtue of having paid higher prices for vehicles containing Electronic Control Units and Heater Control Panels than they would have paid in the absence of Denso's and Doe Corporations' illegal conduct. As a result, the plaintiffs and the members of the Proposed Class have suffered losses and damages in an amount not yet known but to be determined. Full particulars of the losses and damages will be provided before trial.

52. Because Denso's and Doe Corporations' conspiracies, agreements or arrangements were concealed, the plaintiffs and members of the Proposed Class were unaware of the unlawful conduct and could not have discovered its existence through reasonable diligence.

#### **Punitive, Aggravated and Exemplary Damages**

53. Denso and Doe Corporations used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Electronic Control Units and Heater Control Panels. They were aware at all times that their actions would have a significant adverse impact on all members of the Proposed Class. Denso's and Doe Corporations' conduct was high-handed, reckless, without care, deliberate and in disregard of the plaintiffs' and Proposed Class members' rights.

54. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

**Injunctive Relief**

55. The unlawful conduct alleged herein has caused and will continue to cause irreparable harm to the members of the Proposed Class. The plaintiffs request interlocutory and permanent injunctive relief enjoining Denso and Doe Corporations, their respective affiliates, successors, transferees and assignees and officers, directors, partners, agents and employees thereof, from maintaining or renewing the conduct, conspiracies, agreements or arrangements alleged herein, or from entering into any other conduct, conspiracies, agreements or arrangements having a similar purpose or effect.

**Service of Statement of Claim Outside Ontario**

56. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

- (a) Rule 17.02 (f)(i) – the claim relates to a contract made in Ontario;
- (b) Rule 17.02 (g) – the claim relates to a tort committed in Ontario; and
- (c) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (d) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

The plaintiff asks that the trial of this action take place at Toronto, Ontario.

March 19, 2012

**SOTOS LLP**

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

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Lawyers for the plaintiffs

**SHERIDAN CHEVROLET CADILLAC LTD. et. al.**  
Plaintiffs

-and-

**DENSO CORPORATION et. al.**  
Defendants

CJ-12-449233000

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PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF CLAIM**

**SOTOS LLP**  
Barristers and Solicitors  
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