

AMENDED THIS Sept 16/15 PURSUANT TO
MODIFIÉ CE A CONFORMÉMENT A
☒ RULE/LA RÈGLE 26.02 (A)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No. CV-13-472259-00CP

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RÉGISISTRAR GREGGIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN: **Y. Grant**
Registrar

**SHERIDAN CHEVROLET CADILLAC LTD., PICKERING AUTO MALL LTD., URLIN
RENT A CAR LTD., KATE O'LEARY SWINKELS, and FADY SAMAHA**

Plaintiffs

- and -

**AUTOLIV ASP, INC., AUTOLIV B.V. & CO. KG, AUTOLIV JAPAN LTD., AUTOLIV
SAFETY TECHNOLOGY, INC., TAKATA CORPORATION, TK HOLDINGS INC.,
TOKAI RIKI CO., LTD., TRQSS INC., TRAM, INC., TAC MANUFACTURING, INC.,
TOYODA GOSEI, CO., LTD., TOYODA GOSEI NORTH AMERICA CORPORATION,
TG MISSOURI CORPORATION, TRW AUTOMOTIVE HOLDINGS CORP., TRW
AUTOMOTIVE INC., TRW DEUTSCHLAND HOLDING GMBH, MITSUBISHI
ELECTRIC CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA,
INC., and MITSUBISHI ELECTRIC SALES CANADA INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. C.6

**SECOND FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM
(Occupant Safety 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.

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 January 18, 2013

Issued by

"S. Gatti"

Local registrar

Address of court office Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: AUTOLIV ASP, INC.
3350 Airport Road, Ogden Technical Center,
Ogden, Utah 84406, USA

AND TO: AUTOLIV B.V. & CO. KG
Karl-Götz-Straße 8,
D-974 24 Schweinfurt, Germany

AND TO: AUTOLIV JAPAN LTD.
4 F Innotech Bldg. 3-17-6 Shinyokohama, Kohoku-ku
Yokohama, Japan 222-8580

AND TO: AUTOLIV SAFETY TECHNOLOGY, INC.
2475 Paseo De Las Americas, Ste. A,
San Diego, California 92154, USA

AND TO: TAKATA CORPORATION
12-31 Akasaka 2-Chome,
Minato-Ku, Tokyo 107-8508, Japan

AND TO: TK HOLDINGS INC.
2500 Takata Drive,
Auburn Hills, Michigan 48326, USA

AND TO: TOKAI RIKA CO., LTD.
3-260 Toyota, Oguchi-cho, Niwa-gun,
Aichi 480-0195, Japan

- AND TO: TRQSS INC.**
255 Patillo Road, R.R.#1
Tecumseh, Ontario, N8N 2L9, Canada
- AND TO: TRAM, INC.**
47200 Port Street,
Plymouth, Michigan 48170, USA
- AND TO: TAC MANUFACTURING, INC.**
4111 County Farm Road,
Jackson, Michigan 49201, USA
- AND TO: TOYODA GOSEI, CO., LTD.**
1 Haruhinagahata Kiyosu
Aichi, Japan 452-8564
- AND TO: TOYODA GOSEI NORTH AMERICA CORPORATION**
1400 Stephenson Highway
Troy, MI 48083, USA
- AND TO: TG MISSOURI CORPORATION**
2200 Platin Road
Perryville, MO 63775, USA
- AND TO: TRW AUTOMOTIVE HOLDINGS CORP.**
12001 Tech Center Drive,
Livonia, Michigan 48150, USA
- AND TO: TRW AUTOMOTIVE INC.**
12025 Tech Center Drive,
Livonia, MI 48150-2122, USA
- AND TO: TRW DEUTSCHLAND HOLDING GMBH**
Carl-Spaeter-Str. 8
56070 Koblenz, Germany
- AND TO: MITSUBISHI ELECTRIC CORPORATION**
Tokyo Building, 2-7-3, Marunouchi,
Chiyoda-ku, Tokyo, 100-8310, Japan
- AND TO: MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC.**
4773 Bethany Road
Mason, Ohio 45040, USA
- AND TO: MITSUBISHI ELECTRIC SALES CANADA INC.**
4299 14th Avenue
Markham, Ontario L3R 0J2

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 9 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 Occupant Safety Systems (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 9 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 Occupant Safety Systems were sold in North America and elsewhere 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*, 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 \$10,000,000;
- (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 of seatbelts, steering wheels and airbags used in automobiles and other light-duty vehicles (collectively, “**Occupant Safety Systems**”). The unlawful conduct occurred from at least as early as January 1, 2003 and continued until at least July 1, 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 Occupant Safety Systems and/or new vehicles containing Occupant Safety 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, 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, Urlin Rent A Car Ltd., (“**Urlin**”) is a motor vehicle rental company located in London, Ontario that has been in operation since the early 1990s. During the Class Period, Urlin purchased several Toyota, Ford, GM and Chevrolet vehicles.

7. The plaintiff, Kate O’Leary Swinkels, a resident of Dublin, Ontario, purchased a new BMW in 2008.

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

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

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

¹ A Occupant Safety System is a collection of safety devices in an Automotive Vehicle; including but not limited to seat belts, steering wheels, and air bags.

² Occupant Safety 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, 2003 to July 1, 2011 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Autoliv Defendants

10. The defendant, Autoliv ASP, Inc. (“**Autoliv ASP**”) is an American corporation with its principal place of business in Ogden, Utah. Autoliv ASP is owned and controlled by Autoliv Inc. During the Class Period, Autoliv ASP manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Autoliv B.V. & Co. KG (“**Autoliv Germany**”), Autoliv Japan Ltd. (“**Autoliv Japan**”), and Autoliv Safety Technology, Inc. (“**Autoliv Safety**”).

11. Autoliv Germany is a German corporation with its principal place of business in Schweinfurt, Germany. During the Class Period, Autoliv Germany manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Autoliv Germany is owned and controlled by Autoliv Inc.

12. Autoliv Japan is a Japanese corporation with its principal place of business in Yokohama, Japan. During the Class Period, Autoliv Japan manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Autoliv Japan is owned and controlled by Autoliv Inc.

13. Autoliv Safety is an American corporation with its principal place of business in San Diego, California. During the Class Period, Autoliv Safety manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly

through the control of its predecessors, affiliates, and/or subsidiaries. Autoliv Safety is owned and controlled by Autoliv Inc.

14. The business of each of Autoliv ASP, Autoliv Germany, Autoliv Japan, and Autoliv Safety 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. Autoliv ASP, Autoliv Germany, Autoliv Japan, and Autoliv Safety are referred to hereinafter as “**Autoliv.**”

Takata Defendants

15. The defendant, Takata Corporation (“**Takata Corp.**”) is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Takata Corp. manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendant, TK Holdings Inc. (“**TK Holdings**”).

16. TK Holdings is an American corporation with its principal place of business in Auburn Hills, Michigan. During the Class Period, TK Holdings manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TK Holdings is owned and controlled by Takata Corp.

17. The business of each of Takata Corp and TK Holdings 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. Takata Corp and TK Holdings are referred to hereinafter as “**Takata.**”

Tokai Rika Defendants

18. The defendant, Tokai Rika Co., Ltd. (“**Tokai Rika Co.**”) is a Japanese corporation with its principal place of business in Aichi, Japan. During the Class Period, Tokai Rika Co. manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, TRQSS Inc. (“**TRQSS**”), TRAM, Inc. (“**TRAM**”), and TAC Manufacturing, Inc. (“**TAC**”).

19. TRQSS, formerly known as Tokai Rika QSS, is a Canadian corporation with its principal place of business in Tecumseh, Ontario. During the Class Period, TRQSS manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TRQSS is owned and controlled by Tokai Rika Co.

20. TRAM is an American corporation with its principal place of business in Plymouth, Michigan. During the Class Period, TRAM manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TRAM is owned and controlled by Tokai Rika Co.

21. TAC is an American corporation with its principal place of business in Jackson, Michigan. During the Class Period, TAC manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TAC is owned and controlled by Tokai Rika Co.

22. The business of each of Tokai Rika Co., TRQSS, TRAM and TAC 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. Tokai Rika Co., TRQSS, TRAM and TAC are referred to hereinafter as “**Tokai Rika.**”

23. In 2001, Tokai Rika entered into an agreement with Toyota Gosei Co., Ltd. to collaborate on the development, manufacturing and sale of Occupant Safety Systems. Toyota Gosei Co., Ltd. was primarily responsible for the development, design, marketing, and sale of the integrated safety systems featuring air bag modules and seatbelts, while Tokai Rika contributed its expertise to developing, producing, and marketing seatbelts. The steering wheel production of the two companies continues to be cooperative.

Toyota Gosei Defendants

24. The defendant, Toyota Gosei Co., Ltd. (“**Toyoda**”) is a Japanese corporation with its principal place of business in Aichi, Japan. During the Class Period, Toyoda manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Toyota Gosei North America Corporation (“**Toyoda North America**”) and TG Missouri Corporation (“**TG Missouri**”).

25. As noted above, Toyoda collaborated with Tokai Rika on the development, manufacturing and sale of Occupant Safety Systems.

26. Toyoda North America is an American corporation with its principal place of business in Troy, Michigan. During the Class Period, Toyoda North America manufactured, marketed, sold,

and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Toyoda North America is owned and controlled by Toyoda.

27. TG Missouri is an American corporation with its principal place of business in Perryville, Missouri. During the Class Period, TG Missouri manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TG Missouri is owned and controlled by Toyoda.

28. The business of each of Toyoda, Toyoda North America and TG Missouri 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. Toyoda, Toyoda North America and TG Missouri are referred to hereinafter as “**Toyoda Gosei**.”

TRW Automotive Defendants

29. The defendant, TRW Automotive Holdings Corp. (“**TRW Holdings**”) is incorporated under the laws of the State of Delaware in the United States of America with its principal place of business in Livonia, Michigan. During the Class Period, TRW Holdings manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, TRW Automotive Inc. (“**TRW Inc.**”) and TRW Deutschland Holding GmbH (“**TRW Germany**”).

30. TRW Inc. is an American corporation with its principal place of business in Livonia, Michigan. During the Class Period, TRW Inc. manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TRW Inc. is owned and controlled by TRW Holdings.

31. TRW Germany is a German corporation with its principal place of business in Koblenz, Germany. During the Class Period, TRW Germany manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. TRW Germany is owned and controlled by TRW Holdings.

32. The business of each of TRW Holdings, TRW Inc. and TRW Germany 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. TRW Holdings, TRW Inc. and TRW Germany are referred to hereinafter as “**TRW Automotive.**”

Mitsubishi Defendants

33. The defendant, Mitsubishi Electric Corporation (“**Mitsubishi Electric**”), is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Mitsubishi Electric manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Mitsubishi Electric Automotive America,

Inc. (“**Mitsubishi Automotive**”) and Mitsubishi Electric Sales Canada Inc. (“**Mitsubishi Canada**”).

34. Mitsubishi Automotive is an American corporation with its principal place of business in Mason, Ohio. During the Class Period, Mitsubishi Automotive manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsubishi Automotive is owned and controlled by Mitsubishi Electric.

35. Mitsubishi Canada is a Canadian corporation with its principal place of business in Markham, Ontario. During the Class Period, Mitsubishi Canada manufactured, marketed, sold, and/or distributed Occupant Safety Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsubishi Canada is owned and controlled by Mitsubishi Electric.

36. The business of each of Mitsubishi Electric, Mitsubishi Automotive, and Mitsubishi Canada 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 Occupant Safety Systems in Canada and for the purposes of the conspiracy described herein. Mitsubishi Electric, Mitsubishi Automotive, and Mitsubishi Canada are referred to hereinafter as “**Mitsubishi**.”

Unnamed Co-Conspirators

37. 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

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

39. 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 Occupant Safety System Industry

40. An Occupant Safety System protects the driver or passenger of a vehicle from damage or injury. An Occupant Safety System works with a number of electronic sensors to detect and respond to movements of the vehicle that could injure or cause bodily harm to the driver or passenger. An Occupant Safety System includes a seat belt (also known as a safety belt), which is designed to secure the driver or passenger against harmful movement that might result during a collision or a sudden stop. The seat belt reduces the likelihood of injury by reducing the force of secondary impacts with the interior of the vehicle, keeping drivers or passengers positioned correctly for maximum effectiveness of the airbag(s) (if deployed), and preventing drivers or passengers from being ejected out of the vehicle. There are sensors that control the seat belt's

tightening within a split-second to enhance the safety of the driver and/or passenger inside a vehicle.

41. An Occupant Safety System also includes energy-absorbing steering wheels and airbags that provide passive protection to the driver and/or passenger. Typically, the steering wheel and airbag are designed and built as a single unit on the driver-side. Airbags are also built as curtain airbags to prevent head injury from the side, as side airbags to protect the chest and pelvis area, rear-side airbags to protect rear occupants, as knee airbags, and as anti-sliding airbags. The release of the airbag is also controlled by sensors.

42. Occupant Safety Systems are standard features of every new vehicle and are installed by automobile original equipment manufacturers (“**OEMs**”) in new vehicles as part of the automotive manufacturing process.

43. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Honda, Chrysler, Toyota and others – purchase Occupant Safety Systems directly from the defendants. Occupant Safety 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 Occupant Safety Systems directly to an OEM.

44. When purchasing Occupant Safety 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.

45. During the Class Period, the defendants and their unnamed co-conspirators supplied Occupant Safety Systems to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Occupant Safety 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.

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

47. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Occupant Safety 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 Occupant Safety 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 Occupant Safety Systems, the prices of new vehicles containing Occupant Safety Systems would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Occupant Safety Systems and purchasers and lessees of new vehicles containing Occupant Safety Systems. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Occupant Safety Systems.

48. By virtue of their market shares, the defendants are some of the dominant manufacturers and suppliers of OSS in Canada and the world. Their customers include Subaru, Honda, Nissan, Toyota, GM, Mitsubishi, Mazda, and Isuzu.

The Occupant Safety System Market

49. Seat belts, steering wheels and airbags are all considered part of the same global Occupant Safety System market, which is valued at over US \$18 billion. Seatbelts account for 27% of that market (approximately US \$4.86 billion) and airbags account for 52% of that market (approximately US \$9.36 billion) (28% frontal airbags and 24% side airbags). The global steering wheel market has a value of just over US \$1 billion. The North American Occupant Safety System market is estimated to be US \$4.2 billion.

50. The Occupant Safety Systems market is dominated and controlled by large manufacturers, the top three of which control a large portion of the global market. Autoliv controls more than 33% of the global market, TRW accounts for approximately 20% of the global market, and Takata controls an additional 20% of the global market.

51. 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 Occupant Safety Systems in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

52. Autoliv Inc. has agreed to plead guilty and pay a fine of US\$14.5 million in respect of the role of its Japanese subsidiary in the alleged conspiracy to fix the prices of Occupant Safety Systems to Japanese OEMs from as early as March 1, 2006 and continuing until at least July 1, 2011.

53. TRW Germany has agreed to plead guilty and pay a fine of US\$5.1 million in respect of its role in the alleged conspiracy to fix the prices of Occupant Safety Systems to German OEMs from as early as March 1, 2006 and continuing until at least July 1, 2011.

54. Takata Corp has agreed to plead guilty and pay a fine of US\$71.3 million in respect of its role in the alleged conspiracy to fix the prices of Occupant Safety Systems from as early as March 1, 2006 and continuing until at least July 1, 2011.

55. Toyota Gosei has agreed to plead guilty and pay a fine of US \$26 million in respect of its role in the alleged conspiracy to fix the prices of Occupant Safety Systems from as early as Jan 1, 2003 and continuing until at least July 1, 2011.

56. Mitsubishi Electric has agreed to plead guilty and pay a fine of US\$190 million in respect of its role in the alleged conspiracy to fix prices of various automotive parts. As part of the Plea

Agreement, Mitsubishi Electric is required to provide cooperation regarding the alleged conspiracy to fix prices of airbags.

Plaintiffs Purchased New Vehicles Containing Occupant Safety Systems

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

58. 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.

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

60. 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.

61. During the Class Period, Urlin purchased, for use as part of its fleet of rental vehicles, the following brands of vehicles: Toyota, Ford, General Motors, Chevrolet, Mazda, Dodge, Jeep, Mercedes, Nissan, Volkswagen, and Hyundai.

62. The vehicles purchased by Sheridan, Pickering, and Urlin 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.

63. Sheridan, Pickering and Urlin purchased new vehicles containing Occupant Safety Systems during the Class Period.

64. Kate O'Leary Swinkels purchased a new BMW in 2008, which contained an Occupant Safety System.

65. Fady Samaha purchased a new Honda Civic in 2009, which contained an Occupant Safety System.

Breaches of Part VI of *Competition Act*

66. From at least as early as January 2003 until at least July 2011, the defendants and their unnamed co-conspirators engaged in a conspiracy (or possibly separate but related conspiracies) to rig bids for and to fix, maintain, increase, or control the prices of Occupant Safety Systems sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Occupant Safety Systems and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Occupant Safety Systems in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Occupant Safety Systems and new vehicles containing Occupant Safety Systems.

67. 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 Occupant Safety 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 Occupant Safety 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 Occupant Safety Systems sold in North America and elsewhere;

(h) selling Occupant Safety Systems to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Occupant Safety Systems in North America and elsewhere;

(i) allocating the supply of Occupant Safety Systems sold to OEMs in North America and elsewhere on a model-by-model basis;

- (j) accepting payment for Occupant Safety 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, and/or distribution of Occupant Safety Systems.

68. 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 Occupant Safety Systems and/or new vehicles containing Occupant Safety Systems.

69. 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

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

Civil Conspiracy

71. 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 Occupant Safety 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.

72. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 67 above.

73. 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 Occupant Safety Systems, and to illegally increase their profits on the sale of Occupant Safety Systems.

74. 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 circumstance, that their unlawful acts would likely cause injury.

Discoverability

75. Occupant Safety Systems are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Occupant Safety 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 Occupant Safety Systems.

76. 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

77. 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.

78. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 67 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

79. 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 Occupant Safety Systems and/or new vehicles containing Occupant Safety Systems.

Unjust Enrichment

80. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Occupant Safety Systems. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Occupant Safety Systems and/or new vehicles containing Occupant Safety 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.

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

82. 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

83. 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.

84. As a direct, proximate, and foreseeable result of the defendants’ wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Occupant Safety Systems. As a result of the unlawful conspiracy, the defendants profited from the sale of Occupant Safety 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

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

- (a) price competition has been restrained or eliminated with respect to Occupant Safety 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 Occupant Safety 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 Occupant Safety Systems in Ontario and the rest of Canada.

86. Occupant Safety Systems are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Occupant Safety 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 Occupant Safety Systems can be traced through the distribution chain.

87. 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 Occupant Safety Systems and/or new vehicles containing Occupant Safety 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

88. 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 Occupant Safety 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.

89. 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

90. 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.

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

Date: January 18, 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
Andrea L. DeKay LSUC # 43818M
Linda Visser LSUC # 52158I
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*)

**SECOND FRESH AS AMENDED CONSOLIDATED
STATEMENT OF CLAIM
(Occupant Safety 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
Andrea L. DeKay LSUC # 43818M
Linda Visser LSUC # 52158I

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