

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SHERIDAN CHEVROLET CADILLAC LTD., THE
PICKERING AUTO MALL LTD., and FADY SAMAHA

Plaintiffs

- and -

DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., DENSO
INTERNATIONAL KOREA CORPORATION, DENSO KOREA AUTOMOTIVE
CORPORATION, KOREA WIPER BLADE CO., LTD., ASMO CO., LTD., ASMO
NORTH AMERICA, LLC, MITSUBA CORPORATION, AMERICAN MITSUBA
CORPORATION, ASMO GREENVILLE OF NORTH CAROLINA, INC., ROBERT
BOSCH GMBH, RBKB, BOSCH ELECTRICAL DRIVES CO., LTD., ROBERT BOSCH
LLC, and ROBERT BOSCH INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED FOURTH FRESH AS AMENDED STATEMENT OF CLAIM
(Windshield Wiper Systems)

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.

AMENDED THIS FEB - 4 2016 PURSUANT TO
MODIFIÉ CE _____ CONFORMÉMENT À
☐ RÈGLE 26.02 (_____)
☒ THE ORDER OF Justice Belobaba
L'ORDONNANCE DU
DATED / FAIT LE Dec 9 2015
REGISTRAR SUPERIOR COURT OF JUSTICE GRIFFIER COUR SUPÉRIEURE DE JUSTICE

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 11, 2013 *in*

Issued by: "S. Desouza"
Local Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th 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 Drive
Southfield, Michigan 48033, USA

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

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

AND TO: DENSO INTERNATIONAL KOREA CORPORATION
131 Seonggogae-ro, Uiwang-si,
Gyeonggi-do, South Korea 437-120

- AND TO: DENSO KOREA AUTOMOTIVE CORPORATION**
47, Sungsan-dong, Sungsan-gu,
Changwon-city Kyungnam,
Kyeongnam, South Korea
- AND TO: KOREA WIPER BLADE CO., LTD.**
#506-2, Moknae-dong Danwon-gu,
Ansan-Si, Kyunggi-Do, South Korea
(Banwol Ind.Est B17-54-1)
- AND TO: ASMO CO., LTD.**
390, Umeda, Kosai City
Shizuoka Pref. 431-0493, Japan
- AND TO: ASMO NORTH AMERICA, LLC**
470 Crawford Road
Statesville, North Carolina 28625-8504, USA
- AND TO: MITSUBA CORPORATION**
1-2681 Hirosawa-cho
Kiryu, Gunma Pref. 376-8555, Japan
- AND TO: AMERICAN MITSUBA CORPORATION**
2945 Three Leaves Drive
Mt. Pleasant, Michigan 48858, USA
- AND TO: ASMO GREENVILLE OF NORTH CAROLINA, INC.**
1125 Sugg Parkway
Greenville, North Carolina 27834, USA
- AND TO: ROBERT BOSCH GMBH**
Postfach 10 60 50
Stuttgart, 70049, Germany
- AND TO: RBKB BOSCH ELECTRICAL DRIVES CO., LTD.**
115, Geumhosunmal-gil,
Bugang-myeon, Sejong Self-governing City, 339-942, Korea
- AND TO: ROBERT BOSCH LLC**
38000 Hills Tech Drive
Farmington, Michigan, 48331, USA
- AND TO: ROBERT BOSCH INC.**
6955 Creditview Road
Mississauga, Ontario L5N 1R1

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 below):

- (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 of Windshield Wiper Systems (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 7 below);
- (b) A declaration that the defendants and their co-conspirators 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 Windshield Wiper Systems were sold in North America and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$50,000,000:
 - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*");
 - (ii) for civil conspiracy;
 - (iii) for unjust enrichment; and
 - (iv) for waiver of tort;
- (d) Punitive, exemplary and aggravated damages in the amount of \$5,000,000;

- (e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("*Courts of Justice Act*"), as amended;
- (f) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (g) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (h) Such further and other relief as this Honourable Court deems just.

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere for windshield wiper systems used in automobiles and other light-duty vehicles ("**Windshield Wiper Systems**"). Windshield Wiper Systems include windshield wipers and components such as the motor, linkage arm and blade. The unlawful conduct occurred from at least as early as January 1, 2000 and continued until at least July 31, 2011 and impacted prices for several years thereafter. The unlawful conduct was targeted at the 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 other members of the Proposed Class paid artificially inflated prices for Windshield Wiper Systems and/or new vehicles containing Windshield Wiper Systems manufactured, marketed, sold, and/or distributed during the Class Period and have thereby suffered losses and damages.

The Plaintiffs

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, The 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 plaintiff, Fady Samaha, a resident of Newmarket, Ontario, purchased a new Honda Civic in 2009.

7. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

All Persons in Canada who purchased a Windshield Wiper System;^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing a Windshield Wiper System during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹ Windshield Wiper Systems include windshield wipers and components such as the motor, linkage arm and blade.

² Windshield Wiper Systems purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

³ Automotive Vehicle means passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs).

⁴ Class Period means between January 1, 2000 and July 31, 2011 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Denso Defendants

8. The defendant, Denso Corporation, is a Japanese corporation with its principal place of business in Kariya, Japan. During the Class Period, Denso Corporation manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and subsidiaries, including the defendants, Denso International America Inc. ("**Denso US**"), Denso Manufacturing Canada, Inc. ("**Denso Manufacturing Canada**"), Denso Sales Canada, Inc. ("**Denso Sales Canada**"), Denso International Korea Corporation ("**Denso International Korea**"), Denso Korea Automotive Corporation ("**Denso Korea Automotive**") and Korea Wiper Blade Co., Ltd. ("**Korea Wiper Blade**").

9. Denso US is an American corporation with its principal place of business in Southfield, Michigan. During the Class Period, Denso US manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso US is owned and controlled by Denso Corporation.

10. Denso Manufacturing Canada is a Canadian corporation with its principal place of business in Guelph, Ontario. During the Class Period, Denso Manufacturing Canada manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates,

and/or subsidiaries. Denso Manufacturing Canada is owned and controlled by Denso Corporation.

Denso Sales Canada is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Denso Sales Canada manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso Sales Canada is owned and controlled by Denso Corporation.

11. Denso International Korea is a Korean corporation with its principal place of business in Uiwang-si, South Korea. During the Class Period, Denso International Korea manufactured, marketed, sold and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso International Korea is owned and controlled by Denso Corporation.

12. Denso Korea Automotive is a Korean corporation with its principal place of business in Changwon, South Korea. During the Class Period, Denso Korea Automotive manufactured, marketed, sold and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso Korea Automotive is owned and controlled by Denso Corporation.

13. Korea Wiper Blade is a Korean corporation with its principal place of business in Ansan-Si, South Korea. During the Class Period, Korea Wiper Blade manufactured, marketed, sold and/or distributed Windshield Wiper Systems to customers either directly or indirectly through

the control of its predecessors, affiliates and/or subsidiaries. Korea Wiper Blade is owned and controlled by Denso Corporation.

14. The business of each of Denso Corporation, Denso US, Denso Manufacturing Canada, Denso Sales Canada, Denso International Korea, Denso Korea Automotive and Korea Wiper Blade is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Windshield Wiper Systems in Canada and for the purposes of the conspiracy described hereinafter. Denso Corporation, Denso US, Denso Manufacturing Canada, Denso Sales Canada, Denso International Korea, Denso Korea Automotive and Korea Wiper Blade are collectively referred to herein as “**Denso.**”

ASMO Defendants

15. The defendant, ASMO Co., Ltd., is a Japanese corporation with its principal place of business in Kosai City, Japan. During the Class Period, ASMO Co., Ltd. manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, ASMO North America, LLC (“**ASMO NA**”) and ASMO Greenville of North Carolina Inc. Co., Ltd., (“**ASMO GNC**”). ASMO Co., Ltd. is owned and controlled by Denso Corporation.

16. ASMO NA is an American corporation with its principal place of business in Statesville, North Carolina. During the Class Period, ASMO NA manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or

indirectly through the control of its predecessors, affiliates, and/or subsidiaries. ASMO NA is owned and controlled by ASMO Co., Ltd.

17. ASMO GNC is an American corporation with its principal place of business in Greenville, North Carolina, USA. During the Class Period, ASMO GNC manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. ASMO GNC is owned and controlled by ASMO Co., Ltd.

18. The business of each of ASMO Co., Ltd., ASMO NA and ASMO GNC is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Windshield Wiper Systems in Canada and for the purposes of the conspiracy described hereinafter. ASMO Co., Ltd., ASMO NA and ASMO GNC are collectively referred to herein as “ASMO.”

Mitsuba Defendants

19. The defendant, Mitsuba Corporation, is a Japanese corporation with its principal place of business in Kiryu, Japan. During the Class Period, Mitsuba Corporation manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendant, American Mitsuba Corporation (“Mitsuba US”).

20. Mitsuba US is an American corporation with its principal place of business in Mt. Pleasant, Michigan. During the Class Period, Mitsuba US manufactured, marketed, sold, and/or

distributed Windshield Wiper Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsuba US is owned and controlled by Mitsuba Corporation.

21. The business of each of Mitsuba Corporation and Mitsuba US is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Windshield Wiper Systems in Canada and for the purposes of the conspiracy described hereinafter. Mitsuba Corporation and Mitsuba US are collectively referred to herein as “Mitsuba.”

Bosch Defendants

22. The defendant, Robert Bosch GmbH (“**Bosch GmbH**”), is a German corporation with its principal place of business in Stuttgart, Germany. During the Class Period, Bosch GmbH, manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries, including the defendants, RBKB Bosch Electrical Drives Co., Ltd.. (“**Bosch Korea**”), Robert Bosch LLC (“**Bosch LLC**”), and Robert Bosch Inc. (“**Bosch Inc.**”).

23. Bosch Korea is a Korean corporation with its principal place of business in Sejong, Korea. During the Class Period, Bosch Korea manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Bosch Korea is owned and controlled by Bosch GmbH.

24. Bosch LLC is an American corporation with its principal place of business in Farmington, Michigan. During the Class Period, Bosch LLC manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Bosch LLC is owned and controlled by Bosch GmbH.

25. Bosch Inc. is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Bosch Inc. manufactured, marketed, sold, and/or distributed Windshield Wiper Systems to customers either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Bosch Inc. is owned and controlled by Bosch GmbH.

26. The business of each of Bosch GmbH, Bosch Korea, Bosch LLC, and Bosch Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Windshield Wiper Systems and for the purposes of the conspiracy described herein. Bosch GmbH, Bosch Korea, Bosch LLC, and Bosch Inc. are hereinafter referred to as “Bosch.”

Unnamed Co-Conspirators

27. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

28. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

29. 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 Windshield Wiper Systems Industry

30. Windshield wipers are devices used to remove rain and debris from a vehicle's windshield. Windshield wipers generally consist of an arm, pivoting at one end and with a long rubber blade attached to the other. The blade is swung back and forth over the glass, pushing water from its surface. Windshield Wiper Systems include windshield wipers and components such as the motor, linkage arm and blade.

31. Windshield Wiper Systems are installed by automobile original equipment manufacturers ("OEMs") in new vehicles as part of the automotive manufacturing process.

32. For new vehicles, the OEMs – mostly large automotive manufacturers such as Honda, Toyota, Volvo, General Motors and others – purchase Windshield Wiper Systems directly from the defendants. Windshield Wiper Systems may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called "**Tier I**

Manufacturers” in the industry. A Tier I Manufacturer supplies Windshield Wiper Systems directly to an OEM.

33. When purchasing Windshield Wiper Systems, OEMs issue Requests for Quotation (“**RFQs**”) to automotive parts suppliers on a model-by-model basis for model-specific parts. In at least some circumstances, the RFQ is sought from pre-qualified suppliers of the product. Typically, the RFQ would be made when there has been a major design change on a model-by-model basis. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the production life of the parts program is between two and five years. Typically, the bidding process begins approximately three years before the start of production of a new model. Once production has begun, OEMs issue annual price reduction requests (“**APRs**”) to automotive parts suppliers to account for efficiencies gained in the production process. OEMs procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

34. During the Class Period, the defendants and their unnamed co-conspirators supplied Windshield Wiper Systems to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Windshield Wiper Systems: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in vehicles manufactured in North America and sold in Canada, and (c) outside North

America for installation in vehicles manufactured outside North America for export to and sale in Canada.

35. The defendants and their unnamed co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Windshield Wiper Systems and new vehicles containing Windshield Wiper Systems sold in North America and elsewhere.

36. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Windshield Wiper Systems and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Windshield Wiper Systems would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their unnamed co-conspirators were aware that, by unlawfully increasing the prices of Windshield Wiper Systems, the prices of new vehicles containing Windshield Wiper Systems would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Windshield Wiper Systems and purchasers and lessees of new vehicles containing Windshield Wiper Systems. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Windshield Wiper Systems.

37. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Windshield Wiper Systems in Canada and the world. In 2010, the top three suppliers of Windshield Wipers Systems controlled approximately seventy percent of the global

market. Their customers include Ford, GM, Chrysler, BMW, Mercedes-Benz, Toyota, Honda, Subaru, Mazda, Suzuki, Mitsubishi, Nissan, Kia, Hyundai, and Volvo.

38. 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 Windshield Wiper Systems in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

39. Mitsuba Corporation agreed to plead guilty and pay a fine of US\$135 million in respect of its role in various conspiracies to fix the prices of five different automotive parts, including Windshield Wiper Systems, sold to automobile manufacturers in the United States and elsewhere from at least as early as January 2000 and continuing until at least February 2010.

Japan

40. Mitsuba Corporation received cease and desist orders and was required to pay a surcharge payment of ¥1,107,510,000 (approximately US\$10.8 million) in respect of its role in various conspiracies to fix the prices of four different automotive parts, including Windshield Wiper Systems, sold to automobile manufacturers in Japan and elsewhere from at least as early as June 2000 and continuing until at least July 2011.

41. Denso Corporation received a cease and desist order in respect to its role to fix the prices of Windshield Wiper Systems from at least as early as January 2000 continuing until at least July 2011.

South Korea

42. South Korea's Fair Trade Commission fined Bosch ₩5,600,000,000 (US \$5.1 million) for its alleged participation in a conspiracy to fix prices of Windshield Wiper Systems, sold to automobile manufacturers from at least as early as January 2008, continuing to at least March 2012.

43. South Korea's Fair Trade Commission fined Denso Corporation ₩63,000,000,000 (US \$57.8 million) for its alleged participation in a conspiracy to fix prices of Windshield Wiper Systems, sold to automobile manufacturers from at least as early as August 2008 and continuing until at least February 2009.

Plaintiffs Purchased New Vehicles Containing Windshield Wiper Systems

44. During the Class Period, Sheridan purchased for resale the following brands of vehicles manufactured by GMCL or its affiliates: Chevrolet, Oldsmobile, and Cadillac.

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

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

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

48. 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, Japan, and other parts of the world.

49. Sheridan and Pickering purchased new vehicles containing Windshield Wiper Systems.

50. Fady Samaha purchased a new Honda Civic in 2009, which contained a Windshield Wiper System.

Breaches of Part VI of *Competition Act*

51. From at least as early as January 1, 2000 until at least July 31, 2011, the defendants and their unnamed co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase, or control the prices of Windshield Wiper Systems sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Windshield Wiper Systems and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Windshield Wiper Systems in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Windshield Wiper Systems and new vehicles containing Windshield Wiper Systems.

52. The defendants and their unnamed co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in the United States, Japan, Europe, and elsewhere to discuss the bids (including RFQs) and price quotations to be submitted to OEMs selling automobiles in North America and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, on bids (including RFQs) and price quotations (including APRs) to be submitted to OEMs in North America and elsewhere (including agreeing that certain defendants or co-conspirators would win the RFQs for certain models);
- (c) agreeing on the prices to be charged and to control discounts (including APRs) for Windshield Wiper Systems in North America 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 Windshield Wiper Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America and elsewhere;
- (f) submitting bids (including RFQs), price quotations, and price adjustments (including APRs) to OEMs in North America and elsewhere in accordance with the agreements reached;

- (g) enhancing unreasonably the prices of Windshield Wiper Systems sold in North America and elsewhere;
- (h) selling Windshield Wiper Systems to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Windshield Wiper Systems in North America and elsewhere;
- (i) allocating the supply of Windshield Wiper Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Windshield Wiper Systems sold to OEMs in North America and elsewhere at collusive and supra-competitive prices;
- (k) engaging in meetings, conversations, and communications in the United States, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent "paper trails," abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale or distribution of Windshield Wiper Systems.

53. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid unreasonably enhanced/supra-competitive prices for Windshield Wiper Systems and/or new vehicles containing Windshield Wiper Systems.

54. 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 loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

55. The defendants and their unnamed co-conspirators' conduct, particularized in this statement of claim, took place in, among other places, the United States, South Korea, Japan, and Europe, where it was illegal and contrary to the competition laws of the United States, South Korea, Japan, and Europe.

Civil Conspiracy

56. The defendants and their unnamed co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiffs and other 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 Windshield Wiper Systems sold to customers in North America and elsewhere in contravention of sections 45(1), 46(1), and 47(1) of the *Competition Act*; and

(b) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

57. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 52 above.

58. The defendants and their 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 Windshield Wiper Systems, and to illegally increase their profits on the sale of Windshield Wiper Systems.

59. The defendants and their unnamed co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, the defendants and their unnamed co-conspirators knew, in the circumstances, that their unlawful acts would likely cause injury.

Discoverability

60. Windshield Wiper Systems are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Windshield Wiper Systems industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Windshield Wiper Systems.

61. Accordingly, the plaintiffs and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

Fraudulent Concealment

62. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiffs and other members of the Proposed Class. The defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

63. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 52 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

64. Because the defendants' agreements, understandings and conspiracies were kept secret, plaintiffs and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying supra-competitive prices for Windshield Wiper Systems and/or new vehicles containing Windshield Wiper Systems.

Unjust Enrichment

65. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Windshield Wiper Systems. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Windshield Wiper Systems and/or new vehicles containing Windshield Wiper Systems. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place.

66. It would be inequitable for the defendants to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

67. The plaintiffs and other members of the Proposed Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

Waiver of Tort

68. In the alternative to damages, in all of the circumstances, the plaintiffs plead an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants as a result of their unlawful conspiracy.

69. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Windshield Wiper Systems. As a result of the unlawful conspiracy, the defendants profited from the sale of Windshield Wiper

Systems at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

Damages

70. The conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Windshield Wiper Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Windshield Wiper Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the plaintiffs and other members of the Proposed Class have been deprived of free and open competition for Windshield Wiper Systems in Ontario and the rest of Canada.

71. Windshield Wiper Systems are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Windshield Wiper Systems follow a traceable chain of distribution from the defendants to the OEMs (or alternatively to the Tier I Manufacturers and then to OEMs) and from the OEMs to automotive dealers to consumers or other end-user purchasers. Costs attributable to Windshield Wiper Systems can be traced through the distribution chain.

72. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Windshield Wiper Systems and/or new vehicles containing Windshield Wiper Systems than they would have paid in the absence of the illegal conduct of the defendants and their unnamed co-conspirators. As a result, the plaintiffs and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

Punitive, Aggravated and Exemplary Damages

73. The defendants and their unnamed co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Windshield Wiper Systems. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Proposed Class. The conduct of the defendants and their unnamed co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

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

Service of Statement of Claim Outside Ontario

75. 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*, RRO 1990, Reg 194 because:

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

76. The plaintiffs propose that this action be tried at Toronto, Ontario.

DATE: ~~December, 2015~~ ^{April 11, 2013}

SOTOS LLP

Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8

David Sterns LSUC # 36274J
Jean-Marc Leclerc LSUC # 43974F
Rory McGovern LSUC # 65633H
Tel: (416) 977-0007
Fax: (416) 977-0717

SISKINDS LLP

Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8

Charles M. Wright LSUC # 36599Q
Linda Visser LSUC # 52158I
Kerry McGladdery Dent LSUC # 59685G
Tel: (519) 672-2121
Fax: (519) 672-6065

Lawyers for the Plaintiffs

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED FOURTH FRESH AS AMENDED STATEMENT OF CLAIM
(Windshield Wiper Systems)

SOTOS LLP
Barristers and Solicitors
180 Dundas Street West,
Suite 1200
Toronto, ON M5G 1Z8

David Sterns LSUC # 36274J
Jean-Marc Leclerc LSUC # 43974F
Rory McGovern LSUC # 65633H

Tel: (416) 977-0007
Fax: (416) 977-0717

Lawyers for the Plaintiffs

SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright LSUC # 36599Q
Linda Visser LSUC # 52158I
Kerry McGladdery Dent LSUC # 59685G

Tel: (519) 672-2121
Fax: (519) 672-6065