

CV-16-549728

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



**SHERIDAN CHEVROLET CADILLAC LTD.,
THE PICKERING AUTO MALL LTD., FADY SAMAHA
and URLIN RENT A CAR LTD.**

Plaintiffs

- and -

**KAYABA INDUSTRY CO. LTD. d/b/a/ KYB CORPORATION, KYB AMERICAS
CORPORATION, HITACHI, LTD., HITACHI AUTOMOTIVE SYSTEMS, LTD.,
HITACHI AUTOMOTIVE SYSTEMS AMERICAS, INC., SHOWA CORPORATION,
AMERICAN SHOWA, INC., and SHOWA CANADA INC.**

Defendants

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

**STATEMENT OF CLAIM
(Shock Absorbers)**

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: March 30th, 2016

Issued by:  Beverley Pinto

Local Registrar

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

- TO: KAYABA INDUSTRY CO. LTD. d/b/a/ KYB CORPORATION**
World Trade Center Building
4-1 Hamamatsu-cho 2-chome
Minato-ku, Tokyo 105-6111, Japan
- AND TO: KYB AMERICAS CORPORATION**
2652 North Morton St.
Franklin, Indiana 46131, USA
- AND TO: HITACHI, LTD.**
6-6 Marunouchi 1-chome
Chiyoda-ku, Tokyo 100-8280, Japan
- AND TO: HITACHI AUTOMOTIVE SYSTEMS, LTD.**
2-1, Otemachi 2-chom
Chiyoda-ku, Tokyo 100-0004, Japan
- AND TO: HITACHI AUTOMOTIVE SYSTEMS AMERICAS, INC.**
955 Warwick Rd.
Harrodsburg, Kentucky 40330, USA
- AND TO: SHOWA CORPORATION**
1-14-1, Fujiwara-cho, Gyoda City
Saitama 361-8506, Japan
- AND TO: AMERICAN SHOWA, INC.**
707 West Cherry St.
Sunbury, Ohio 43074, USA

AND TO: **SHOWA CANADA INC.**
1 Showa Court, PO Box 1000
Schomberg, Ontario L0G 1T0, Canada

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 8 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 Shock Absorbers (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 8 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 Shock Absorbers 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 \$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 shock absorbers used in automobiles, motorcycles and other light-duty vehicles (“**Shock Absorbers**”). Shock Absorbers include mechanical or hydraulic devices of either a twin-tube or mono-tube design used to absorb and damp shock impulses allowing for improved ride quality and vehicle handling. The unlawful conduct occurred from at least as early as January 1, 1995 and continued until at least December 31, 2012 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 Shock Absorbers and/or new motorcycles and vehicles containing Shock Absorbers 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 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.
8. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

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

¹ Shock Absorbers are mechanical or hydraulic devices of either a twin-tube or mono-tube design used to absorb and damp shock impulses allowing for improved ride quality and vehicle handling.

² Shock Absorbers purchased for repair or replacement in an Automotive Vehicle or motorcycle are excluded from the Class.

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

⁴ Class Period means between January 1, 1995 and December 31, 2012 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

KYB Defendants

9. The defendant, Kayaba Industry Co. Ltd. d/b/a/ KYB Corporation (“**KYB Corp.**”), is a Japanese corporation. During the Class Period, KYB Corp. manufactured, marketed, sold and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly,

through the control of its predecessors, affiliates and subsidiaries, including the defendant, KYB Americas Corporation (“**KYB US**”).

10. KYB US is an American corporation and has its principal place of business in Franklin, Indiana. During the Class Period, KYB US manufactured, marketed, sold, and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. KYB US is owned and controlled by KYB Corp.

11. The business of each of KYB Corp. and KYB US are 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 Shock Absorbers and for the purposes of the conspiracy described hereinafter. KYB Corp. and KYB US are collectively referred to herein as “**KYB.**”

Hitachi Defendants

12. The defendant, Hitachi Ltd., is a Japanese corporation. During the Class Period, Hitachi Ltd. manufactured, marketed, sold and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and subsidiaries, including the defendants, Hitachi Automotive Systems, Ltd. (“**Hitachi Automotive**”) and Hitachi Automotive Systems Americas, Inc. (“**Hitachi US**”), as well as the former Hitachi Unisia Automotive, Ltd. and the former Tokico, Ltd. In March 2004, Hitachi, Ltd. announced a merger of Hitachi, Ltd., Hitachi Unisia Automotive, Ltd., and Tokico, Ltd. As part of the merger, Hitachi, Ltd. absorbed Hitachi Unisia Automotive, Ltd. and Tokico, Ltd., and Hitachi Unisia Automotive, Ltd. and Tokico, Ltd. were dissolved thereafter. The merger became effective in October 2004. Prior to the merger, Hitachi, Ltd. held a 23.9% equity interest

in Tokico, Ltd. (42.1% including indirect holdings through subsidiaries) and wholly owned Hitachi Unisia Automotive, Ltd.

13. Hitachi Automotive is a Japanese corporation and has its principal place of business in Tokyo, Japan. During the Class Period, Hitachi Automotive manufactured, marketed, sold and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Hitachi Automotive is owned and controlled by Hitachi, Ltd.

14. Hitachi US is an American corporation and has its principal place of business in Farmington Hills, Michigan. During the Class Period, Hitachi US manufactured, marketed, sold, and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Hitachi US is owned and controlled by Hitachi, Ltd.

15. The business of each of Hitachi, Ltd., Hitachi Automotive, and Hitachi 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 Shock Absorbers in Canada and for the purposes of the conspiracy described hereinafter. Hitachi, Ltd., Hitachi Automotive, and Hitachi US are collectively referred to herein as “**Hitachi.**”

Showa Defendants

16. The defendant, Showa Corporation, is a Japanese corporation and has its principal place of business in Saitama, Japan. During the Class Period, Showa Corporation manufactured, marketed, sold and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and subsidiaries, including

the defendants American Showa, Inc. (“**American Showa**”) and Showa Canada Inc. (“**Showa Canada**”).

17. American Showa is an American corporation and has its principal place of business in Sunbury, Ohio. During the Class Period, American Showa manufactured, marketed, sold, and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. American Showa is owned and controlled by Showa Corporation.

18. Showa Canada is a Canadian corporation and has its principal place of business in Schomberg, Ontario. During the Class Period, Showa Canada manufactured, marketed, sold, and/or distributed Shock Absorbers to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries. Showa Canada is owned and controlled by Showa Corporation.

19. The business of each of Showa Corporation, American Showa, and Showa 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 Shock Absorbers and for the purposes of the conspiracy described hereinafter. Showa Corporation, American Showa, and Showa Canada are collectively referred to herein as “**Showa.**”

Unnamed Co-Conspirators

20. 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

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

22. 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 Shock Absorber Industry

23. Shock Absorbers are mechanical or hydraulic devices of either a twin-tube or mono-tube design used to absorb and damp shock impulses allowing for improved ride quality and vehicle handling. Shock Absorbers form an integral part of a motorcycle's or Automotive Vehicle's suspension system by converting the kinetic energy of a shock impulse into another form of energy, such as heat, which is then dissipated, in order to limit excessive suspension movement. Shock Absorbers are installed by automobile original equipment manufacturers ("**OEMs**") in new motorcycles or Automotive Vehicles as part of the automotive manufacturing process.

24. For new motorcycles or vehicles, the OEMs – mostly large manufacturers such as Honda, Toyota, Volvo, General Motors and others – purchase Shock Absorbers directly from the defendants. Shock Absorbers 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 Shock Absorbers directly to an OEM.

25. When purchasing Shock Absorbers, OEMs issue Requests for Quotation (“**RFQs**”) to 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. Parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected 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 parts suppliers to account for efficiencies gained in the production process. OEMs procure parts for North American manufactured motorcycles and vehicles in Japan, the United States, Canada and elsewhere.

26. During the Class Period, the defendants and their unnamed co-conspirators supplied Shock Absorbers to OEMs for installation in motorcycles and vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Shock Absorbers: (a) in North America for installation in motorcycles and vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in motorcycles and vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in motorcycles and vehicles manufactured outside North America for export to and sale in Canada.

27. The defendants and their unnamed co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Shock Absorbers and new motorcycles and vehicles containing Shock Absorbers sold in North America and elsewhere.

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

29. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Shock Absorbers in Canada and the world. Their customers include Subaru, Honda, Kawasaki, Nissan, Suzuki, Toyota, BMW, Bombardier, Ducati, Harley Davidson, Mazda, Triumph Motorcycles and Yamaha.

30. The defendants are some of the largest manufacturers and suppliers of Shock Absorbers in Canada and the world.

31. The automotive industry in Canada and the United States is an integrated industry. Automobiles and motorcycles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Shock Absorbers in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

32. In the United States, KYB has agreed to plead guilty and pay a fine of US\$62 million in respect of its role in the alleged conspiracy to fix the prices of Shock Absorbers from as early as the mid-1990s and continuing until as late as December 2012.

Plaintiffs Purchased New Vehicles Containing Shock Absorbers

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

34. 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.

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

36. 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.

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

38. 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.

39. Sheridan, Pickering and Urlin purchased new vehicles containing Shock Absorbers.

40. Fady Samaha purchased a new Honda Civic in 2009, which contained Shock Absorbers.

Breaches of Part VI of *Competition Act*

41. From at least as early as January 1, 1995 until at least December 31, 2012, 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 Shock Absorbers sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Shock Absorbers and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Shock Absorbers in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Shock Absorbers and new motorcycles and vehicles containing Shock Absorbers.

42. 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 Shock Absorbers 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 Shock Absorbers 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 Shock Absorbers sold in North America and elsewhere;

- (h) selling Shock Absorbers to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Shock Absorbers in North America and elsewhere;
- (i) allocating the supply of Shock Absorbers sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Shock Absorbers 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 Shock Absorbers.

43. 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 Shock Absorbers and/or new motorcycles and vehicles containing Shock Absorbers.

44. 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

45. 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

46. 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 Shock Absorbers 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.

47. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 42 above.

48. 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 Shock Absorbers, and to illegally increase their profits on the sale of Shock Absorbers.

49. 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

50. Shock Absorbers are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Shock Absorbers 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 Shock Absorbers.

51. 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

52. 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.

53. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 42 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

54. 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 Shock Absorbers and/or new motorcycles and/or vehicles containing Shock Absorbers.

Unjust Enrichment

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

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

57. 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

58. 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.

59. As a direct, proximate, and foreseeable result of the defendants’ wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Shock Absorbers and/or new motorcycles and/or vehicles containing Shock Absorbers. As a result of the unlawful conspiracy, the defendants profited from the sale of Shock Absorbers 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

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

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

61. Shock Absorbers are identifiable, discrete physical products that remain essentially unchanged when incorporated into a motorcycle or vehicle. As a result, Shock Absorbers 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 Shock Absorbers can be traced through the distribution chain.

62. 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 Shock Absorbers and/or new motorcycles and/or vehicles containing Shock Absorbers 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

63. 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 Shock Absorbers. 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.

64. 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

65. 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; and
- (b) Rule 17.02 (p) – the claim relates to a person ordinarily resident or carrying on business in Ontario.

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

DATE: March 30, 2016

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Lawyers for the Plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM
(Shock Absorbers)**

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