

AMENDED THIS
MODIFIÉ CE

Apr. 14/16

PURSUANT TO
CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02 (

☒ THE ORDER OF
L'ORDONNANCE DU

BeTobaba J.
Jan. 28/16

DATED / FAIT LE

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

Court File No. CV-12-446737-00CP

BETWEEN:

URLIN RENT A CAR LTD. and FADY SAMAHA

Plaintiffs

- and -

FURUKAWA ELECTRIC CO. LTD., AMERICAN FURUKAWA INC., FUJIKURA LTD., FUJIKURA AMERICA INC., FUJIKURA AUTOMOTIVE AMERICA LLC, LEONI AG, LEONI KABEL GMBH, LEONI WIRING SYSTEMS, INC., LEONISCHE HOLDING, INC., LEONI WIRE INC., LEONI ELOCAB LTD., LEONI BORDNETZ-SYSTEME GMBH, SUMITOMO ELECTRIC INDUSTRIES, LTD., SEWS CANADA LTD., SUMITOMO WIRING SYSTEMS, LTD., SUMITOMO ELECTRIC WIRING SYSTEMS, INC., SUMITOMO WIRING SYSTEMS (U.S.A.), INC., YAZAKI CORPORATION, YAZAKI NORTH AMERICA, INC., S-Y SYSTEMS TECHNOLOGIES EUROPE, GMBH, G.S. ELECTECH, INC., G.S.W. MANUFACTURING, INC., and G.S. WIRING SYSTEMS INC.

Defendants

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

**THIRD FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM
(Automotive Wire Harness 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: February 17, 2012

Issued by: M. Godin
Local Registrar

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

TO: FURUKAWA ELECTRIC CO. LTD.
Marunouchi Nakadori Bldg., 2-3, Marunouchi 2-chome,
Chiyodaku, Tokyo, 100-8322, Japan

AND TO: AMERICAN FURUKAWA INC.
47677 Galleon Drive
Plymouth, Michigan, 48170, USA

AND TO: FUJIKURA LTD.
1-5-1, Kiba,
Koto -ku, Tokyo, 135-8512, Japan

AND TO: FUJIKURA AMERICA INC.
3150-A Coronado Drive
Santa Clara, California, 95054, USA

AND TO: FUJIKURA AUTOMOTIVE AMERICA LLC.
25865 Meadowbrook Road
Novi, MI 48375, USA

- AND TO: LEONI AG**
Marienstrasse 7
90402 Nuremberg, Germany
- AND TO: LEONI KABEL GMBH**
Stieberstrabe 5
91154 Roth, Germany
- AND TO: LEONI WIRING SYSTEMS, INC.**
2861 North Flowing Wells Road, Suite 121
Tucson, Arizona, 85705, USA
- AND TO: LEONISCHE HOLDING, INC.**
2861 North Flowing Wells Road, Suite 121
Tucson, Arizona, 85705, USA
- AND TO: LEONI WIRE INC.**
301 Griffith Road
Chicopee, Massachusetts, 01022, USA
- AND TO: LEONI ELOCAB LTD.**
258 McBrine Drive
Kitchener, ON, N2R 1H8, Canada
- AND TO: LEONI BORDNETZ-SYSTEME GMBH**
Flugplatzstrasse 74
97318 Kitzingen, Germany
- AND TO: SUMITOMO ELECTRIC INDUSTRIES, LTD.**
5-33, Kitahama 4-chome,
Chuo-ku, Osaka, Japan
- AND TO: SEWS CANADA LTD.**
8771 George Bolton Parkway
Bolton, ON L7E 2X8, Canada
- AND TO: SUMITOMO WIRING SYSTEMS, LTD.**
1-14 Nishisuehiro-cho
Yokkaichi, Mie 510-8503, Japan
- AND TO: SUMITOMO ELECTRIC WIRING SYSTEMS, INC.**
1018 Ashley Street
Bowling Green, Kentucky, 42103, USA
- AND TO: SUMITOMO WIRING SYSTEMS (U.S.A.), INC.**
39555 Orchard Hill Place Suite L60
Novi, Michigan, 48375-5523, USA

- AND TO: YAZAKI CORPORATION**
17th Floor, Mita-Kokusai Bldg., 4-28 Mita 1-chome
Minato-ku, Tokyo, 108-8333, Japan
- AND TO: YAZAKI NORTH AMERICA, INC.**
6801 Haggerty Road
Canton, Michigan, 48187, USA
- AND TO: S-Y SYSTEMS TECHNOLOGIES EUROPE, GMBH**
Im Gewerbepark B32,
D-93059, Regensburg, Germany
- AND TO: G.S. ELECTECH, INC.**
Yoshiwara Hirako 58-1
Toyota City, Aichi, Japan
- AND TO: G.S.W. MANUFACTURING, INC.**
1801 Production Drive
Findlay, Ohio, 45840, USA
- AND TO: G.S. WIRING SYSTEMS INC.**
1801 Production Drive
Finlay, OH, 45840-5446, USA

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, fix, maintain, increase or control the price for Affected AWHs (as defined in paragraph 3 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 Affected AWHs were sold in North America and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$500,000,000:
 - (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***"); and
 - (ii) for civil conspiracy;
- (d) Punitive, exemplary and aggravated damages in the amount of \$50,000,000;
- (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. Automotive wire harness systems are the various assemblies of cables and surrounding components that transmit signals or electric power between electronic components throughout an automotive vehicle (“**AWHS**”). Every automotive vehicle contains AWHS.

3. This action arises from a conspiracy to rig bids, fix, maintain, increase or control prices, and allocate the market and customers in North America and elsewhere for AWHS sold to the automotive original equipment manufacturers (“**OEMs**”) Toyota Motor Corporation, Honda Motor Co., Ltd., Fuji Heavy Industries, Ltd., and Nissan Motor Company Ltd. or any of their related entities (collectively, the “**Affected OEMs**”) for installation in new automotive vehicles sold under the following brand names: Toyota, Lexus, Honda, Acura, Subaru, Nissan, and Infiniti (“**Affected AWHS**”). The conspiracy increased the prices of Affected AWHS purchased by the Affected OEMs and installed in new automotive vehicles. The conspiracy also unlawfully increased the prices of new vehicles sold under the brand names listed above during the Class Period (the “**Affected Vehicles**”). The Affected Vehicles were sold by the Affected OEMs to distributors, by the distributors to dealers, and by the dealers to end customers. The unlawful conduct occurred from at least as early as January 1, 1999 and continued until at least March 1, 2010 and might have impacted prices thereafter. The unlawful conduct was targeted at, and raised prices to, all members of the Proposed Class.

4. As a direct result of the unlawful conduct, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Affected AWHs and/or Affected Vehicles manufactured, marketed, sold and/or distributed during the Class Period and have thereby suffered losses and damages.

The Plaintiffs

5. The plaintiff, Ural Rent a Car Ltd., is a motor vehicle rental company located in London, Ontario that has been in operation since the early 1990s.

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, during the Class Period,¹:

- (a) purchased and/or leased an Affected Vehicle;² or
- (b) purchased an Automotive Wire Harness System³ for installation in an Affected Vehicle.

Excluded from the class are those persons who validly and timely opted-out of the action, and the defendants, their parent companies, subsidiaries, and affiliates.

¹ Class Period means between January 1, 1999 and March 1, 2010.

² Affected Vehicle means new passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs) sold under the following brand names: Toyota, Lexus, Honda, Acura, Subaru, Nissan, and Infiniti.

³ Automotive wire harness systems are an assembly of cables and certain integrated components that transmit signals or electric power between electronic components throughout an automotive vehicle.

The Defendants

Furukawa Defendants

8. The defendant, Furukawa Electric Co. Ltd. ("**Furukawa Electric**"), is a Japanese corporation. During the Class Period, Furukawa Electric manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendant American Furukawa Inc. ("**American Furukawa**").

9. American Furukawa is an American corporation with its principal place of business in Plymouth, Michigan. During the Class Period, American Furukawa manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. American Furukawa is owned and controlled by Furukawa Electric.

10. The business of each of Furukawa Electric and American Furukawa 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. Furukawa Electric and American Furukawa are hereinafter collectively referred to as "**Furukawa**".

Fujikura Defendants

11. The defendant Fujikura Ltd. is a Japanese corporation. During the Class Period, Fujikura Ltd. manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and subsidiaries,

including the defendants Fujikura America Inc. (“**Fujikura America**”) and Fujikura Automotive America LLC (“**Fujikura America LLC**”).

12. Fujikura America is an American corporation with its principal place of business in Santa Clara, California. During the Class Period, Fujikura America manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Fujikura America is owned and controlled by Fujikura Ltd.

13. Fujikura America LLC is a Delaware corporation with its headquarters in Novi, Michigan. During the Class Period, Fujikura America LLC manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Fujikura America LLC is owned and controlled by Fujikura Ltd.

14. The business of each of Fujikura Ltd., Fujikura America and Fujikura America LLC 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. Fujikura Ltd., Fujikura America and Fujikura America LLC are hereinafter collectively referred to as “**Fujikura**”.

Leoni Defendants

15. The defendant, Leoni AG, is a German corporation with its principal place of business in Nuremberg, Germany. During the Class Period, Leoni AG manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the

control of its predecessors, affiliates and/or subsidiaries, including the defendants Leoni Kabel GmbH (“**Leoni Kabel**”), Leoni Wiring Systems, Inc. (“**Leoni Wiring**”), Leonische Holding, Inc. (“**Leonische**”), Leoni Wire Inc. (“**Leoni Wire**”), Leoni Elocab Ltd. (“**Leoni Elocab**”), and Leoni Bordnetz-Systeme GmbH (“**Leoni Bordnetz**”).

16. Leoni Kabel is a German corporation with its principal place of business in Roth, Germany. During the Class Period, Leoni Kabel manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries. Leoni Kabel is owned and controlled by Leoni AG.

17. Leoni Wiring is an American corporation with its principal place of business in Tucson, Arizona. During the Class Period, Leoni Wiring Systems manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Leoni Wiring Systems is owned and controlled by Leoni AG.

18. Leonische is an American corporation with its principal place of business in Tucson, Arizona. During the Class Period, Leonische manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Leonische is owned and controlled by Leoni AG.

19. Leoni Wire is an American corporation with its principal place of business in Massachusetts. During the Class Period, Leoni Wire manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Leoni Wire is owned and controlled by Leoni AG.

20. Leoni Elocab is incorporated under the laws of Ontario and has its principal place of business in Kitchener, Ontario. During the Class Period, Leoni Elocab manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Leoni Elocab is owned and controlled by Leoni AG.

21. Leoni Bordnetz is a German corporation with its principal place of business in Kitzingen, Germany. During the Class Period, Leoni Bordnetz manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries. Leoni Bordnetz is owned and controlled by Leoni AG.

22. The business of each of Leoni AG, Leoni Kabel, Leoni Wiring, Leonische, Leoni Wire, Leoni Elocab and Leoni Bordnetz 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. Leoni AG, Leoni Kabel, Leoni Wiring, Leonische, Leoni Wire, Leoni Elocab and Leoni Bordnetz are hereinafter collectively referred to as “**Leoni**”.

Sumitomo Defendants

23. The defendant, Sumitomo Electric Industries, Ltd. (“**Sumitomo Electric**”), is a Japanese corporation. During the Class Period, Sumitomo Electric manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants SEWS Canada Ltd. (“**SEWS**”), Sumitomo Wiring Systems, Ltd. (“**Sumitomo Wiring**”), Sumitomo Electric

Wiring Systems, Inc. (“**Sumitomo Electric Wiring**”), and Sumitomo Wiring Systems (U.S.A.), Inc. (“**Sumitomo USA**”).

24. SEWS is an Ontario corporation with its registered office and principal place of business in Bolton, Ontario. During the Class Period, SEWS manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. SEWS is a subsidiary or affiliate of Sumitomo Wiring Systems, Ltd., which is owned and controlled by Sumitomo Electric.

25. Sumitomo Wiring is a Japanese corporation. During the Class Period, Sumitomo Wiring manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Sumitomo Wiring is owned and controlled by Sumitomo Electric.

26. Sumitomo Electric Wiring is an American corporation with its principal place of business in Bowling Green, Kentucky. During the Class Period, Sumitomo Electric Wiring manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Sumitomo Electric Wiring is a joint venture between Sumitomo Electric and Sumitomo Wiring.

27. Sumitomo USA is an American corporation with its principal place of business in Novi, Michigan. During the Class Period, Sumitomo USA manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Sumitomo USA is a joint venture between Sumitomo Electric and Sumitomo Wiring.

28. The business of each of Sumitomo Electric, SEWS, Sumitomo Wiring, Sumitomo Electric Wiring, and Sumitomo USA 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. Sumitomo Electric, SEWS, Sumitomo Wiring, Sumitomo Electric Wiring, and Sumitomo USA are hereinafter collectively referred to as “**Sumitomo**”.

Yazaki Defendants

29. The defendant, Yazaki Corporation (“**Yazaki Corp.**”), is a Japanese corporation. During the Class Period, Yazaki Corp. manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Yazaki North America, Inc. (“**Yazaki NA**”) and S-Y Systems Technologies Europe GmbH (“**S-Y Systems**”).

30. Yazaki NA is an American corporation with its principal place of business in Canton Township, Michigan. During the Class Period, Yazaki NA manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Yazaki NA is owned and controlled by Yazaki Corp.

31. S-Y Systems is a German corporation. During the Class Period, S-Y Systems manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. S-Y Systems is owned and controlled by Yazaki Corp.

32. S-Y Systems Technologies America, LLC (“**S-Y America**”) was formerly an American corporation and had its principal place of business in Dearborn, Michigan. During the Class Period, S-Y America manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. S-Y America was owned and controlled by Yazaki Corporation. S-Y America merged with and became part of Yazaki NA effective December 31, 2005.

33. The business of each of Yazaki Corp., Yazaki NA, and S-Y Systems 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. Yazaki Corp., Yazaki NA, and S-Y Systems are hereinafter collectively referred to as “**Yazaki**”.

G.S. Electech Defendants

34. The defendant, G.S. Electech, Inc., is a Japanese corporation with its principal place of business in Toyota City, Japan. During the Class Period, GS Electech Inc., manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants G.S.W. Manufacturing Inc. (“**GSW**”) and G.S. Wiring Systems Inc. (“**GS Wiring**”).

35. GSW is an American corporation with its principal place of business in Findlay, Ohio. During the Class Period, GSW manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. GSW is owned and controlled by GS Electech Inc.

36. GS Wiring is an American corporation with its principal place of business in Findlay, Ohio. During the Class Period, GS Wiring manufactured, marketed, sold and/or distributed AWHs to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. GS Wiring is owned and controlled by GS Electech Inc.

37. The business of each of GS Electech Inc., GSW, and GS Wiring 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 AWHs in Canada and for the purposes of the conspiracy described hereinafter. GS Electech Inc., GSW, and GS Wiring are hereinafter collectively referred to as “**GS Electech**”.

Unnamed Co-Conspirators

38. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named herein, including, but not limited to Lear Corporation and Kyungshin-Lear Sales and Engineering, LLC, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged herein, and have performed acts and made statements in furtherance of the unlawful conduct. Other 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 herein, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

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

40. 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 Automotive Wire Harness Industry

41. To ensure safety and basic functions (e.g., driving, turning and stopping), as well as to provide comfort and convenience, automotive vehicles are equipped with various electronics which operate using control signals running on electrical power supplied from the battery. AWHs are the conduit for the transmission of these signals and electrical power. Automotive vehicles contain numerous different AWHs.

42. AWHs are installed by automotive OEMs, including the Affected OEMs, in new vehicles as part of the automotive manufacturing process.

43. For new vehicles, the OEMs, including the Affected OEMs, purchase AWHs directly from the suppliers, including the defendants. AWHs 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 AWHs directly to an OEM. The vast majority of AWHs sales are made by a supplier directly to an OEM.

44. When purchasing AWHs, Affected OEMs issue Requests for Quotation (“**RFQs**”) to automotive parts suppliers on a model-by-model basis for model-specific parts. In most circumstances, the RFQ is sought from pre-qualified suppliers of the product. AWHs RFQs contain specifications regarding the relevant AWHs and which components will be integrated into the AWHs. The integrated components may include some or all of the following: automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, electrical boxes, fuse boxes, relay boxes, junction blocks, speed sensor wire assemblies, and power distributors. For the purpose of this action, the integrated components are only included within the scope of the claim to the extent that they are included in an RFQ for AWHs. Some RFQs related to multiple AWHs for a particular vehicle model, while others related to only one type of Automotive Wire Harness System.

45. Automotive parts suppliers generally submit quotations or bids to OEMs, including the Affected OEMs, in response to RFQs. The OEMs, including the Affected 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. OEMs, including the Affected OEMs, procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

46. Once production has begun, OEMs, including the Affected OEMs, issue annual price reduction requests (“**APRs**”) to automotive parts suppliers. The APRs require the suppliers to reduce prices to account for expected efficiencies gained over the life of the supply agreement.

47. During the Class Period, the defendants and their unnamed co-conspirators supplied AWHs manufactured and sold in North America and elsewhere for installation in the Affected Vehicles. The defendants and their unnamed co-conspirators manufactured AWHs: (a) in North America for installation in Affected Vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in Affected Vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in Affected Vehicles manufactured outside North America for export to and sale in Canada.

48. The defendants and their unnamed co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Affected AWHs and Affected Vehicles sold in North America and elsewhere.

49. The defendants and their unnamed co-conspirators unlawfully conspired to rig bids, agree and manipulate prices for Affected AWHs and conceal their anti-competitive behaviour from the Affected OEMs and other industry participants. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the prices at which Affected AWHs would be sold from the prices 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 Affected AWHs, the prices of Affected Vehicles would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure the Affected OEMs, dealers of Affected Vehicles and ultimately end purchasers and lessees of Affected Vehicles.

50. The defendants' conduct was so pervasive that it affected the prices paid by the Affected OEMs for all AWHs they purchased, not just those that were the subject of a rigged RFQ. The conspiracy served to raise the baseline prices for all AWHs purchased by the Affected OEMs.

51. The defendants and their unnamed co-conspirators intended to, and did, enter into agreements or arrangements between and among each other in which they coordinated their responses to RFQs and/or to requests for APRs from the Affected OEMs for Affected AWHs. The defendants discussed and agreed upon the allocation of bids to the Affected OEMs and the prices each entity would submit in response to an RFQ from an Affected OEM. The agreements were not disclosed to the Affected OEMs.

52. The defendants were the dominant suppliers of AWHs to the Affected OEMs. The conspiracy was organized primarily by the defendants, as dominant suppliers of the Affected OEMs, to protect and further their dominance by coordinating regarding the RFQ process for Affected AWHs and trying to prevent non-conspirator suppliers from gaining the business of the Affected OEMs.

53. 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 AWHs sold to the Affected OEMs and installed in Affected Vehicles. The Affected Vehicles were manufactured in Canada, the United States, Japan, and possibly elsewhere. Some of the Affected Vehicles that were manufactured in the United States, Japan or elsewhere were imported into Canada. Where the Affected Vehicles were manufactured outside of Canada or the United States, they might have first been imported into the United States for subsequent resale into Canada.

Investigations into International Cartel and Resulting Fines

Canada

54. Yazaki Corp. has agreed to plead guilty in Canada and pay a \$30 million criminal fine for bid-rigging relating to sales of motor vehicle electrical wiring, lead wire assemblies, cable bond, motor vehicle wiring connectors, motor vehicle wiring terminals, electronic control units, fuse boxes, relay boxes, and junction boxes to Honda Canada and Toyota Canada.

55. Furukawa Electric has agreed to plead guilty in Canada and pay a \$5 million criminal fine for bid-rigging relating to sales of fuse boxes, relay boxes, and junction boxes to Honda Canada.

United States

56. Yazaki Corp. agreed to plead guilty and pay a fine of US\$470 million in respect of its role in the conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, and junction blocks, as well as two other automotive parts.

57. Fujikura Ltd. agreed to plead guilty and pay a fine of US\$20 million in respect of its role in the conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, cable bond, automotive wiring connectors, automotive wiring terminals, and fuse boxes.

58. Furukawa Electric Co. Ltd. agreed to plead guilty and pay a fine of US\$200 million in respect of its role in the conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, electronic control units, fuse boxes, relay boxes, junction blocks, and power distributors.

59. G.S. Electech, Inc. agreed to plead guilty and pay a fine of US\$2.75 million in respect of its role in the conspiracy to eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of speed sensor wire assemblies. Speed sensor wire assemblies are a specific type of wire harness.

Europe

60. The European Commission fined Yazaki Corp., Furukawa Electric Co. Ltd., S-Y Systems Technologies Europe GmbH and Leoni Wire Inc. a combined €141 million for infringements of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement creating the European Economic area, which consisted of agreements or concerted practices to coordinate their pricing behaviour and allocate supplies of wire harnesses to certain manufacturers relating to AWHs sold to Toyota, Honda, Nissan and Renault.¹ Sumitomo Electric was granted immunity for being the first entity to report the cartel to the European Commission.

Japan

¹ In 1999, Renault and Nissan formed a strategic partnership through a cross-shareholding agreement, known as the Renault-Nissan Alliance.

61. Japan's Fair Trade Commission has fined Furukawa Electric Co. Ltd., Fujikura Ltd., Sumitomo Electric Industries, Ltd., and Yazaki Corporation a combined ¥12.9 billion (US\$169 million) for substantially restraining competition in the automotive parts industry by conspiring to appoint the designated successful bidder during the AWHs procurement process (bid-rigging) with respect to sales to Toyota, Honda, Nissan and Fuji Heavy Motors.²

Plaintiffs Purchased Affected Vehicles

62. During the Class Period, Urlin Rent a Car Ltd. purchased Affected Vehicles for resale. Urlin Rent a Car Ltd. purchased new vehicles sold under Toyota and Nissan brand names. The Affected Vehicles purchased by Urlin Rent a Car Ltd. were manufactured in whole or in part at various times in the United States, Japan, and other parts of the world.

63. Fady Samaha purchased a new Honda Civic in 2009.

Breaches of Part VI of *Competition Act*

64. From at least as early as January 1, 1999 until at least March 1, 2010, 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 Affected AWHs in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to allocate bids submitted to the Affected OEMs, set prices, enhance unreasonably the prices of Affected AWHs and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Affected AWHs in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Affected AWHs and Affected Vehicles.

² Fuji Heavy Motors is the manufacturer of Subaru-branded vehicles.

65. 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 the Affected OEMs selling automobiles in North America and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, to decline to bid, withdraw bids, or submit bids (including RFQs) and price quotations to Affected 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 limit APRs to Affected OEMs for Affected AWHs in North America and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Affected AWHs sold to the Affected OEMs in North America and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments and APRs for Affected AWHs in North America and elsewhere;
- (f) declining to submit bids, withdrawing from the bidding process, or submitting bids (including RFQs), price quotations, and price adjustments (including APRs) for

Affected AWHs in North America and elsewhere in accordance with the agreements and arrangements reached;

(g) enhancing unreasonably the prices of Affected AWHs in North America and elsewhere;

(h) selling Affected AWHs in North America and elsewhere for the agreed-upon prices, controlling discounts including APRs, and otherwise fixing, increasing, maintaining or stabilizing prices for Affected AWHs in North America and elsewhere;

(i) allocating the supply of Affected AWHs in North America and elsewhere on a model-by-model basis;

(j) accepting payment for Affected AWHs 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 the Affected OEMs, 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 Affected AWHs.

66. 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 Affected AWHs and/or Affected Vehicles.

67. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) (with respect to the Canadian defendants) 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.

Civil Conspiracy

68. 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 were entering into agreements to rig bids and fix, maintain, increase or control prices of Affected AWHs in North America and elsewhere in contravention of sections 45(1), 46(1) (with respect to the Canadian defendants), and 47(1) of the *Competition Act*.

69. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 69 above.

70. 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 Affected AWHs, and to illegally increase their profits on the sale of Affected AWHs.

71. 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

72. AWHs are not exempt from competition regulation and thus, the plaintiffs reasonably considered the AWHs industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to, or had the ability to, investigate the legitimacy of the defendants' prices for AWHs.

73. 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

74. 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 the Affected OEMs 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.

75. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 69 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the conspiracy.

76. 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 AWHs intended for inclusion in the Affected Vehicles.

Damages

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

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

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

79. 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 Affected AWHs and/or Affected Vehicles 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

80. 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 Affected AWHs. 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.

81. 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

82. 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.

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

Date: February 17, 2012

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Court File No.: CV-12-446737-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**THIRD FRESH AS AMENDED CONSOLIDATED
STATEMENT OF CLAIM
(Automotive Wire Harness Systems)**

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