

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**J. BISSON**

Plaintiff

- and -

**JUI LI ENTERPRISE COMPANY, LTD., TONG YANG INDUSTRY CO., LTD., TYG  
PRODUCTS, L.P., GORDON AUTO BODY PARTS CO., LTD., GORDON AUTO  
BODY PARTS USA CORP., AUTO PARTS INDUSTRIAL LTD., AND  
CORNERSTONE AUTO PARTS, LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.**

Date: October 17, 2014

Issued by

\_\_\_\_\_  
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## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Aftermarket Automotive Sheet Metal Part(s)**” or “**AM Sheet Metal Part(s)**” means any and/or all replacement part(s) for any of the non-mechanical sheet metal parts which generally constitute the exterior of a motor vehicle, including inner and outer panels neither made for, nor by, the manufacturer of the motor vehicle and includes, but is not limited to: hoods, doors, fenders, bonnets, floor panels, trunk assemblies, trunk lids, tailgates, roof panels, and reinforcement parts;
- (b) “**Class**” or “**Class Members**” means all residents in Canada who have purchased **Aftermarket Automotive Sheet Metal Part(s)** manufactured by a Defendant or from any predecessors, parents, subsidiaries, agents or affiliates thereof, whether directly or indirectly, during the **Class Period**;
- (c) “**Class Period**” or “**Conspiracy Period**” means from January 1, 2003 to the present;
- (d) “*Courts of Justice Act*” means the Ontario Courts of Justice Act, RSO 1990, c C-43, as amended;
- (e) “*Class Proceedings Act*” means the Class Proceedings Act, 1992, SO 1992, c 6, as amended;
- (f) “*Competition Act*” means the *Competition Act*, RSC 1985, c C-34, as amended;

- (g) “**Rules of Civil Procedure**” means the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (h) “**SMPA**” means the trade industry group, the Sheet-Metal Parts Alliance;
- (i) “**TABPA**” means the trade industry group, the Taiwan Auto Body Panels Association;
- (j) “**AAPEX**” means the trade industry group, the Automotive Aftermarket Products Exposition;
- (k) “**Defendants**” means Jui Li Enterprise Company, Ltd., Tong Yang Industry Co., Ltd., TYG Products, L.P., Gordon Auto Body Parts Co., Ltd., Gordon Auto Body Parts USA Corp., Auto Parts Industrial Ltd., and Cornerstone Auto Parts, LLC;
- (l) “**Taiwanese Defendants**” or “**Foreign Defendants**” means Jui Li Enterprise Company, Ltd., Tong Yang Industry Co., Ltd., Gordon Auto Body Parts Co., Ltd., and Auto Parts Industrial Ltd.;
- (m) “**North American Subsidiaries**” means TYG Products, L.P., Gordon Auto Body Parts USA Corp., and Cornerstone Auto Parts, LLC;
- (n) “**Plaintiff**” means J. Bisson; and
- (o) “**Overcharge**” means the difference between the prices paid for **AM Sheet Metal Part(s)** and the prices which would have been paid during the **Class Period** in the absence of the conspiracy.

## THE CLAIM

2. The proposed Representative Plaintiff, J. Bisson, claims on his own behalf and on behalf of the members of the Class of persons as defined in paragraph 4 below (the “Class”) as against Jui Li Enterprise Company, Ltd., Tong Yang Industry Co., Ltd., TYG Products, L.P., Gordon Auto Body Parts Co., Ltd., Gordon Auto Body Parts USA Corp., Auto Parts Industrial Ltd., and Cornerstone Auto Parts, LLC (collectively the “Defendants”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the Defendants conspired and/or agreed with each other to raise, maintain, fix and/or artificially stabilize the price of AM Sheet Metal Parts during the period beginning at least from January 1, 2003 to the present (the “Class Period”);
- (c) A declaration that the Defendants conspired and/or agreed to lessen unduly, competition in the manufacture, import, export, distribution and/or sale of AM Sheet Metal Parts in Canada during the Class Period;
- (d) Special damages and general damages on an aggregate basis or otherwise for the conspiracy, the unlawful and intentional interference with economic interests and relations and conduct that is contrary to Part VI of the *Competition Act* in an amount that this Honourable Court finds appropriate at the trial of the common

issues or at a reference or references, or alternatively, damages assessed equal to the amount of the Overcharge as established by an accounting if necessary;

- (e) Punitive, aggravated and exemplary damages in an amount that this Honourable Court deems appropriate at the trial of the common issues;
- (f) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (g) In addition, or in the alternative, an accounting of revenues received by the Defendants resulting from the sale of AM Sheet Metal Parts to members of the Class;
- (h) A declaration that the Defendants have been unjustly enriched at the expense of the Plaintiff and the other Class Members by their receipt of the illegal Overcharge;
- (i) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their AM Sheet Metal Parts to members of the Class on the basis of quantum meruit;
- (j) A declaration that the Defendants hold the illegal Overcharge in a constructive trust for the benefit of the Plaintiff and the other Class Members;
- (k) An order directing the Defendants to disgorge their ill-gotten Overcharge;

- (l) Costs of investigation and prosecution of these proceedings pursuant to Part IV, s. 36(1) of the *Competition Act*;
- (m) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (n) A permanent injunction restraining the Defendants from continuing any actions taken by them in contravention of the *Competition Act*;
- (o) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (p) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (q) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 2 (9) of the *Class Proceedings Act*;
- (r) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon pursuant to the *Excise Tax Act*, R.S.C. 1990. C. E-15; and
- (s) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in all the circumstances.

## **THE PARTIES**

### **I. The Representative Plaintiff**

3. The Plaintiff, J. Bisson, is an individual residing in the city of Ottawa, in the province of Ontario. Mr. Bisson purchased two (2) AM Sheet Metal Parts in order to repair the body of his automobile, namely a front driver side door and a rear driver side door.

### **II. The Class**

4. The Plaintiff seeks to represent the following class of which he is a member (the “Proposed Class”):

All residents in Canada that purchased an Aftermarket Automotive Sheet Metal Part (an “AM Sheet Metal Part”) manufactured by a Defendant or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2003 and the present (the “Class Period”).

### **III. The Defendants**

#### **A. JUI LI**

5. The Defendant, Jui Li Enterprise Company, Ltd. (“Jui Li”), is a Taiwanese corporation with its head office in Kaohsiung, Taiwan. It is a leading manufacturer of AM Sheet Metal Parts, which it manufactures in both Taiwan and China for export around the world.

6. The Jui Li Defendant, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts that were purchased throughout Canada, during the Class Period.

## **B. TONG YANG GROUP (“TYG”)**

7. The Defendant, Tong Yang Industry Co., Ltd. (“Tong Yang”), is a Taiwanese corporation with its head office in Tainan, Taiwan. It is the flagship firm of the “Tong Yang Group” (“TYG”), one of the largest auto-parts conglomerates in Taiwan with \$500 million in annual revenue and 1,480 employees. Both Tong Yang and TYG are traded as public companies on the Taiwan Stock Exchange. In September 2010, Tong Yang merged with its fellow TYG affiliate, Taiwan Kai Yih Industrial Co. Ltd. (“TKY”), pursuant to a stock purchase agreement. Under the terms of the merger, Tong Yang became the surviving entity and expressly assumed all rights and potential liabilities of TKY. References to Tong Yang herein prior to September 2010 refer to its predecessor, TKY. Tong Yang holds itself out as the largest manufacturer of AM Sheet Metal Parts, holding the dominant share of that market. Tong Yang manufactures AM Sheet Metal Parts in Taiwan and exports them for sale around the world. In fact, Tong Yang’s top seven (7) customers are in North America.

8. The Defendant, TYG Products, L.P. (“TYG Products”), is an American corporation with its head office in McKinney, Texas. It is a wholly-owned subsidiary of TYG and was established to meet North America market demand.

9. The TYG Defendants, Tong Yang and TYG Products, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts that were purchased throughout Canada, during the Class Period.

10. The businesses of both of the Tong Yang Group Defendants are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture,

import, export, distribution and/or sale of AM Sheet Metal Parts in Canada and the conspiracy described hereinafter.

11. Given the close ties between the Tong Yang Group Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other.

### **C. GORDON**

12. The Defendant, Gordon Auto Body Parts Co., Ltd. (“Gordon Taiwan”), is a Taiwanese corporation with its head office in Taoyuan Hsien, Taiwan. It is a leading maker of AM Sheet Metal Parts that focuses on the North American market.

13. The Defendant, Gordon Auto Body Parts USA Corp. (“Gordon USA”), is an American corporation with its head office in California.

14. The Gordon Defendants, Gordon Taiwan and Gordon USA, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts that were purchased throughout Canada, during the Class Period.

15. The businesses of both of the Gordon Defendants are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, import, export, distribution and/or sale of AM Sheet Metal Parts in Canada and the conspiracy described hereinafter.

16. Given the close ties between the Gordon Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other.

#### **D. AUTO PARTS**

17. The Defendant, Auto Parts Industrial Ltd. (“API”), is a Taiwanese corporation with its head office in Taoyuan, Taiwan. It is the parent company of Defendant Cornerstone Auto Parts, LLC (“Cornerstone”). Through the 1980s, 1990s and 2000s, API merged with a number of companies engaged in sheet metal manufacturing to become one of the largest manufacturers of AM Sheet Metal Parts in the world.

18. The Defendant, Cornerstone, is an American corporation with its head office in Texas. It is a wholly-owned subsidiary of Defendant API and operates as its North American office.

19. The Auto Parts Defendants, API and Cornerstone, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts that were purchased throughout Canada, during the Class Period.

20. The businesses of each of the Auto Parts Defendants are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, import, export, distribution and/or sale of AM Sheet Metal Parts in Canada and the conspiracy described hereinafter.

21. Given the close ties between the Auto Parts Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other.

22. All Defendants and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or artificially stabilize the prices of AM Sheet Metal Parts.

23. During the Class Period, the Defendants comprised the main manufacturers, importers, exporters, distributors and/or sellers of AM Sheet Metal Parts.

<b>Major Sheet-metal Body Parts Makers in Taiwan</b>			
Unit: NT\$ 100 million			
Company	Export Ratio	2003 Revenue	2004 Jan.-Feb. Revenue
Taiwan Kai Yih	100% (about 40% to 45% to North America)	39.29	6.4
Gordon	100% (about 70% to North America)	16.21	2.84
Jui Li	40% (about a half to North America)	30	4.67

Source: The companies

<b>Taiwan AM Parts Suppliers Rated "Good" by Major U.S. Distributors</b>	
Parts Category	Major Suppliers
Sheet-Metal Body Parts	Gordon, Taiwan Kai Yih, Jui Li, API, Da Juan
Auto Lamp	TYC, Depo
Plastic Body Parts	Tong Yang, Pro Fortune

Source: Industrial Development Bureau

<b>Taiwan's Automotive Sheet Metal and Forming Mold Supply Chain</b>		
Upstream Mold Makers	Midstream Sheet Metal Makers	Downstream Customers
<p align="center"><b>OEM</b></p> <p>Gobo Enterprise, Jui Li Enterprise, COC Tooling &amp; Stamping, Van Guard Mold Enterprise, Ejee Pressing Dies Industry, Chun Shyang Shin Yeh Industry, Qiao Feng Machinery Mold, Li Sheing Tooling Industry, Yow Jann Chern Enterprise</p>	<p align="center"><b>OEM</b></p> <p>Jui LI Enterprise, Chun Shyang Shin Yeh Industry, COC Tooling &amp; Stamping, Lioho Machine Works, Hsin Chon Machinery Works, Yulon Motor, China Motor</p>	<p align="center"><b>Local Carmakers</b></p> <p>Yulon Motor , China Motor, Luxgen, Kuozui Motors</p> <p align="center"><b>Foreign Carmakers</b></p> <p>Honda, Nissan, Tesla, Ford, Chrysler, MSIL, Tata, M&amp;M, etc.</p>
<p align="center"><b>AM</b></p> <p>Jui Li Enterprise, Gordon Auto Body Parts, Taiwan Kai Yih Industrial, Auto Parts Industrial, Yuehcheng Co.</p>	<p align="center"><b>AM</b></p> <p>Jui Li Enterprise, Gordon Auto Body Parts, Taiwan Kai Yih Industrial, Auto Parts Industrial, Yuehcheng Co.</p>	

24. In fact, the Defendants named herein comprise the major sheet metal part manufacturers in Taiwan and manufacture over 95% of all AM Sheet Metal Parts sold in North America.

### THE NATURE OF THE CLAIM

25. The Defendants and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or to artificially stabilize the prices of AM Sheet Metal Parts.

26. These class proceedings concern the conspiracy among the Defendants to fix the price at which AM Sheet Metal Parts were sold in Canada and worldwide. The Plaintiff alleges that the Defendants and the senior executives of the corporate Defendants during the Class Period participated in illegal and secretive meetings and made agreements relating to price targets,

specific price increases, market share divisions and production capacity for AM Sheet Metal Parts.

27. The AM Sheet Metal Parts were intended to be placed into the stream of commerce, to be distributed, offered for sale and sold to the Plaintiff and to the public in Ontario and in the other provinces and territories within Canada.

28. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

29. Canadian consumers were never compensated for damages incurred as a result of purchasing the Defendants' AM Sheet Metal Parts.

30. The Defendants placed these AM Sheet Metal Parts into the stream of commerce in Ontario and elsewhere with the expectation that consumers, such as the Plaintiff and Class Members, would purchase the products.

#### **I. THE AUTOMOTIVE AFTERMARKET ("AM")**

31. In 2011, there were 21.4 million registered vehicles on the road in Canada.

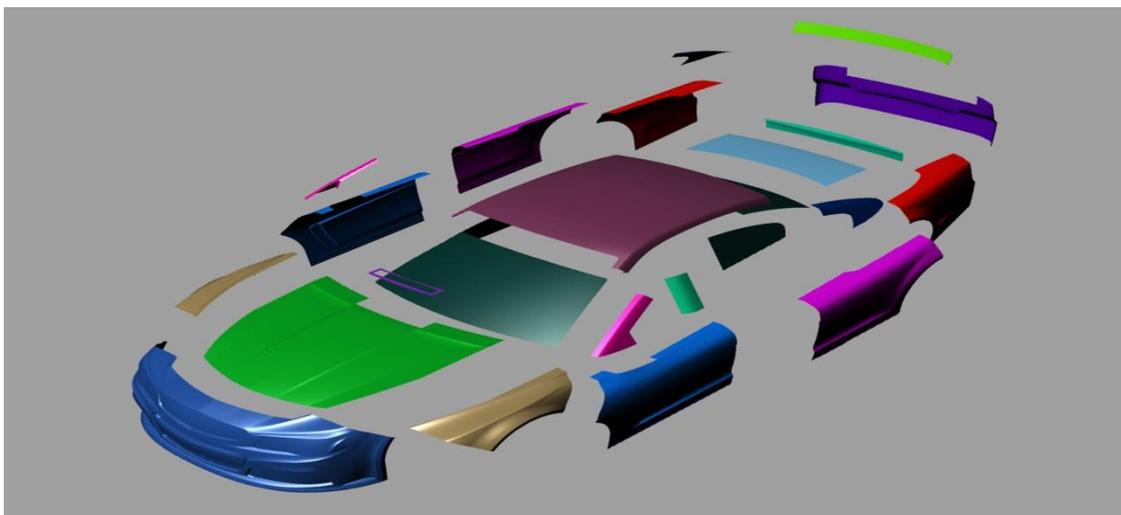
32. As vehicles age and/or are involved in collisions, they may require replacement parts. The market for automotive replacement parts, otherwise known as the "crash-parts market", is divided into three (3) main areas: (1) original equipment manufacturer parts ("OEM parts"), which are often distributed through the auto manufacturers' own service channels and sold under their brand names, (2) used or refurbished OEM parts, and (3) aftermarket parts, which have the

same specifications as OEM parts, but are usually not manufactured by OEMs or sold with automaker certification.

33. The automotive aftermarket is the secondary market of the automotive industry that is concerned with the manufacture, remanufacture, distribution, wholesaling, retailing, and installation of all vehicle replacement parts, accessories, tools, equipment, chemicals and services, after the sale of the automobile by the OEM to the consumer.

34. This growing industry is now estimated as a \$274 billion market in North America with Canadian retail sales at just over \$19.4 billion.

35. AM Sheet Metal Parts represent a significant portion of the entire aftermarket automotive “crash-parts market.” AM Sheet Metal Parts include, but are not limited to, hoods, doors, fenders, bonnets, floor panels, trunk assemblies, trunk lids, tailgates, roof panels, and reinforcement parts.



36. AM Sheet Metal Part prices are less expensive than OEM parts prices because aftermarket companies specialize in such parts and tend to redesign and make more cost efficient changes as compared to the OEM parts, resulting in cheaper prices for the consumer.

37. Taiwan is the largest manufacturing base for AM Sheet Metal Parts in the world. North America and particularly the United States, is an extremely large and profitable market for AM Sheet Metal Parts. The Defendants' AM Sheet Metal Parts comprise the vast majority of all AM Sheet Metal Parts sold in North America.

38. At all relevant times, the AM Sheet Metal Parts market has been a highly concentrated oligopoly controlled by the Defendants. The manufacturers of AM Sheet Metal Parts are highly-consolidated and closely-knit companies. This high degree of concentration facilitated the anticompetitive conduct alleged herein because it is relatively easy for a limited group of sellers to reach an illegal agreement on output and prices and to monitor adherence to such an agreement.

## **II. THE MARKET CONDITIONS IN WHICH THE DEFENDANTS' CONSPIRATORIAL BEHAVIOUR ORIGINATED**

### **i) A MARKET HIGHLY CONDUCTIVE TO CONSPIRACY**

39. In the early 2000s, the Defendants, because of their close relationship, conceived and established a scheme and device to work together in agreement to control the production of AM Sheet Metal Parts and to manipulate, raise, fix, maintain, and/or stabilize the price charged to purchasers of AM Sheet Metal Parts in North America, including in Canada.

40. Beginning in at least 2003, the Defendants—all of whom are purported horizontal competitors— developed, participated, facilitated, and maintained their secretive anti-competitive collusion by:

- (a) Creating and participating in anticompetitive joint “alliances” to develop tools for making AM Sheet Metal Parts, to implement artificial barriers to entry for new potential competitors, and to meet and to discuss confidential market information, supply chain management and negotiation with customers;
- (b) Engaging in secret meetings where they discussed and entered into illegal pricing and output agreements with each other such as agreeing to “floor prices” below which no Defendant would sell their Parts, agreeing to simultaneous price increases, to be falsely attributed to rising input costs, and enforcing penalties for Defendants that violated these agreements; and
- (c) Forming a production arrangement, called the “Unified Tooling” program, to curtail competition for AM Sheet Metal Parts by agreeing to limit the number of Defendants producing Parts.

41. As a result, the market for AM Sheet Metal Parts in Taiwan became highly concentrated.

42. The Taiwanese manufacturers of AM Sheet Metal Parts amassed their market dominance and concentration throughout the 1970s, 1980s and 1990s by a series of mergers, acquisitions, and consolidations. By 2000, the supply of AM Sheet Metal Parts was controlled by a few manufacturers, namely, the Defendants. These manufacturers decided to work together through

collusive “initiatives” and “alliances” as part of an anticompetitive international scheme and collusion to dominate the North American marketplace for AM Sheet Metal Parts, to fix and to control production and to artificially inflate prices or to overcharge purchasers of these products. The Defendants carried out their illegal scheme with the assistance, coordination, and cover of several trade industry groups, including, but not limited to the SMPA, the TABPA, and the AAPEX. The trade groups facilitated the conspiracy, providing platforms for meetings to facilitate output-reduction and price-fixing coordination. The Defendants also attended trade shows and conventions within the United States and elsewhere to further develop their anti-competitive conduct and to maintain their anti-competitive foothold within the AM Sheet Metal market.

43. Today, Taiwan is the biggest and most important production base, or manufacturing centre, for AM Sheet Metal Parts in the world. The geographic concentration of a well-established cluster of AM Sheet Metal Parts manufacturers in the southern part of the island is highly conducive to an anticompetitive agreement.

44. The basis for the unification and anti-competitive conduct was explained by Raymond Wu, current vice chairman (former president) of non-party TYG, whose AM Sheet Metal Parts arm is Defendant Tong Yang (formerly known as TKY), when he explained in a 2003 Taiwan Economic News article how the Taiwanese aftermarket parts manufacturers clustering helps them to price in tandem to closely cooperate and “escape blood-shedding price competition”:

Now the world’s strongest AM auto-parts production citadel, according to [Raymond] Wu, Taiwan comes close to monopolizing the global AM parts market and is largely able to escape any negative impact from foreign-exchange fluctuations because almost all major makers in the AM sector are from Taiwan and thus their quotation bases move in tandem, providing strong pricing power.

Wu points out that most local major makers of AM auto parts in southern Taiwan's industry cluster have similar backgrounds. Their founding personnel were previously with traditional makers in the auto sector. They were focused on export sales right from the early years. They gradually expanded production scale with increased global demand, constantly upgrading their production techniques and finished-product quality, constantly accelerating and strengthening their product-development capabilities, and have also become engaged in OE parts supply to international automakers after gaining a solid foothold in the AM market. After about 30 years of strenuous efforts, Wu says, many small companies in and around the southern Taiwan city of Tainan have grown to become major international OE/AM parts suppliers.

...

Taiwan's AM-parts industry is also now implementing a more sophisticated international marketing strategy, moving away from exclusive reliance on low prices to attract customers. *In the past, Wu explains, most local AM-parts makers competed with one another by cutting prices no matter how strong the global demand was, to "steal" market share from each other, but now the situation has changed, makers have abandoned this approach, and the profit margins of major local AM-parts makers parallel or even outstrip those of high-tech product makers on the island.*

One of the best examples is Taiwan Kai Yih Industrial Co., Ltd., an affiliate of Tong Yang and one of the island's major AM sheet-metal body-parts makers. Kai Yih is a relative newcomer among major counterparts in Taiwan but *the company skillfully utilizes Tong Yang Group's resources and advantages in mold/die development and closely cooperates with local counterparts to escape the bloodshedding price competition, thus achieving very high profitability,* Wu explains. [emphasis added]

45. The anticompetitive production arrangement between TYG and Defendant Tong Yang (then TKY) was described in the same 2003 article as follows:

Wu Jun-ji, chairman of Ta Yih Group, was with Tong Yang earlier in his career before he stepped out of the group to set up one of the island's first motorcycle and auto-lamp factories. *With close ties with Tong Yang, Wu jun-ji insists that all of the affiliates in the Ta Yih Group only produce items that Tong Yang does not, to escape destructive in-group competition. With this tacit understanding between Ta Yih and Tong Yang, Wu Jun-ji says, the two groups cooperate closely in joint marketing development by sharing marketing expenses and together offering a more comprehensive product line. (emphasis added).*

ii) ANTICOMPETITIVE JOINT “ALLIANCES”

46. The ties between the Defendants are strong. Beginning in at least 2003, the Defendants set up what they call “cooperative initiatives” and “strategic alliances”. The Defendants used these arrangements as opportunities to strengthen their control of the market in order to collude on AM Sheet Metal Parts and they facilitated their collusion through these “alliances” with the purpose and effect of carrying out their illegal price-fixing and output scheme.

47. The Defendants are or have previously been members in a variety of so-called “alliances”, including, but not limited to the following:

a) THE JOINT DIE-DEVELOPMENT PROJECT

48. In July 2003, a “strategic alliance” was implemented encompassing Taiwan’s major AM Sheet Metal Part manufacturers with the united goal of artificially manipulating the North American market and with the intent of harming Class Members, by increasing prices, by restricting competition through joint mold and die development for the AM Sheet Metal Parts, and by exchanging confidential pricing, information, and materials in the process. Alliance members include non-party TYG and Defendants Tong Yang, Jui Li and Gordon.

49. The alliance “partners” agreed to end the separate development of competing dies for AM Sheet Metal Part molds in order to create a uniform pricing and marketing product. The alliance partners developed and shared about eighty (80) sets of dies for AM Sheet Metal Parts, thereby transforming their former competition into cooperation, unifying the type of product sold, and expanding Taiwan’s share of the global market. Prior to the alliance, the Defendants manufactured these dies separately and competed for sales of the parts to the Class Members.

50. Defendant Gordon reported record high revenues in 2004, 2005 and 2006 due to the strategic alliance and its vice-president, Pan Ming-Hsiung, attributed the company's "lucrative" operations to the anti-competitive alliance with other manufacturers in Taiwan, which "effectively ended the price-cutting competition".

51. By agreeing to end competition among themselves and by secretly colluding to act as one manufacturing, marketing and exporting conglomerate or "unit" to end competition, the Defendants knew that they could control the market and the price for AM Sheet Metal Parts thereby increasing their profits to the detriment of Class Members.

52. By 2005, this joint die and mold "alliance" was coined as the "Joint Die-Development Project." This alliance reduced capacity and choice to the North American market as there was no longer competition with regard to tools (typically dies for pressing sheet metal parts). The agreement lowered the Defendants' expenses, increased their market share in North America and substantially increased their profits. However, recognizing that their anti-competitive behavior was successful, the Defendants wanted more profits at the expense of consumers who were paying supracompetitive prices as a result of the Defendants' illegal cartel.

53. In 2006, due to the cancellation of the "Joint Die-Development Project", and the resultant price competition or "price wars" that ensued, the profitability of the Defendants Tong Yang, Jui Li and Gordon dwindled temporarily, until the agreement was reinstated to develop about sixty (60) sets of dies, with the final target being one hundred (100) sets.

b) THE UNIFIED TOOLING PROGRAM

54. In April 2004, Defendants Gordon, Tong Yang, API and Jui Li formed a “Tooling Alliance”, also called the “Unified Tooling” program wherein they reached production/marketing agreements to stop price-cutting competition in overseas markets in order to boost profit margin. The Defendants agreed to stop competing with different tools and to work out a production arrangement that ended competition and they ensured that a price floor would be fixed, established and maintained and that pricing would not fall below these agreed-upon levels.

55. This production and price-fixing agreement resulted in continued success to the Defendants’ goal of market domination and increased profits. Because the Defendants had shared costs, had eliminated the need to distinguish themselves in the marketplace, and had agreed to production and pricing levels, the Defendants’ profits largely escalated. For example, Defendant Gordon’s profits rose rapidly from 15% to 25% to approximately 38%. Defendant Tong Yang’s (then TKY) profits rose higher than 19%. In 2006 the “Tooling Alliance” agreement was renewed at Defendant Jui Li’s suggestion and Defendants Gordon and TKY agreed, sharing the profit equally on more than 30 sets of tools.

c) STRATEGIC ALLIANCE TO ENHANCE COOPERATION AND  
AVOID MALICIOUS PRICE-CUTTING COMPETITION

56. In October 2005, as part of their continuing international agreement to fix prices and to control production, the Defendants organized yet another “strategic alliance” to enhance collusive cooperation and avoid price-cutting competition. The alliance was organized to further artificially strengthen the Defendants’ market information collection, supply-chain management, negotiating power with foreign customers, and to otherwise increase consolidation of

international market power. A sophisticated cooperative marketing alliance was implemented to prevent reliance on low prices to attract customers. Alliance members include Defendants Tong Yang, Jui Li and API.

d) R&D ALLIANCE OF DIGITIZED DIE-DEVELOPMENT TECHNOLOGY FOR AM SHEET-METAL AUTOMOTIVE PARTS

57. In November of 2006, to further maintain, develop, and grow their international cartel and price-fixing agreement, the Defendants jointly set up a cooperative arrangement with Taiwan's steel maker, China Steel Corp. ("CSC") called the "R&D Alliance of Digitized Die-development Technology for AM Sheet-metal Automotive Parts". Together, the Defendants and CSC planned to spend at least \$1.96 million on technology development and expected to increase the revenue generated from AM Sheet Metal Parts exports (but control the volume of production) by about \$210.84 million per year, for a total of over \$813 million per year. CSC technical vice-president Chen Yu-song pointed out that the "thrust behind the new R&D alliance was two-fold –to make their downstream customers [i.e. the Defendants] more successful and profitable, in turn expecting to trigger more purchases from CSC". Participants would experience upgraded engineering techniques and expedited development process, therefore limiting competition in the AM Sheet Metal Parts market. Alliance members include Defendants Gordon, API, Tong Yang, and Jui Li.

58. The Defendants facilitated their collusion through these alliances with the purpose and effect of illegally fixing output and setting prices amongst themselves. The Defendants used the alliances as opportunities to collude on AM Sheet Metal parts, especially those sold in North America.

59. During the time that the Defendants engaged in their “cooperative business arrangements”, they intentionally agreed to abandon competition amongst themselves with the ulterior motive of controlling the market and increasing prices for AM Sheet Metal Parts. This was accomplished through cutting prices and instead, cooperating with each other to illegally increase their profits. The Defendants exchanged confidential pricing information and mapped out comprehensive price fixing and output agreements, including limiting supplies. The Defendants engaged in this behaviour based on the basic economic principle that reducing supply results in price inflation, which in turn increased their profit margins. By secretly agreeing to limit supplies, the Defendants knew they would be able to inflate prices and to increase profit margins. Furthermore, the Defendants utilized a misleading marketing campaign replete with pretextual reasons for the price hikes (such as the rising price of steel, as discussed below) to cover their anti-competitive behavior so that they could increase their market share and maintain higher or artificially-inflated pricing in North America.

60. The Defendants’ collusive activity was highly lucrative. A January 15, 2007 article titled: “TYC, Gordon Report Lucrative Auto Part Sales for Dec. 2006” noted that Gordon attributed its high monthly revenue to a “successful alliance between some local [aftermarket] sheet-metal parts suppliers” and increased orders from the United States. The increased profits were a result of the Defendants’ overcharge of AM Sheet Metal Parts in North America. Accordingly, the Defendants increased their profits to the detriment of Class Members, who had no reasonable market alternative and had to pay artificially inflated prices as a result of the Defendants’ anti-competitive conduct. In fact, prices for AM Sheet Metal Parts in North America dramatically increased. For example, Defendant Gordon increased the prices of the parts it sold in the United States by 106%. Therefore, as a direct result of the Defendants’ unfair

and anti-competitive agreements and collusion, Class Members, paid an “overcharge” or artificially inflated price for AM Sheet Metal Parts.

### **iii. CONSPIRATORIAL MEETINGS**

61. Since at least 2003, the Defendants agreed to simultaneously increase prices and to limit output and they attended regular meetings to this effect. They accomplished their illegal objectives by exchanging confidential pricing information and by enforcing penalties for any Defendants that breached their agreements. For example, in March 2004, the Defendants agreed to institute a price hike for AM Sheet Metal Parts sold into North America, the specific purpose of which was to increase the Defendants’ margins to 20%-30%. The Defendants falsely and pretextually attributed the rising prices to the rising cost of steel.

62. The Defendants also routinely met and agreed, since at least 2003, on a floor price at which they would sell AM Sheet Metal Parts to buyers in North America and at which they would sell those same Parts to each other. In order to enforce this price-fixing agreement, the Defendants instituted penalties for any company that sold below those agreed-upon prices.

63. The Defendants further colluded to dramatically increase the prices of selected parts. These joint export price hikes were cleverly applied to parts that had the highest potential for competition because they were the products most likely to experience price erosion as a result of that competition. The Defendants raised prices by 5% to 15% for items that suffered weak competitiveness and were produced with jointly developed molds and dies. The increase for highly competitive items, such as doors, fenders and engine hoods, most of which the companies produced with their own molds and dies, were as high as 100%.

64. The Defendants monitored adherence to their illegal agreements to avoid price-cutting competition. The Defendants required involvement in a comprehensive production scheme, under which each company was assigned to produce parts for car models. The scheme was expected to push profit margins up to 30% from the current level of under 10% and raise prices for consumers.

#### **iv. UNIFIED TOOLING PRODUCTION ARRANGEMENT**

65. The Defendants did not limit their artificial manipulation of the relevant market to their pricing agreements. The Defendants further effectuated their anticompetitive collusion by agreeing to limit capacity and to reduce output of AM Sheet Metal Parts. The Defendants rebuilt the production and marketing order for Taiwan-made sheet metal parts sold in North America and set up a similar production/marketing negotiation mechanism in order to avoid overlapped production.

66. As mentioned earlier, the Defendants created what is called the “Unified Tooling” program. Under this scheme, the Defendants entered into secret agreements wherein they agreed to share costs in developing tools, molds, and dies for pressing sheet metal parts that would be sold to purchasers in North America. The Defendants agreed to quit competing with regard to pressing sheet metal parts and developing different of the Defendants’ tools and/or dies that produced certain AM Sheet Metal Parts, production of those Parts were limited to one or two of the producer Defendants. Thereafter, all orders for any such product that was produced from “Unified Tooling” were filled with “Unified” Parts that were produced by only one or two of the Defendants.

67. The Defendants would provide a new pricing scheme for such “Unified” Parts. When the parts became “Unified,” their costs dramatically increased and all Defendants sold them at the same fixed price or fixed price range.

68. The prices of “Unified Tooling” parts would be much lower if the Defendants competed against each other by offering lower prices; however, this would have been a violation of the terms of the price fixing agreement with their supposed competitors.

69. The number of AM Sheet Metal Parts that fell under the “Unified Tooling” program increased exponentially during the Class Period, from a few dozen early on to more than 1,000 today. This means that at least 20% of all AM Sheet Metal Parts sold in North America fell under the “Unified Tooling” arrangement or program, and the number continues to rise.

70. The intended effect of the “Unified Tooling” arrangement was to artificially manipulate the North American market for AM Sheet Metal Parts in order to reduce and/or eliminate competition and increase the prices for those Parts.

71. The actual effect of the “Unified Tooling” arrangement or program on the prices of AM Sheet Metal Parts was profound; prices increased dramatically, by as much as three or four times the pre-Unified price, or more.

72. The goal of the Defendants’ collusion was to increase their profit margins by two to three-fold. The collusion was highly successful. Overall, prices for products that became part of the “Unified Tooling” program increased in price from 20% to 100% and profit margins increased during the Class Period as a result.

**v. THE UPWARD EFFECT ON REVENUE**

73. The Defendants' adherence to their collusion had immediate and substantial results. The years leading up to the commencement of the Defendants' anti-competitive behaviour were met with severe price-cutting competition in the AM Sheet Metal Parts market. For example, Sonny Pan, vice-president of Defendant Gordon and chairman of the Sheet-Metal Parts Alliance (the "SMPA"), stated that the average profit margin for AM Sheet Metal Parts had fallen to under 10% in the early 2000s. These profit cuts eventually incentivized the Defendants to fix prices, to engage in collusive activities, and to control output.

74. Perhaps most notable was a 1999 Illinois class action instituted against State Farm Mutual Auto Insurance Company (*Avery vs. State Farm Mutual Auto Insurance Company – "State Farm"*) that had a dramatic effect on the aftermarket automotive parts market. On or about October 4, 1999, a jury awarded over \$1 billion in damages (including punitive) against State Farm for breaching contracts with policy holders when it required the use of non-original equipment parts, including AM Sheet Metal Parts, in the repair of vehicles damaged in crashes . In the wake of this sizeable damages award, automotive insurance companies suspended the use of AM Sheet Metal Parts in their repairs. As a result, the North American market for aftermarket parts, including AM Sheet Metal Parts dropped by about 40% in 2000, resulting in challenging times for Taiwan AM Part suppliers, predominantly the Defendants.

75. In fact, in 2000, only 69% of automotive body repair shops in the United States reportedly used and installed AM Sheet Metal Parts.

76. On or about April 5, 2001, the Illinois Appellate Court affirmed the judgment, lowering the damage award.

77. In August of 2005, the Illinois Supreme Court overturned the judgment. This greatly enhanced the willingness of both auto-insurance companies and general consumers to use aftermarket replacement parts, including AM Sheet Metal Parts, to repair their cars.

78. In between the initial ruling in 1999 and the Supreme Court's reversal, the Defendants were highly motivated to coordinate and to maintain their collusion because of its dramatic upward effect on revenues in spite of a marked decrease in demand. Contrary to market expectations, the Defendants' revenues jumped considerably each year during their collusive activities. As a result of the combination, Defendant Tong Yang (then TKY) saw a successive rise in sales, ranging from \$60.7 million in 2003 to \$156.7 million in 2005 to US\$184 million in 2008—a 260% improvement with steady and significant annual increases. Defendants Gordon, Jui Li, and API saw similar sales growth during those years.

79. In 2005, Defendant Gordon's revenues increased to \$83.6 million, a 300% increase from 2003. By 2008, Defendant Gordon brought in revenue of \$100.5 million. Gordon attributed its increase in earnings and revenue to its strategic alliance with its local counterparts as well as used the pretextual reason of "bad weather in North America". Similarly, Defendant Jui Li saw its revenues go from \$48.4 million to \$126.2 million, another 260% improvement, over the same period.

80. By 2008, over two (2) years since the Supreme Court's reversal in State Farm, 97% of automotive body repair shops in the United States reportedly used and installed AM Sheet Metal Parts.

**III. THE STRUCTURE AND CHARACTERISTICS OF THE AM SHEET METAL PARTS MARKET RENDER THE COLLUSION EVEN MORE PLAUSIBLE AS THEY ARE CONDUCTIVE TO ANTI-COMPETITIVE PRICE FIXING**

81. For at least as long as the Class Period, the AM Sheet Metal Parts industry has demonstrated numerous characteristics that have served to facilitate the Defendants' unlawful collusion. By way of illustration and not limitation, the industry has exhibited (1) high barriers to entry for new market participants, (2) quality certification, (3) mutual interchangeability of Defendants' products (high fungibility), (4) lack of available substitutes, (5) inelasticity of demand, (6) market concentration among a limited number of participants, (7) commoditization, (8) weak demand, (7) a large number of purchasers with limited purchasing power, and (8) opportunities and ease of information sharing among the Defendants.

**A. High barriers to entry for new suppliers**

82. A collusive agreement or combination that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supracompetitive pricing and profits. Where, however, there are significant barriers to entry, new entrants are less likely. Thus, barriers to entry help to facilitate the formation and maintenance of a cartel.

83. Companies seeking to manufacture and to sell AM Sheet Metal Parts without having any prior involvement in the AM Sheet Metal Parts market face various significant barriers to their entry.

84. These barriers to entry facilitated the Defendants' collusion as described herein, including, but not limited to: (a) the Defendants' established market positions; (b) the collusive

business culture among Taiwanese manufacturers of AM Sheet Metal Parts, namely the Defendants; (c) the substantial research and development costs involved; (d) the development and maintenance of a robust distribution system; (e) investment in large tools and dies that can create or “stamp” sheet metal into proper product shapes; and (f) the Defendants’ lower design costs based on the Defendants’ acts of unfair competition related to patent, trade secret and other intellectual property infringement.

85. Defendant Gordon’s vice-president, Sonny Pan, stated that the “AM parts business requires large and continuous injections of cash into the development of molds and dies if [sic] a comprehensive range of products, and thus competitiveness, is to be maintained”.

86. The AM Sheet Metal Parts industry has a number of “High Entry Barriers” that make the relevant market extremely difficult for new entrants to penetrate, namely:

- High capital costs: The cost of developing one tooling set is estimated to be around US\$150,000 to US\$180,000,
- Limited available capacity of tooling plants: It is therefore difficult for competitors to secure available tooling development capacity,
- Long development cycle for tooling sets: The average time required for developing one tooling set is established to be 6 months,
- Characteristics of the market: The ability to offer complete product line-up of collision parts is required to meet global demand of one-stop ordering,
- Ability to manufacture aftermarket products that meet quality certification systems: the Certified Automotive Parts Association (“CAPA”) & the Manufacturers’ Qualification and Validation Program (“MQVP”) (described in section B below), and

- Tooling accumulation and experience: Major manufacturers in this industry have decades of experience and have accumulated thousands of toolings.

87. The AM Sheet Metal Parts manufacturing industry is a mature one dominated by established corporations, each having global market reach. These companies have significant experience in the industry and have established reputations with both sellers of raw materials and purchasers of finished AM Sheet Metal Parts. These companies typically have access to significant financial resources that not only allow them to commit the capital necessary to bring online new fabrication operations and facilities or to expand/retrofit existing ones to meet market demand and adjust to technological changes, but also to establish and to secure necessary supply chain commitments for all raw materials that they require.

88. For a prospective AM sheet metal part manufacturer, setting up competitive manufacturing operations and supply chain operations is a significant financial and logistic hurdle to market entry. A new entrant seeking to build AM sheet metal part fabrication operations and facilities faces not only the sizeable start-up cost of building fabrication plants, but also the costs of acquiring the necessary production technology, hiring and retaining skilled and knowledgeable labour, and securing the raw materials and supply chain relationships necessary to manufacture competitive products. These costs are highly prohibitive and would exceed hundreds of millions of dollars. For example, in order for a new entrant to be competitive within the industry, its mold/die development as well as electro-plating and surface coating capability is a basic requirement.

89. Ultimately, to be competitive, a new market entrant has to commit to significant financial and operational undertakings to establish itself in an industry where—in the absence of any price

manipulation—profit margins are not large and economies of scale must be achieved in order to reach profitability.

90. These substantial barriers to entry facilitated the collusive oligopoly because they enabled the Defendants to set supracompetitive prices without fear that new entrants would, or could, come into the market and undercut those prices.

91. Even if a would-be competitor sought to enter the market, it could not survive because the Defendants colluded to temporarily cut the prices of the competing parts sold by the new market entrant. In addition, the need to obtain various quality certifications for AM Sheet Metal Parts makes it difficult for a would-be competitor with new products to compete. Once the would-be competitor is sufficiently undercut and eliminated from the market, the Defendants resume their agreement to artificially raise prices.

#### **B. Quality certification**

92. Two (2) certification systems that are widely used in North America relating to sheet metal manufacturing include CAPA and MQVP. Certification leads to increased sales as consumers are much more likely to use non-OEM parts if they bear marks showing CAPA or MQVP approval and further, some insurance companies actually require them. Certification of AM Sheet Metal Parts is a challenge because it may ostensibly require even higher levels of quality and safety than that which is required for OEM parts; therefore, the Defendants' obtaining of CAPA certification facilitated the maintenance of the illegal price-fixing scheme described herein, as it created further barriers to entry and limited competition.

93. CAPA is a non-profit organization established to develop and oversee a test program guaranteeing the suitability and quality of automotive parts. It ostensibly includes a detailed review and inspection of a participant's factory and manufacturing processes, followed by an analysis conducted by an independent testing laboratory. The factory and parts continue to purportedly be subject to random inspection by CAPA to ensure quality standards. All Defendants are participating manufacturers in the CAPA certification program and prominently display, advertise, and promote their approval as CAPA-certified parts manufacturers. In April of 2009, Defendant Gordon was recognized by CAPA with an award for providing the U.S. market with the most CAPA parts in 2008.

94. MQVP is another certification program for the quality and safety of non-OEM parts sold in North America. The program outlines policies and quality-management practices designed to ensure that repair parts are equal to original parts in form, function, durability, and appearance. Defendants Tong Yang, Gordon, and Jui Li are participating manufacturers in the MQVP certification programs.

95. These certification systems are another example of the many entry barriers into the AM Sheet Metal Parts market, which enabled the Defendants to engage in their collusive activities without fear of competition from a new market player.

### **C. Mutual interchangeability of Defendants' products (high fungibility)**

96. AM Sheet Metal Parts are a highly fungible product because the manufacturers offer essentially the same products for the same vehicles: hoods, fenders, bumpers, doors, etc. Specifically, AM Sheet Metal Parts are assigned interchangeable part numbers, whereby a single part number is assigned to a sheet metal product manufactured by several Defendants. For

example, when a customer orders a replacement part for a particular make and model of an automobile, the customer typically does not request a certain manufacturer or have a preference whether the part comes from Defendant Tong Yang (then TKY), Gordon, Auto Parts or Jui Li because all AM Sheet Metal Parts are seen as interchangeable by customers.

97. Absent the alleged collusion, purchasers of AM Sheet Metal Parts would have selected a manufacturer based on price, and the Defendants would have competed, as they had in the distant past, largely on price. Price fixing is particularly effective in highly fungible markets as there are few, if any, factors other than price, by which a consumer makes a purchasing decision.

98. There are few defining physical characteristics that differentiate Defendants' various AM Sheet Metal Parts from each other, less so given the various alliances described hereinabove.

99. Because purchasers are aware of the mutual interchangeability of Defendants' respective AM Sheet Metal Parts along with the possibility that certain products that are not directly fungible can still replace each other, Defendants present purchasers a broad portfolio of product choices that can meet their needs. Accordingly, but-for Defendants' noncompetitive maintenance of pricing, price would be the primary means of competition among Defendants in the AM Sheet Metal Part market.

#### **D. Lack of available substitutes**

100. There are no reasonably interchangeable substitutes for AM Sheet Metal Parts. AM Sheet Metal Parts constitute a market distinct from parts supplied by third parties to vehicle manufacturers for incorporation into new vehicles, and also distinct from the market for OEM parts made by the manufacturers of automobiles, or for those manufacturers by third parties.

101. The prices of AM Sheet Metal Parts are much lower than OEM part prices. There is a significant difference in the wholesale price, often as large as 50%-100%, between an OEM part and a comparable AM Sheet Metal Part. In fact, most insurance carriers who supply coverage for automobile collisions require automotive body shops to purchase and use aftermarket products on repairs paid for by the insurance carriers (As in the case of State Farm). The Property and Casualty Insurers Association of America found that non-OEM parts save about \$2.8 billion in insurance costs every year. Accordingly, AM Sheet Metal Parts and OEM parts are not reasonably interchangeable substitutes from the point of view of the purchaser and are not in direct and substantial competition with each other.

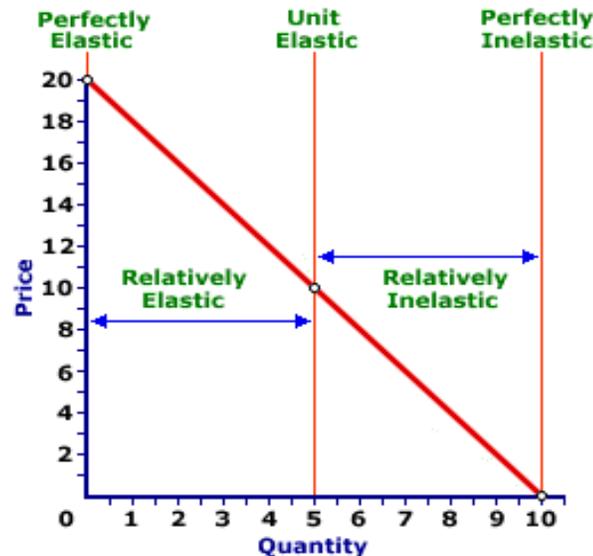
102. The lack of reasonably interchangeable substitutes facilitated the collusion because it enabled the Defendants to set supra-competitive prices without fear that customers would switch to other alternatives.

#### **E. Inelastic demand**

103. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. Demand is said to be inelastic where customers have nowhere to turn to for an alternative, cheaper product of similar quality and must continue to purchase an item despite a price increase. Because of the lack of substitute products, the AM Sheet Metal Parts market should not see a large decrease in demand as prices rise. The market is inelastic in that an increase in prices does not result in a drop in revenue or demand.

104. In other words, inelastic demand means that increases in price result in limited declines in quantity sold in the market. For a cartel to profit from raising prices above competitive levels, demand must be inelastic at competitive prices such that cartel members are able to raise prices

without triggering a decline in sales revenue that would make the price increase unprofitable. In simple terms, demand is inelastic when the loss in volume arising from a price increase is small relative to the magnitude of the increase in price, allowing higher prices to increase revenues and profits.



105. Because the demand for AM Sheet Metal Parts is inelastic, it is a market favourable for collusive activity. When there are few or no substitutes for a product, purchasers have little choice other than to pay higher prices in order to produce their product.

106. In other words, for a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues and profits, as customers purchased substitute products or declined to buy altogether. Demand is said to be “inelastic” if an increase in the price of a product results in only a small, if any, decline in the quantity sold of that product. Because demand for AM Sheet

Metal Parts is inelastic consumers have nowhere to turn for alternative, cheaper products of similar quality and so they continue to purchase AM Sheet Metal Parts despite price increases.

**F. The market for AM Sheet Metal Parts is highly concentrated**

107. Simply put, market concentration facilitates collusion as the fewer firms that dominate the market, the more power they maintain. If an industry is divided into a large number of small firms, the current gain from cheating on a cartel (profits from sales captured from other cartel members through undercutting of the cartel-fixed price in the current time period, which risks causing the cartel to fall apart in the future) is large relative to the firm's possible gains from the cartel's continuing future success (the firm's future share of the total cartel profits if collusion were to continue successfully). Conversely, with a more concentrated industry, a greater share for a colluding firm in future cartel profits tips the balance in favor of continued collusion, and away from any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and gaining a transitory increase in market share.

108. Market power in the AM Sheet Metal Part manufacturing industry itself is highly concentrated—a fact that is conducive to the type of collusive activity alleged herein.

109. Significant market power is concentrated in the Defendants as they are the main manufacturers of AM Sheet Metal in Taiwan and their products constitute the main AM Sheet Metal imports into North America.

**G. Commoditization**

110. When a product is characterized as a commodity, market participants typically compete on the basis of price rather than other attributes such as product quality or customer service.

Where competition occurs principally on the basis of price, it is easier to implement and monitor a cartel because price is more often objectively measurable and observable than non-price factors such as service.

111. Because AM Sheet Metal Parts are products generally that have relatively standardized characteristics for the various mutually interchangeable automobiles, the AM Sheet Metal Parts at issue are largely commoditized.

#### **H. Weak Demand**

112. Static or declining demand is one factor which makes the formation of a collusive arrangement more likely. Under normal business conditions, when faced with weak demand conditions, firms will attempt to increase sales by taking market share from competitors by decreasing prices. For this reason, firms faced with static or declining demand have a greater incentive to collude to avoid price competition with competitors in order to ballast their declining business.

113. As alleged herein, the overall demand for AM Sheet Metal Parts markedly declined in 1999 following the State Farm decision and only after the Supreme Court reversed the decision did the Defendants experience comparable demand.

#### **I. Large Number of Purchasers With Limited Purchasing Power**

114. In a market with many purchasers, each of whom forms a small share of the total marketplace, there is less incentive for cartel members to cheat on collusive pricing arrangements, since each potential sale is small while the risk of disrupting the collusive pricing agreement carries large penalties.

115. In the market for AM Sheet Metal Parts, the Defendants each have historically sold and currently sell to a wide number of purchasers.

116. Defendants therefore had many reasons during the Class Period to coordinate pricing and market supply availability with each other within the auspices of their cartel.

117. Defendants concertedly priced their respective AM Sheet Metal Parts during the Class Period.

#### **J. Opportunities and ease of information sharing among Defendants**

118. Because of their common and open membership in the various trade industry groups and “alliances” detailed above, there were many opportunities both before and during the Class Period for the Defendants to collude by discussing competitive information regarding their respective AM Sheet Metal Parts. The ease of communication was facilitated by the use of meetings, telephone conversations, e-mail messages, written correspondence and text messaging. Defendants took advantage of these opportunities to discuss and to agree upon their pricing for the various types of AM Sheet Metal Parts that they produce.

119. Industry trade associations actually make a market more susceptible to collusive behaviour because they can provide a pretext under which conspirators can exchange sensitive company information such as pricing and market allocation.

120. A number of industry trade associations exist in the AM Sheet Metal Part industry, some of which the Defendants are members, namely, the Sheet-Metal Parts Alliance (the “SMPA”), the Taiwan Auto Body Panels Association (the “TABPA”), and the Automotive Aftermarket Products Exposition (the “AAPEX”).

#### IV. CONCEALMENT

121. Plaintiff and members of the Class did not discover and could not have discovered through the exercise of reasonable diligence, the existence of the collusion and/or conspiracy alleged herein as competition and law enforcement authorities have not yet begun investigations.

122. The Defendants engaged in a secret conspiracy that did not give rise to facts that would put Plaintiff or the Class on inquiry notice that there was an agreement or collusion among AM Sheet Metal Part manufacturers to artificially fix, raise, maintain and/or to stabilize prices, as well as to restrict their respective output. As discussed above, Defendants gave pretextual justifications for the pricing changes and the reductions in output that occurred during the Class Period.

123. Indeed, Defendants relied on a variety of market-based explanations for pricing changes and reductions in output in order to conceal the conspiracy.

124. Even if the explanations that the Defendants provided could be grounded partly in fact, Defendants still disproportionately manipulated prices beyond any reasonably justifiable adjustments necessary to account for any actual pricing impact. Indeed, the excuses given by Defendants for their price changes were always misleading (if not outright false), because they lulled the Plaintiff and members of the Class into believing that the price changes were the normal result of competitive and economic market forces, rather than the product of collusive, unlawful efforts. The Defendants made statements in the media in support of price changes that were presumed to be true and were designed to convince members of the Class to pay purportedly legitimate prices.

125. Defendants' explanations for price changes were pretextual and materially false and/or misleading and served only to cover up Defendants' anticompetitive conduct. As a result of Defendants' concealment, the running of any statute of limitations/ prescriptive period has been tolled/ suspended with respect to any claims that Plaintiff and the Class members have as a result of the anticompetitive and unlawful conduct alleged herein.

126. By reason of the alleged violations, the Plaintiff and the members of the Class have sustained economic loss by having paid higher prices for AM Sheet Metal Parts than they would have paid in the absence of the Defendants' illegal contract, combination, and/or conspiracy, and, as a result, have suffered damages in an amount presently undetermined.

127. The Defendants, when committing the acts as alleged herein, knew or ought to have known that AM Sheet Metal Parts would be sold in Canada, including within the province of Ontario.

128. The Defendants' conduct as alleged herein was intended to, and did in fact, cause the members of the class to suffer a prejudice in Canada, by means of having to pay artificially inflated prices for AM Sheet Metal Parts.

129. Defendants' explanations for price changes and extended lead times were pretextual and materially false and/or misleading and served only to cover up Defendants' anticompetitive conduct. As a result of Defendants' concealment, the running of any statute of limitations/ prescriptive period has been tolled/ suspended with respect to any claims that Plaintiff and the Class members have as a result of the anticompetitive and unlawful conduct alleged herein.

## **THE REPRESENTATIVE PLAINTIFF**

130. As briefly outlined above in paragraph 3, on or about February 15, 2011, the Plaintiff had a repair done to the body of his automobile, a 2007 Toyota Yaris, at Country Customs at 765 Limoges Road, in Limoges, Ontario for approximately \$1,864.50 including taxes.

131. The repair that the Plaintiff had done was to replace the front driver side door and the rear driver side door (i.e. the front and back doors on the left side of the automobile) with aftermarket automotive sheet metal doors.

132. Due to the Defendants' conduct, Plaintiff was deprived of the benefit of free market competition, and because of this, he was charged a higher price for the products that he purchased.

## **CAUSES OF ACTION**

- **UNLAWFUL INTERFERENCE WITH ECONOMIC INTERESTS**

133. During the relevant time period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, conspired with each other and with other manufacturers and distributors of AM Sheet Metal Parts to illegally fix the prices of AM Sheet Metal Parts sold in Canada. In furtherance of the conspiracy, at times and places some of which are unknown to the Plaintiff, the Defendants wrongfully, unlawfully and lacking *bona fides* engaged in communications conversations and attended meetings with each other in which these persons unlawfully agreed to:

- (a) Allocate the market share and/or to set specific sales volumes of AM Sheet Metal Parts that each company would manufacture and supply in Canada and elsewhere;
- (b) Fix, increase and/or maintain at artificially high levels the prices at which the Defendants and other manufacturers and distributors of AM Sheet Metal Parts would sell AM Sheet Metal Parts in Canada;
- (c) Exchange information in order to monitor and enforce adherence to the agreed-upon prices for AM Sheet Metal Parts;
- (d) Prevent or lessen, unduly, competition in the manufacture, import, export, distribution and/or sale of AM Sheet Metal Parts in Canada and elsewhere by reducing the supply; and
- (e) Intentionally cause harm to the Plaintiff and to members of the Class.

134. The North American Subsidiaries, TYG Products, L.P. and Cornerstone Auto Parts, LLC, participated in and furthered the objectives of the conspiracy knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, thereby acted as agents in carrying out the conspiracy and are liable for such acts.

135. The North American Subsidiaries participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

- **CIVIL CONSPIRACY (PREDOMINANT PURPOSE CONSPIRACY & UNLAWFUL MEANS CONSPIRACY)**

136. Further, or alternatively, the tort of predominant purpose conspiracy can be made out as the Defendants:

- (a) Acted in combination by agreement or common design to illegally increase their profits on the sale of AM Sheet Metal Parts;
- (b) Had the predominant purposes and predominant concerns to intentionally cause injury to the Plaintiff and the other Class Members by requiring them to pay artificially high prices for AM Sheet Metal Parts; and
- (c) The Defendants' conduct caused harm to the Plaintiff and to other Class Members.

137. Further or alternatively, the acts alleged in this claim were unlawful acts directed towards the Plaintiff and other purchasers of AM Sheet Metal Parts in Canada amounting to the tort of unlawful means conspiracy in that the Defendants:

- (a) Acted in combination, by agreement or common design, to illegally increase their profits on the sale of AM Sheet Metal Parts;
- (b) Are liable for the conspiracy and/or are in breach of the *Competition Act*;
- (c) Directed their unlawful conduct at the Plaintiff and at the other Class Members;
- (d) Knew or ought to have known in the circumstances that their conduct would likely cause injury to the Plaintiff and to other purchasers of AM Sheet Metal Parts; and

- (e) Caused harm through their unlawful conduct in furtherance of their conspiracy to the Plaintiff and to the Class Members.

138. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

139. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to him and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated such that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to manufacture, import, export, distribution and/or sell the AM Sheet Metal Parts;
- (d) Each Defendant owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, import, export, distribute, and/or to sell the AM Sheet Metal Parts; and
- (e) The Defendants intended that their businesses be run as one global business organization.

140. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate.

141. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to:

- (a) Harm the Plaintiff and other Class Members by requiring them to pay artificially high prices for AM Sheet Metal Parts; and
- (b) Illegally increase their profits on the sale of AM Sheet Metal Parts.

142. In furtherance of the conspiracy, during the Class Period, the following acts were done by the Defendants, their servants and agents and other manufacturers and distributors of AM Sheet Metal Parts:

- (a) They participated in meetings, conversations and communications in Taiwan, in the United States and/or elsewhere to discuss prices of AM Sheet Metal Parts to be submitted in Canada and elsewhere;
- (b) They agreed to fix, increase and maintain at artificially high levels the price of AM Sheet Metal Parts and to coordinate price increases for the sale of AM Sheet Metal Parts;
- (c) They agreed to coordinate prices of AM Sheet Metal Parts sold in Canada and elsewhere;
- (d) They agreed to allocate the volumes of sales of, and customers and markets for AM Sheet Metal Parts among themselves;

- (e) They agreed to depress the supply of AM Sheet Metal Parts;
- (f) They met secretly to discuss prices and volumes of sales of AM Sheet Metal Parts;
- (g) They exchanged information regarding the prices and volumes of sales of AM Sheet Metal Parts for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (h) They instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy;
- (i) They sold AM Sheet Metal Parts in Canada and elsewhere at collusive and non-competitive prices;
- (j) They accepted payment for AM Sheet Metal Parts at collusive and non-competitive prices;
- (k) They employed measures to keep their conduct secret, including the provision of false statements to the public to explain increased prices for AM Sheet Metal Parts; and
- (l) They disciplined any corporation which failed to comply with the conspiracy.

143. The acts alleged in this claim were also in breach of Part VI of the *Competition Act* and render the Defendants liable to pay the damages which resulted pursuant to s. 36 of the *Competition Act*.

144. Further, or alternatively, the acts alleged in this claim were unlawful acts directed towards the Plaintiff and other purchasers of AM Sheet Metal Parts in Canada which unlawful acts the Defendants knew in the circumstances would likely cause injury to the Plaintiff and the

other purchasers of AM Sheet Metal Parts and the Defendants are liable for the tort of civil conspiracy.

145. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

146. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to him and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to manufacture, import, export, distribute, and/or to sell the AM Sheet Metal Parts;
- (d) Each Defendant owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, import, export, distribute and/or sell the AM Sheet Metal Parts; and
- (e) The Defendants intended that their businesses be run as one global business organization.

147. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate.

## **DAMAGES**

- **Compensatory Damages**

148. The Plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing prices of AM Sheet Metal Parts at artificial and non-competitive levels.

149. During the Class Period, the Plaintiff and other Class Members have, directly or indirectly, purchased millions of dollars of AM Sheet Metal Parts manufactured, imported, exported, distributed and/or sold by the Defendants and other manufacturers and distributors of AM Sheet Metal Parts who participated in the unlawful conspiracy described above. By reason of the alleged violations of the *Competition Act* and the unlawful conduct at common law, the Plaintiff and the other Class Members paid more for AM Sheet Metal Parts than they would have paid in the absence of the illegal combination and conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

150. The Plaintiff asserts that the combined damages of himself and of the other Class Members are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the Defendants and other manufacturers and distributors of AM Sheet

Metal Parts who participated in the unlawful conspiracy described above for AM Sheet Metal Parts and the prices which would have been obtained in the absence of the illegal agreements (the Overcharge).

- **Punitive, Exemplary and Aggravated Damages**

151. The Defendants have taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

152. In addition, it should be noted since the Defendants are parts of a highly-revered, multi-billion dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

153. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

### **STATUTORY REMEDIES**

154. The Defendants are in breach of the *Competition Act* and/or other similar/equivalent legislation.

155. The Plaintiff pleads and relies upon competition and trade legislation and on the common law, as it exists in this jurisdiction, and the equivalent/similar legislation and common law in other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices.

- **Breach of the *Competition Act***

156. The Defendants' acts are in breach of s. 45 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*. Further or alternatively, the North American subsidiaries of the Taiwanese Defendants are liable to the Plaintiff and to the other Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s.46(1) of the *Competition Act*.

157. In furtherance of the conspiracy, during the Class Period, the following acts were done by the Defendants, by their servants and by their agents whereby they agreed to:

- (a) Fix, maintain, increase and/or control the prices of AM Sheet Metal Parts; and/or
- (b) Fix, maintain, control, prevent, lessen or eliminate the supply of competitively-priced AM Sheet Metal Parts by competitors.

158. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 46.

159. The North American subsidiaries of the Taiwanese Defendants implemented, in whole or in part, directives, instructions, intimations of policy and/or other communications for the purpose of giving effect to the conspiracy, combination, agreement or arrangement.

160. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

161. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

162. The Plaintiff reserves the right to elect at the Trial of the Common Issues to Waive the Unlawful Interference with Economic Interests and the Tort of Civil Conspiracy and to have damages assessed in an amount equal to the artificially-induced Overcharge from the sale of the AM Sheet Metal Parts.

163. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the AM Sheet Metal Parts and as such, *inter alia*, that:

- (a) The Defendants have obtained an enrichment by the artificially-induced Overcharge;

- (b) The Plaintiff and the Class Members have suffered a corresponding deprivation because of the artificially-induced Overcharge in the amount of such Overcharge attributable to the sale of AM Sheet Metal Parts in Canada; and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' inappropriate conduct and wrongful acts in conspiring to fix the price and allocate the market share of AM Sheet Metal Parts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

164. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by the artificially-induced Overcharge for the AM Sheet Metal Parts;
- (b) The Class Members suffered a corresponding deprivation because of the artificially-induced Overcharge in the amount of such Overcharge attributable to the sale of AM Sheet Metal Parts in Canada;
- (c) The artificially-induced Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;

- (e) The integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would, in respect of the artificially-induced Overcharge, render the imposition of a constructive trust unjust.

165. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

### **COMMON ISSUES**

166. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Did the Defendants engage in an agreement, contract, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of AM Sheet Metal Parts?
- (b) Did the Defendants take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?
- (c) Did the Defendants' conduct cause the prices of AM Sheet Metal Parts to be sold at artificially inflated and non-competitive levels?

- (d) Were members of the class prejudiced by the Defendants' conduct, and, if so, what is the appropriate measure of these damages?
- (e) Are members of the class entitled to, among other remedies, injunctive relief due to the continuing anticompetitive conduct and, if so, what is the nature and extent of such injunctive relief?
- (f) Are the Defendants liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?
- (g) Did the Defendants' acts or practices breach the *Competition Act* or other similar/equivalent legislation?

### **EFFICACY OF CLASS PROCEEDINGS**

167. The members of the proposed Class potentially number in the hundreds of thousands if not millions. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

168. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group Professional Corporation. These actions include *Petrella v. Jui Li Enterprise Company, Ltd. et alii*, an action commenced before the Superior Court of Quebec in Montreal (October 15, 2014 File No.: 500-06-000715-140).

169. Members of the proposed Class have no material interest in commencing separate actions. In addition, given the costs and risks inherent in an action before the courts, and the small amount being claimed by each person, many people will hesitate to institute an individual action against the Defendants. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

170. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgements on questions of fact and law that are similar or related to all members of the class.

171. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

172. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

## **LEGISLATION**

173. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act* and the *Competition Act*.

## **JURISDICTION AND FORUM**

### **Real and Substantial Connection with Ontario**

174. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendants engage in business with residents of Ontario;
- (b) The Defendants derive substantial revenue from carrying on business in Ontario;  
and
- (c) The damages of Class Members were sustained in Ontario.

175. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

### **DEFENDANTS' JOINT AND SEVERAL LIABILITY**

176. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to herself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;

- (c) Each company entered into a common advertising and business plan to manufacture, import, export, distribute and/or sell the AM Sheet Metal Parts;
- (d) Each Defendant owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, import, export, distribute and/or sell the AM Sheet Metal Parts; and
- (e) The Defendants intended that their businesses be run as one global business organization.

177. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate.

### **SERVICE OUTSIDE ONTARIO**

178. The originating process herein may be served *ex juris* on Defendants located outside Ontario, pursuant to subparagraphs (a), (c), (g), (h), (o) and (p) of Rule 17.02 of the Rules of Civil Procedure. Specifically, the originating process herein may be served without court order outside Ontario, on the basis that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));

- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute and the *Competition Act* (rule 17.02(n));
- (f) Against a person outside Ontario who is necessary and/or proper party to a proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (g) Against a person carrying on business in Ontario (rule 17.02(p)).

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