

CIV-16-555033-00CP

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 -

**CORNING INTERNATIONAL KABUSHIKI KAISHA, DENSO CORPORATION,
DENSO INTERNATIONAL AMERICA, INC., DENSO MANUFACTURING CANADA,
INC. and DENSO SALES CANADA, INC.**

Defendant

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

**STATEMENT OF CLAIM
(Ceramic Substrates)**

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: June 17, 2016

Issued by: _____



Local Registrar

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

TO: CORNING INTERNATIONAL KABUSHIKI KAISHA
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Japan

AND TO: DENSO CORPORATION
1-1, Showa-cho
Kariya City, Aichi Prefecture 448-8661
Japan

AND TO: DENSO INTERNATIONAL AMERICA, INC.
24777 Denso Drive
Southfield, Michigan 48033
U.S.A.

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

AND TO: DENSO SALES CANADA, INC.
195 Brunel Road
Mississauga, ON L4Z 1X3
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 Ceramic Substrates (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 Ceramic Substrates were sold in North America and elsewhere during the Class Period;

(c) Damages or compensation in an amount not exceeding \$50,000,000:

(i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*");

(ii) for civil conspiracy;

(iii) for unjust enrichment; and

(iv) for waiver of tort;

(d) Punitive, exemplary and aggravated damages in the amount of \$5,000,000;

(e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("*Courts of Justice Act*"), as amended;

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

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere for ceramic substrates for catalytic converters used in automobiles and other light-duty vehicles (“**Ceramic Substrates**”). Ceramic Substrates are uncoated ceramic monoliths (cylindrical or rectangular tubes) containing a fine mesh-like inner structure that runs the length of the tube. Ceramic Substrates are coated with a mix of metals and other chemicals and then incorporated into catalytic converters. Catalytic converters are emissions control devices that convert certain pollutants into less harmful gases and are essential for Automotive Vehicles to meet emissions standards. The unlawful conduct occurred from at least as early as July 1, 1999 and continued until at least July 31, 2011 and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive industry, raising prices to all members of the Proposed Class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Ceramic Substrates and/or new vehicles containing Ceramic Substrates 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 a Ceramic Substrate;^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing a Ceramic Substrate during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹ Ceramic Substrates are uncoated ceramic monoliths; often with a fine honeycomb structure. Ceramic Substrates are coated with a mix of metals and other chemicals and then incorporated into catalytic converters.

² Ceramic Substrates 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 July 1, 1999 and July 31, 2011 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Corning Defendant

9. The defendant, Corning International Kabushiki Kaisha (“**Corning International**”), is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Corning International manufactured, marketed, sold and/or distributed Ceramic Substrates to customers throughout Canada or for inclusion in vehicles sold in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries.

10. Corning International is a subsidiary of and wholly-owned and/or controlled by its parent, Corning Incorporated, which has been named as a defendant in another claim containing allegations that are substantially similar to those in this claim.

11. The business of each of Corning International and Corning Incorporated 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 Ceramic Substrates in Canada and for the purposes of the conspiracy described hereinafter. Corning International and Corning Incorporated are collectively referred to herein as “**Corning**”.

Denso Defendants

12. The defendant, Denso Corporation, is a Japanese corporation with its principal place of business Aichi, Japan. During the Class Period, Denso Corporation manufactured, marketed, sold and/or distributed Ceramic Substrates to customers throughout Canada or for inclusion in vehicles sold in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants, Denso International America, Inc.

(“**Denso US**”), Denso Manufacturing Canada, Inc. (“**Denso Manufacturing Canada**”) and Denso Sales Canada, Inc. (“**Denso Sales Canada**”).

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

14. Denso Manufacturing Canada is a Canadian corporation with its principal place of business in Guelph, Ontario. During the Class Period, Denso Manufacturing Canada manufactured, marketed, sold and/or distributed Ceramic Substrates to customers throughout Canada or for inclusion in vehicles sold in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Denso Manufacturing Canada is owned and controlled by Denso Corporation.

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

16. The business of each of Denso Corporation, Denso US, Denso Manufacturing Canada and Denso Sales Canada 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 Ceramic

Substrates in Canada or for inclusion in vehicles sold in Canada and for the purposes of the conspiracy described hereinafter. Denso Corporation, Denso US, Denso Manufacturing Canada and Denso Sales Canada are collectively referred to herein as “**Denso**”.

Unnamed Co-Conspirators

17. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, including, but not limited to NGK Insulators, Ltd., NGK Ceramics USA, Inc., NGK Automotive Ceramics USA, Inc., NGK Insulators of Canada, Ltd. and Corning Incorporated, 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. 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 in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

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

19. 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 Ceramic Substrates Industry

20. Ceramic Substrates are uncoated ceramic monoliths; often with a fine honeycomb structure. They are coated with a mix of metals and other chemicals and then incorporated into automotive catalytic converters. Automotive catalytic converters are emissions control devices that convert certain pollutants in an exhaust gas stream into less harmful gases through catalytic chemical reactions. Automotive catalytic converters, and thereby, Ceramic Substrates, are integral to the ability of an engine to meet emissions standards. Catalytic converters are installed by automobile original equipment manufacturers (“**OEMs**”) in new vehicles as part of the automotive manufacturing process.

21. For new vehicles, the OEMs – mostly large automotive manufacturers such as Ford, Honda, Toyota, Volvo, General Motors and others – purchase Ceramic Substrates indirectly through component manufacturers who supply catalytic converters, or systems containing catalytic converters, to OEMs. These component manufacturers are also called “**Tier I Manufacturers**” in the industry. A Tier I Manufacturer supplies Ceramic Substrates directly to an OEM, sometimes as a component of a catalytic converter. Ceramic Substrates may also be purchased by OEMs directly from the defendants.

22. When purchasing Ceramic Substrates, 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 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 a model. Typically, the production life of a

model is between four to six years or longer. 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.

23. During the Class Period, the defendants and their co-conspirators directly or indirectly supplied Ceramic Substrates to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their co-conspirators manufactured Ceramic Substrates: (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.

24. The defendants and their co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Ceramic Substrates and new vehicles containing Ceramic Substrates sold in North America and elsewhere.

25. The defendants and their co-conspirators unlawfully conspired to agree and manipulate prices for Ceramic Substrates and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Ceramic Substrates would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their co-conspirators were aware that, by unlawfully increasing the prices of Ceramic Substrates, the prices of new vehicles containing Ceramic Substrates would also be artificially inflated. The

defendants and their co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Ceramic Substrates and purchasers and lessees of new vehicles containing Ceramic Substrates. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Ceramic Substrates.

26. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Ceramic Substrates in Canada and the world. Their customers include Ford, General Motors, Toyota, Honda and Nissan.

27. 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 Ceramic Substrates in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

28. In the United States, NGK Insulators, Ltd. has agreed to plead guilty and pay a fine of US\$65.3 million in respect of its role in the alleged conspiracy to fix the prices of Ceramic Substrates from as early as July 2000 and continuing until at least February 2010, and for obstruction of justice related to the investigation. NGK Insulators, Ltd. also pleaded guilty to altering, destroying, mutilating, and concealing records, documents, and other objects, with the intent to impede the investigation.

29. In the United States, Corning International has agreed to plead guilty and pay a fine of US\$66.5 million in respect of its role in the alleged conspiracy to fix the prices of Ceramic Substrates from as early as July 1999 and continuing until at least July 2011 sold to Ford, General Motors and Honda in the United States and elsewhere.

Plaintiffs Purchased New Vehicles Containing Ceramic Substrates

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

31. 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.

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

33. 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.

34. 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.

35. 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.

36. Sheridan, Pickering and Urlin purchased new vehicles containing Ceramic Substrates.

37. Fady Samaha purchased a new Honda Civic in 2009, which contained a Ceramic Substrate.

Breaches of Part VI of *Competition Act*

38. From at least as early as July 1, 1999 until at least July 31, 2011, the defendants and their co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase or control the prices of Ceramic Substrates sold to customers in North America and elsewhere. The defendants and their co-conspirators conspired to enhance unreasonably the prices of Ceramic Substrates and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Ceramic Substrates in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Ceramic Substrates and new vehicles containing Ceramic Substrates.

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

40. 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 Ceramic Substrates and/or new vehicles containing Ceramic Substrates.

41. 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

42. The defendants and their 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

43. The defendants and their 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 Ceramic Substrates 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.

44. In furtherance of the conspiracy, the defendants, their servants, agents and co-conspirators carried out the acts described in paragraph 39 above.

45. The defendants and their 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 Ceramic Substrates, and to illegally increase their profits on the sale of Ceramic Substrates.

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

Discoverability

47. Ceramic Substrates are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Ceramic Substrate 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 Ceramic Substrates.

48. 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

49. 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.

50. The defendants' and their co-conspirators' anti-competitive conspiracy was self-concealing. As detailed in paragraph 39 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

51. 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 Ceramic Substrates and/or new vehicles containing Ceramic Substrates.

Unjust Enrichment

52. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Ceramic Substrates. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for

Ceramic Substrates and/or new vehicles containing Ceramic Substrates. 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.

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

54. 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

55. 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 and their co-conspirators as a result of their unlawful conspiracy.

56. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Ceramic Substrates. As a result of the unlawful conspiracy, the defendants profited from the sale of Ceramic Substrates 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

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

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

58. Ceramic Substrates are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Ceramic Substrates follow a traceable chain of distribution from the defendants and/or their co-conspirators to Tier I Manufacturers and then to OEMs, or alternatively directly from the defendants and/or their co-conspirators to the OEMs, and from the OEMs to automotive dealers to consumers or other end-user purchasers. Costs attributable to Ceramic Substrates can be traced through the distribution chain.

59. 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 Ceramic Substrates and/or new vehicles containing Ceramic Substrates than they would have paid in the absence of the illegal conduct of the defendants and their 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

60. The defendants and their co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Ceramic Substrates. At least some co-conspirators also destroyed relevant evidence in an attempt to impede investigations into their illegal activities. 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 co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

61. 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

62. 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.

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

Date: June 17, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM
(Ceramic Substrates)**

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