

**SUPERIOR COURT OF JUSTICE**

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**No. of Pages Including Cover Sheet: Eight**

**Date: May 10, 2017**

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**RE: SHERIDAN CHEVROLET v. HATACHI, LTD. ET AL.  
COURT FILE NO.: CV-14-506641-CP**

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Please contact Gladys Gabbidon at (416) 327-5052 if you do not receive all pages.

Thank you.

**CITATION:** Sheridan Chevrolet v. Hitachi et al, 2017 ONSC 2803  
**COURT FILES:** Listed below  
**DATE:** 20170510

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>Air Flow Meters</b>	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i>	CV-14-506641-CP
<b>Alternators</b>	<i>Sheridan Chevrolet et al v Denso Corporation et al</i>	CV-13-478125-CP
<b>Automotive Wire Harness Systems</b>	<i>Urlin Rent A Car Ltd. et al v Furukawa Electric Co. Ltd. et al.</i>	CV-12-446737-CP
<b>Electronic Control Units</b>	<i>Sheridan Chevrolet et al v Sumitomo Electric Industries, Ltd. et al</i>	CV-13-482967-CP
<b>Electronic Throttle Bodies</b>	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i>	CV-14-506649-CP
<b>Fuel Injection Systems</b>	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i>	CV-14-506683-CP
<b>Ignition Coils</b>	<i>Sheridan Chevrolet et al v Diamond Electric Mfg. Co. Ltd. et al</i>	CV-14-506686-CP
<b>Inverters</b>	<i>Sheridan Chevrolet et al v Denso Corporation et al</i>	CV-15-524183-CP
<b>Motor Generators</b>	<i>Sheridan Chevrolet et al v Denso Corporation et al</i>	CV-15-524184-CP
<b>Occupant Safety Systems</b>	<i>Sheridan Chevrolet et al v Autoliv ASP, Inc. et al.</i>	CV-13-472259-CP
<b>Starters</b>	<i>Sheridan Chevrolet et al v Denso Corporation et al</i>	CV-13-478127-CP
<b>Valve Timing Control Devices</b>	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i>	CV-14-506670-CP

**BEFORE:** Justice Edward P. Belobaba

**COUNSEL:** *Charles M. Wright, David Sterns and Kerry McGladdery-Dent* for Plaintiffs

*J. Kevin Wright and Kelly Friedman* for Hitachi Defendants

*Patricia D.S. Jackson* for Leoni Defendants

*Joshua Krane and Randall Hofley* for Autoliv Defendants

*Vitali Berditcherski* for Toyota Defendants

*Chantelle Spagnola* for Denso Defendants

*Neil Campbell* for Bosch Defendants

*Neil Campbell and Lindsay Lorimer* for Sumitomo Defendants

*James Gotowiec* for Mitsubishi Defendants

*Mel Hogg* for SY Systems Defendants

*Emrys Davis* for Delphi Defendants

*Evangelia Litsa Kriaris* for Mikuni Defendants

*Lisa Parliament* for Mitsuba Defendants

**HEARD:** May 1, 2017

**Hitachi, Autoliv and Leoni – Settlement Approvals and Related Motions**

[1] The 35 or so auto-parts price-fixing class actions that I am continuing to case manage have started to settle, or at least settle with certain defendants involving certain auto-parts. I have already approved several such settlements.<sup>1</sup>

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<sup>1</sup> See for example, *Sheridan Chevrolet v. Furukawa Electric et al*, 2016 ONSC 729 and *Urlin Rent a Car v. Furukawa Electric*, 2016 ONSC 7965.

[2] In cases where counsel ask that the action be certified for settlement purposes, I do so readily because all of these auto-parts actions follow the same template and easily satisfy the requirements in s. 5 of the *Class Proceedings Act*<sup>2</sup> (“CPA”). In cases where settlement approval alone is the issue, I generally focus on whether the settlement amount falls within a zone of reasonableness. Class counsel now understands what evidence is required in these auto-part cases and they file the appropriate affidavits – about parallel settlements in the U.S., and fines imposed and sales in Canada. In short, both here and in the cases still coming, I expect that settlement approval will be the norm.

[3] Here the plaintiffs move for judicial approval under s. 29(2) of the CPA for the following settlements:

- (i) *the Hitachi defendants* in the ten actions listed below have agreed to pay CDN\$6,667,084 for the benefit of the settlement classes allocated as follows:

Air Flow Meters	\$725,000
Alternators	\$950,000
Electronic Control Units	\$150,000
Electronic Throttle Bodies	\$1,000,000
Fuel Injection Systems	\$1,267,084
Ignition Coils	\$1,100,000
Inverters	\$150,000
Motor Generators	\$150,000
Starters	\$575,000
Valve Timing Control	\$600,000

- (ii) *the Autoliv defendants* in the Occupant Safety Systems action have agreed to pay US\$3.2 million for the benefit of the settlement class; and,

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<sup>2</sup> *Class Proceedings Act, 1992*, S.O. 1992, c.6.

- (iii) *the Leoni defendants* in the Automotive Wire Harness Systems action have agreed to pay CDN\$250,000 for the benefit of the settlement class.

#### **Consent certification for settlement purposes**

[4] The plaintiffs also seek certification, for settlement purposes only, of the Ontario Occupant Safety Systems action as against Autoliv and the Ontario Automotive Wire Harness Systems action as against Leoni. The actions in which Hitachi is the settling defendant were certified for settlement purposes as against Hitachi at the same time as notice approval. I note that that proposed class and common issues are substantively the same as those previously certified. I also note that the proposed representative plaintiffs were previously appointed as representative plaintiffs.

[5] Certification for settlement purposes as against Autoliv in the Occupant Safety Systems action and as against Leoni in the Automotive Wire Harness Systems action is easily granted.

#### **Settlement approvals**

[6] I will consider the Hitachi, Autoliv and Leoni settlements in turn.

##### **(1) Hitachi**

[7] Hitachi has agreed to pay CDN\$6,667,084 as allocated in the chart above and provide substantial cooperation in the ongoing litigation.

[8] I am satisfied that this settlement falls within a zone of reasonableness for the following reasons. The amount of the U.S. settlement was \$61.5 million – the Canadian settlement falls within the one-tenth rule of thumb. Further, there were no direct Canadian sales. This point is supported by the fact that Hitachi has not been the subject of any fines or penalties by the Competition Bureau. The settlement was therefore valued based on Hitachi's indirect sales into Canada and its commitment to provide what class counsel describes as "meaningful cooperation, particularly with regard to the ringleaders of the various conspiracies in several of the relevant actions" and the provision of confidential evidentiary proffers to this end.

[9] The Hitachi settlements are approved.

##### **(2) Autoliv**

[10] Autoliv has agreed to pay US\$3.2 million or CDN\$4,172,800 and provide substantial cooperation in the ongoing litigation.

[11] I am satisfied that the settlement falls within a zone of reasonableness for the following reasons. No fines or penalties were paid to Canadian regulators. The amount of Autoliv's settlements in the U.S. Occupant Safety Systems litigation was US\$65 million, about US\$25 million of which was allocated to indirect purchasers. I agree with class counsel that this case is comparable to the U.S. indirect purchasers situation because Autoliv's only direct purchaser in Canada has opted out of the action. The Autoliv settlement amount is 12.8% of the U.S. indirect settlement amount and 8.6% of the estimated affected commerce – placing the amount generally within the one-tenth rule of thumb.

[12] The Autoliv settlement is approved.

### **(3) Leoni**

[13] Leoni has agreed to pay CDN\$250,000 and provide substantial cooperation in the ongoing litigation. The amount of Leoni's settlements in the U.S. litigation was US\$1.95 million – the Canadian settlement therefore falls within the one-tenth rule of thumb. Also, Leoni has not been the subject of any fines or penalties by the Competition Bureau most likely because Leoni's alleged involvement in the Automotive Wire Harness Systems conspiracy only affected the Renault II, which was never sold in Canada.

[14] The Leoni settlements are approved.

### **Legal fees approval**

[15] By agreement amongst counsel, 7.2% of the Autoliv, Hitachi and Leoni settlement amounts are notionally allocated to the Quebec classes for the purpose of the fee applications in that province. The remaining Autoliv, Hitachi and Leoni settlement amounts are notionally allocated to the Ontario and B.C. classes for the purpose of the fee applications in those provinces. In accordance with the retainer agreements entered into with the Ontario representative plaintiffs, Ontario and B.C. Class Counsel are seeking a fee of 25% of the amount notionally allocated to the Ontario and B.C. classes.

[16] As I explained in *Cannon*<sup>3</sup> and again in *Middlemiss v. Penn West Petroleum*,<sup>4</sup> I am prepared to accord presumptive validity to a properly executed contingency fee arrangement such as the one that is before me. It is only through a robust contingency-compensation system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue

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<sup>3</sup> *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686.

<sup>4</sup> *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537.

to remain viable as a meaningful vehicle for access to justice.<sup>5</sup> (The point about “wins and losses” is clearly illustrated by comparing class counsel’s docketed time with the fees that will be recovered in the Automotive Wire Harness Systems action in the chart below.)

[17] The chart summarizes the legal fees request, the docketed time and the disbursements:

Action	Fees (plus applicable taxes)	Time Incurred	Disbursements (including interest, plus applicable taxes)
<b>Ontario and B.C. Approval</b>			
Alternators	\$220,400	\$62,401.80	\$45,826.32
Automotive Wire Harness Systems	\$58,000	\$2,393,186.95	\$250,488.88
Electronic Control Units	\$34,800	\$96,079.75	\$1,929.68
Fuel Injection Systems	\$293,963.49	\$154,922.00	\$66,353.47
Ignition Coils	\$255,200	\$54,244.50	\$22,867.55
Occupant Safety Systems	\$968,089.60	\$413,547.50	\$12,862.29
Starters	\$133,400	\$63,241.55	\$28,742.60
<b>Ontario Approval Only</b>			
Air Flow Meters	\$168,200	\$43,146.45	\$4,952.70
Electronic Throttle Bodies	\$232,000	\$13,952.60	\$7,528.21
Inverters	\$34,800	\$19,329.00	\$10,834.37
Motor Generators	\$34,800	\$14,976.50	\$10,491.26
Valve Timing Devices	\$139,200	\$20,922.50	\$21,025.94

<sup>5</sup> *Ibid.*, at para. 19. Also see *Ramdath v. George Brown College of Applied Arts and Technology*, 2016 ONSC 3536, at note 14: “Over a period of years, plaintiff-side class action firms will win cases and lose cases. The “risk” that contingency lawyers face cannot be assessed case-by-case or one-off, but must be measured across a great many files. A “large” contingency recovery in one case will offset the loss or losses in other cases. That is why the “multiplier” approach that purports to assess risk by considering only the case that is currently before the court is fundamentally flawed, indeed unprincipled.”

[18] Ontario and B.C. class counsel's request for legal fees in the overall amount of \$2,572,853.09 plus disbursements of \$483,903.27 including interest and applicable taxes is approved.

### **Honoraria**

[19] The representative plaintiffs in the Automotive Wire Harness Systems action have been actively involved both in that litigation and the auto parts cases as a whole. I agree with class counsel that the payment of a \$2500 honorarium to each representative plaintiff in the Automotive Wire Harness Systems action is warranted.

[20] The request for the payment of the honoraria is approved.


### **Remaining requests**

[21] Orders also to go approving the Distribution Protocol; authorizing General Motors of Canada (in respect of the Pontiac Vibe), Honda Canada, Nissan Canada, Subaru Canada, and Toyota Canada ("the National Brands") to disclose name, address and purchase information for the limited purposes of providing notice and facilitating the claims administration process; appointing RicePoint Administration Inc. as the administrator for the limited purpose of receiving, processing and consolidating the customer information provided by the National Brands, and as the claims administrator for the purpose of administering the Distribution Protocol; and approving the Claims Notices and the Plan of Dissemination.

### **Disposition**

[22] The settlements described above with Hitachi, Autoliv and Leoni are approved. Certification is granted, for settlement purposes only, in the Ontario Occupant Safety Systems action as against Autoliv and the Ontario Wire Harness Systems action as against Leoni. Class counsel's legal fees, the requested honoraria and the remaining requests noted above are also approved.

[23] Orders to go as per the draft Orders signed on May 1, 2017.



Justice Edward P. Belobaba

**Date:** May 10, 2017