

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000715-140

(Class Action)  
SUPERIOR COURT

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**M. PETRELLA**

*Petitioner*

-vs.-

**JUI LI ENTERPRISE COMPANY, LTD.**, legal person duly constituted, having its principal place of business at No. 22, Kaonan Road, Jenwu Hsiang, 814 Kaohsiung, Kao-hsiung shih, Taiwan, R.O.C.

and

**TONG YANG INDUSTRY CO., LTD.**, legal person duly constituted, having its principal place of business at 98 An Ho Road, Section 2, City of Tainan, Taiwan, R.O.C.

and

**TYG PRODUCTS, L.P.**, legal person duly constituted, having its principal place of business at 1800 North McDonald Street, City of McKinney, State of Texas, 75071-0365, U.S.A.

and

**GORDON AUTO BODY PARTS CO., LTD.**, legal person duly constituted, having its principal place of business at No. 48 Nieh Hsi Road, Lu Chu Hsiang, Taoyuan Hsien, Taiwan, R.O.C.

and

**GORDON AUTO BODY PARTS USA CORP.**, legal person duly constituted, having its principal place of business at 26398 Deere Court, Suite 101, City of Murrietta, State of California, 92562, U.S.A.



and

**AUTO PARTS INDUSTRIAL LTD.**, legal person duly constituted, having its principal place of business at No. 456, Sec. 2, Kwoling Rd., 7 Lin, Kwo Ling Li, Jhongli City, Taoyuan County, 320, Taiwan, R.O.C.

and

**CORNERSTONE AUTO PARTS, LLC**, legal person duly constituted, having its principal place of business at 1801 Royal Lane, Suite 608, City of Dallas, State of Texas, 75229-3197, U.S.A.

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
&  
TO ASCRIBE THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

**I. GENERAL PRESENTATION**

**A) The Action**

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
  - all residents in Canada that purchased an Aftermarket Automotive Sheet Metal Part (an “AM Sheet Metal Part”) manufactured by a Respondent or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2003 and the present (the “Class Period”), or any other group to be determined by the Court;

Alternately (or as a subclass)



- all residents in Quebec that purchased an Aftermarket Automotive Sheet Metal Part (an “AM Sheet Metal Part”) manufactured by a Respondent or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2003 and the present (the “Class Period”), or any other group to be determined by the Court;
2. “Aftermarket Automotive Sheet Metal Part(s)” and/or “AM Sheet Metal Part(s)” means a replacement part 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;
  3. For decades, the Respondents have been the world’s leading manufacturers and direct competitors within the global AM Sheet Metal Part industry and they have been using their monopolistic power to unlawfully fix, raise, maintain and/or to stabilize the prices of AM Sheet Metal Parts and/or to reduce output or market availability;
  4. This lawsuit is based on the Respondents’ collusive conduct to artificially manipulate the market for AM Sheet Metal Parts. Specifically, Respondents abandoned competing with one another in favour of an agreement among themselves to cooperate and to coordinate in the manufacture, import, export, distribution, and/or sale of AM Sheet Metal Parts. This arrangement, explained Raymond Wu, current vice chairman (former president) of non-party Tong Yang Group (“TYG”), whose AM Sheet Metal Parts arm is Respondent Tong Yang Industrial Co. Ltd. (formerly known as Taiwan Kai Yih Industrial Co. Ltd. (“TKY”)) allowed Respondents to escape “malicious price cutting competition”, thus achieving very high profitability on AM Sheet Metal Parts;
  5. By reason of this anti-competitive and unlawful conduct, the Petitioner and the members of the class have paid artificially inflated prices for AM Sheet Metal Parts, whether directly, indirectly or as end-payers, than those that they would have paid in a competitive market, causing damages upon which they wish to claim;

## **B) The Respondents**

- **JUI LI**

6. Respondent 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;



7. During the Class Period, Respondent Jui Li, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts throughout Canada, including within the province of Quebec;

- **TONG YANG GROUP (“TYG”)**

8. Respondent 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, the whole as appears more fully from a copy of Respondent Tong Yang’s Consolidated Financial Statements for the Years Ended December 31, 2010 and 2009, from a copy of the CENS article entitled “Tong Yang Expands at Seven Sites to Meet Growing Demand” dated April 7, 2010, and from a copy of the CENS article entitled “Tong Yang Industrial to Merge with Taiwan Kai Yih in Sept. 2010” dated December 25, 2009, produced herein *en liasse* as **Exhibit R-1**;
9. Respondent 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;
10. During the Class Period, Respondents Tong Yang and TYG Products (collectively, “Tong Yang Group”), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts throughout Canada, including within the province of Quebec;
11. Given the close ties between the Tong Yang Group Respondents and considering the preceding, they are each solidarily liable for the acts and omissions of the other;

- **GORDON**



12. Respondent Gordon Auto Body Parts Co., Ltd. (“Gordon Taiwan”) is a Taiwanese corporation with its head office in Taoyuan Hsien, Taiwan. It is a leading manufacturer of AM Sheet Metal Parts that focuses on the North American market;
13. Respondent Gordon Auto Body Parts USA Corp. (“Gordon USA”) is an American corporation with its head office in California;
14. During the Class Period, Respondents Gordon Taiwan and Gordon USA, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts throughout Canada, including within the province of Quebec;
15. Given the close ties between the Gordon Respondents and considering the preceding, they are each solidarily liable for the acts and omissions of the other;

- **AUTO PARTS**

16. Respondent Auto Parts Industrial Ltd. (“API”) is a Taiwanese corporation with its head office in Taoyuan, Taiwan. It is the parent company of Respondent 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;
17. Respondent Cornerstone is an American corporation with its head office in Texas. It is a wholly-owned subsidiary of Respondent API and operates as its North American office;
18. During the Class Period, Respondents API and Cornerstone (collectively, “Auto Parts”), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, imported, exported, distributed and/or sold AM Sheet Metal Parts throughout Canada, including within the province of Quebec;
19. Given the close ties between the Auto Parts Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

**AGENTS**

20. Respondents’ conduct was authorized, ordered, and/or done by Respondents’ officers, agents, employees, and/or representatives while actively engaged in the management and operations of the respective Respondents’ businesses;



21. Each Respondent acted as the principal agent or joint venturer of or for the other Respondents with respect to the acts, violations, and common course of conduct as alleged herein;
22. The Respondents 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;

<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><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><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><b>Local Carmakers</b></p> <p>Yulon Motor , China Motor, Luxgen, Kuozui Motors</p> <p><b>Foreign Carmakers</b></p> <p>Honda, Nissan, Tesla, Ford, Chrysler, MSIL, Tata, M&amp;M, etc.</p>
<p><b>AM</b></p> <p>Jui Li Enterprise, Gordon Auto Body Parts, Taiwan Kai Yih Industrial, Auto Parts Industrial, Yuehcheng Co.</p>	<p><b>AM</b></p> <p>Jui Li Enterprise, Gordon Auto Body Parts, Taiwan Kai Yih Industrial, Auto Parts Industrial, Yuehcheng Co.</p>	

23. The Respondents carried out their illegal scheme with the assistance, coordination, and cover of several trade industry groups which facilitated the collusion, providing platforms for meetings to facilitate output-reduction and price-fixing coordination. These trade groups include, but are not limited to the following:

- i) The Sheet-Metal Parts Alliance (the “SMPA”),
- ii) The Taiwan Auto Body Panels Association (the “TABPA”), and
- iii) The Automotive Aftermarket Products Exposition (the “AAPEX”);

### **C) The Situation**

#### **I. The Automotive Aftermarket (“AM”)**

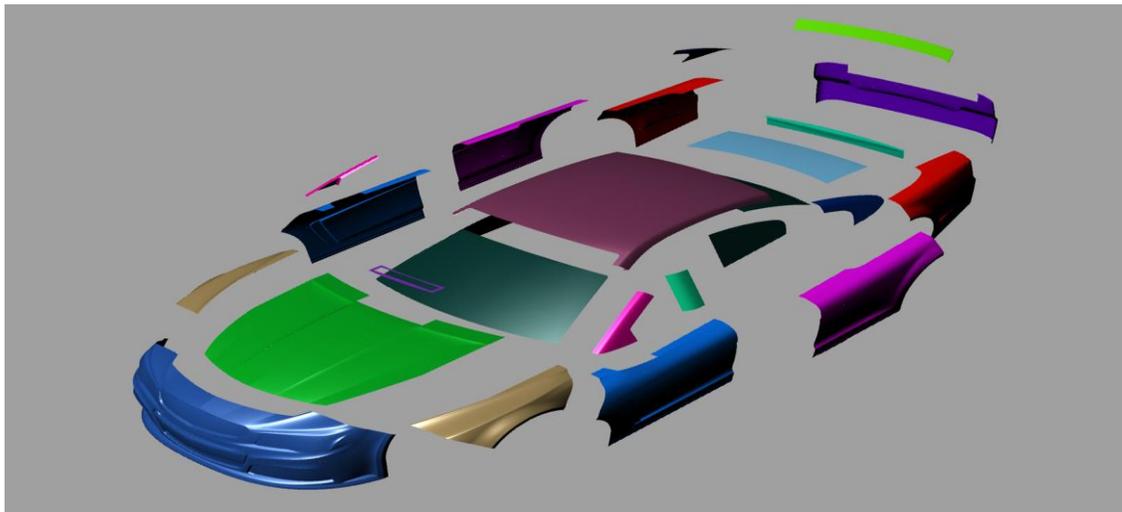
24. In 2011, there were 21.4 million registered vehicles on the road in Canada, the whole as appears more fully from a copy of the Maclean’s article entitled “Stuck in Traffic” dated January 11, 2011, produced herein as **Exhibit R-2**;

25. 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;

26. 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, accessories, chemicals and services, after the sale of the automobile by the OEM to the consumer;
27. This growing industry is now estimated as a \$274 billion market in North America with Canadian retail sales at just over \$19.4 billion, the whole as appears more fully from a copy of the Cross Canada article entitled "Automotive Aftermarket" and from a copy of the Automotive Industries Association of Canada (the "AIA") industry profile, produced herein *en liasse* as **Exhibit R-3**;
28. 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;



29. 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;
30. 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 Respondents' AM Sheet Metal



Parts comprise the vast majority of all AM Sheet Metal Parts sold in North America;

31. At all relevant times, the AM Sheet Metal Parts market has been a highly concentrated oligopoly controlled by the Respondents. 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 Respondents' collusive behaviour originated**

**i) A Market Highly Conducive to Conspiracy**

32. In the early 2000s, the Respondents, 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 and in Quebec;

33. Beginning in at least 2003, the Respondents—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 Respondent would sell their Parts, agreeing to simultaneous price increases to be falsely attributed to rising input costs, and enforcing penalties for Respondents 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 Respondents producing Parts;

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

35. 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 Respondents. These manufacturers decided to work together through collusive “initiatives” and “alliances” as part of an anticompetitive international scheme to dominate the North American marketplace for AM Sheet Metal Parts, to fix and to control production, and to artificially inflate prices and/or to overcharge purchasers of these products. The Respondents 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. These trade groups facilitated the conspiracy, providing platforms for meetings to facilitate output-reduction and price-fixing coordination. The Respondents also attended trade shows and conventions within the United States and elsewhere to further develop their anti-competitive conduct and to maintain its anti-competitive foothold within the AM Sheet Metal market;

36. Today, Taiwan is the biggest and most important production base, or manufacturing center, 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;
37. 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 Respondent 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]

The whole as appears more fully from a copy of the Decision and Order dated November 30, 2010 in the United States District Court Eastern District of Wisconsin, from a copy of the Decision and Order dated September 5, 2012 in the United States District Court Eastern District of Wisconsin, and from a copy of the LAW360 article entitled "Taiwan Auto Parts Price-Fixing Case Moves Forward" dated December 3, 2010, produced herein *en liasse* as **Exhibit R-4**;

38. The anticompetitive production arrangement between TYG and Respondent 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"**



39. The ties between the Respondents are strong. Beginning in at least 2003, the Respondents set up what they call “cooperative initiatives” and “strategic alliances”. The Respondents used these arrangements as opportunities to strengthen their control of the marketplace 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;
40. The Respondents 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**

41. 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<sup>1</sup> for the AM Sheet Metal Parts, and by exchanging confidential pricing, information, and materials in the process. Alliance members include non-party TYG and Respondents Tong Yang, Jui Li and Gordon;
42. 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 Respondents manufactured these dies separately and competed for sales of the parts to the Class Members;
43. Respondent 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*”, the whole as appears more fully from a copy of the CENS article entitled “Taiwan’s major auto parts makers report lucrative first-half results” dated July 28, 2004, from a copy of an extract from Respondent Gordon’s website entitled “Top Taiwanese Auto-Parts Makers Report Record Revenues for Feb.” dated March 17, 2006 at [www.gordon.com.tw](http://www.gordon.com.tw), and from a copy of the CENS article entitled “Top Taiwanese Auto-parts Makers Report Record Revenues for Feb.” dated March 17, 2006, produced herein *en liasse* as **Exhibit R-5**;
44. 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 Respondents knew that they could control the market and the

<sup>1</sup> Mold and die development is used in the forming of sheet metal for, *inter alia*, stretching, bending and/or blanking.



price for AM Sheet Metal Parts thereby increasing their profits to the detriment of Class Members;

45. 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 Respondents’ expenses, increased their market share in North America and substantially increased their profits. However, recognizing that their anti-competitive behavior was successful, the Respondents wanted more profits at the expense of consumers who were paying supracompetitive prices as a result of the Respondents’ illegal cartel;
46. 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 Respondents 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, the whole as appears more fully from a copy of the PChome online newspaper article entitled “Major AM Auto-parts Makers Saw Profits Sputter in First 7 Months” dated September 5, 2006, produced herein as **Exhibit R-6**;

#### **b) The “Unified Tooling” Program**

47. In April 2004, Respondents 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 Respondents 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;
48. This production and price-fixing agreement resulted in continued success to the Respondents’ goal of market domination and increased profits. Because the Respondents had shared costs, had eliminated the need to distinguish themselves in the marketplace, and had agreed to production and pricing levels, the Respondents’ profits largely escalated. For example, Respondent Gordon’s profits rose rapidly from 15% to 25% to approximately 38%. Respondent Tong Yang’s (then TKY) profits rose higher than 19%. In 2006 the “Tooling Alliance” agreement was renewed at Respondent Jui Li’s suggestion and Respondents 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**



49. In October 2005, as part of their continuing international agreement to fix prices and to control production, the Respondents organized yet another “strategic alliance” to enhance collusive cooperation and avoid price-cutting competition. The alliance was organized to further artificially strengthen the Respondents’ 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 Respondents Tong Yang, Jui Li and API;

**d) R&D Alliance of Digitized Die-Development Technology for AM Sheet-metal Automotive Parts**

50. In November of 2006, to further maintain, develop, and grow their international cartel and price-fixing agreement, the Respondents 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 Respondents 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 Respondents] 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 Respondents Gordon, API, Tong Yang, and Jui Li, the whole as appears more fully from a copy of the M2M Evolution article entitled “CSC's R&D Alliance Benefits Downstream Makers to, in Turn, Help CSC” dated November 14, 2006, produced herein as **Exhibit R-7**;

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

52. During the time that the Respondents 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 Respondents exchanged confidential pricing information and mapped out comprehensive price fixing and output agreements, including limiting supplies. The Respondents 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 Respondents knew they would be able to inflate prices and to increase profit margins. Furthermore, the Respondents 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;

53. The Respondents' 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 Respondents' overcharge of AM Sheet Metal Parts in North America. Accordingly, the Respondents 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 Respondents' anti-competitive conduct. In fact, prices for AM Sheet Metal Parts in North America dramatically increased. For example, Respondent Gordon increased the prices of the parts it sold in the United States by 106%. Therefore, as a direct result of the Respondents' unfair and anti-competitive agreements and collusion, Class Members, paid an "overcharge" or artificially inflated price for AM Sheet Metal Parts, the whole as appears more fully from a copy of the PChome online newspaper article entitled "TYC, Gordon Report Lucrative Auto Parts Sales for Dec. 2006" dated January 15, 2007, produced herein as **Exhibit R-8**;

### iii) Conspiratorial Meetings

54. Since at least 2003, the Respondents 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 Respondents that breached their agreements. For example, in March 2004, the Respondents agreed to institute a price hike for AM Sheet Metal Parts sold into North America, the specific purpose of which was to increase the Respondents' margins to 20%-30%. The Respondents falsely and pretextually attributed the rising prices to the rising cost of steel, the whole as appears more fully from a copy of the PChome online newspaper article entitled "Taiwan's sheet-metal auto body parts makers to hike prices by 20% to 30%" dated March 30, 2004, produced herein as **Exhibit R-9**;

55. The Respondents 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 Respondents instituted penalties for any company that sold below those agreed-upon prices;



56. The Respondents 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 Respondents 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%;
57. The Respondents monitored adherence to their illegal agreements to avoid price-cutting competition. The Respondents 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**

58. The Respondents did not limit their artificial manipulation of the relevant market to their pricing agreements. The Respondents further effectuated their anticompetitive collusion by agreeing to limit capacity and to reduce output of AM Sheet Metal Parts. The Respondents 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;
59. As mentioned earlier, the Respondents created what is called the “Unified Tooling” program. Under this scheme, the Respondents 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 Respondents agreed to quit competing with regard to pressing sheet metal parts and developing different of the Respondents’ tools and/or dies that produced certain AM Sheet Metal Parts, production of those Parts were limited to one or two of the producer Respondents. 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 Respondents;
60. The Respondents would provide a new pricing scheme for such “Unified” Parts. When the parts became “Unified,” their costs dramatically increased and all Respondents sold them at the same fixed price or fixed price range;
61. The prices of “Unified Tooling” parts would be much lower if the Respondents 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;



62. 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;
63. 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;
64. 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;
65. The goal of the Respondents’ 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**

66. The Respondents’ adherence to their collusion had immediate and substantial results. The years leading up to the commencement of the Respondents’ anti-competitive behaviour were met with severe price-cutting competition in the AM Sheet Metal Parts market. For example, Sonny Pan, vice-president of Respondent 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 (Exhibit R-9). These profit cuts eventually incentivized the Respondents to fix prices, to engage in collusive activities, and to control output;
67. 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<sup>2</sup>. 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 Respondents;

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<sup>2</sup>The judgment is reportedly the largest judgment ever against an insurance company in the United States.



68. In fact, in 2000, only 69% of automotive body repair shops in the United States reportedly used and installed AM Sheet Metal Parts;
69. On or about April 5, 2001, the Illinois Appellate Court affirmed the judgment, lowering the damage award;
70. 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, the whole as appears more fully from a copy of the PChome online newspaper article entitled “Major Auto-Parts Makers Expand Capacities” dated May 16, 2006, from a copy of the OEMvsAftermarket.com article entitled “Avery vs. State Farm Mutual Auto Insurance Company” undated, from a copy of the Taiwan Economic News article entitled “Spring Comes to Taiwan AM Auto-parts Makers After the State Farm Case Ceases” dated March 20, 2006, from a copy of the Appeal Decision in *Avery v. State Farm* dated April 5, 2001, and from a copy of the CENS article entitled “Illinois Supreme Court's Recent Ruling Opens A Bigger Market for Taiwan-made AM Auto-Parts” dated September 27, 2005, produced herein *en lisse* as **Exhibit R-10**;
71. In between the initial ruling in 1999 and the Supreme Court's reversal, the Respondents 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 Respondents' revenues jumped considerably each year during their collusive activities. As a result of the combination, Respondent Tong Yang (then TKY) saw a successive rise in sales, ranging from US\$60.7 million in 2003 to US\$156.7 million in 2005 to US\$184 million in 2008—a 260% improvement with steady and significant annual increases. Respondents Gordon, Jui Li, and API saw similar sales growth during those years;
72. In 2005, Respondent Gordon's revenues increased to US\$83.6 million, a 300% increase from 2003. By 2008, Respondent 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, Respondent Jui Li saw its revenues go from \$48.4 million to \$126.2 million, another 260% improvement, over the same period, the whole as appears more fully from a copy of the CENS article entitled “Gordon saw earnings shoot up 300% in March” dated April 22, 2005, produced herein as **Exhibit R-11**;
73. 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;



**II. The structure and characteristics of the AM Sheet Metal Parts market render the collusion even more plausible as they are conducive to anti-competitive price fixing**

74. 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 Respondents' 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 Respondents' products (i.e. 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, (9) a large number of purchasers with limited purchasing power, and (10) opportunities and ease of information sharing among the Respondents;

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

75. 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;

76. 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;

77. These barriers to entry facilitated the Respondents' collusion as described herein, including, but not limited to: (a) the Respondents' established market positions; (b) the collusive business culture among Taiwanese manufacturers of AM Sheet Metal Parts, namely the Respondents; (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 Respondents' lower design costs based on the Respondents' acts of unfair competition related to patent, trade secret and other intellectual property infringement;

78. Respondent 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", the whole as appears more fully from a copy of the CENS article entitled "Leading Taiwan Auto-Parts Maker Conquers U.S., Eyes Europe" dated June 29, 2005, produced herein as **Exhibit R-12**;



79. 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 \$150,000 to \$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;

80. 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;

81. 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 electroplating and surface coating capability is a basic requirement, the whole as appears more fully from a copy of the CENS article entitled “Tong Yang



expanding electro-plating capacities [sic] in Taiwan, China” dated November 11, 2004, produced herein as **Exhibit R-13**;

82. 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;
83. These substantial barriers to entry facilitated the collusive oligopoly because they enabled the Respondents to set supracompetitive prices without fear that new entrants would, or could, come into the market and undercut those prices;
84. Even if a would-be competitor sought to enter the market, it could not survive because the Respondents 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 Respondents resume their agreement to artificially raise prices;

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

85. 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 Respondents’ 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;
86. 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 Respondents 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, Respondent Gordon was recognized by CAPA with an award for providing the U.S. market with the most CAPA parts in 2008 (Exhibit R-5);



87. 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. Respondents Tong Yang, Gordon, and Jui Li are participating manufacturers in the MQVP certification programs;
88. These certification systems are another example of the many entry barriers into the AM Sheet Metal Parts market, which enabled the Respondents to engage in their collusive activities without fear of competition from a new market player;

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

89. 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 Respondents. 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 Respondent Tong Yang (then TKY), Gordon, Auto Parts or Jui Li because all AM Sheet Metal Parts are seen as interchangeable by customers;
90. Absent the alleged collusion, purchasers of AM Sheet Metal Parts would have selected a manufacturer based on price, and the Respondents 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;
91. There are few defining physical characteristics that differentiate Respondents' various AM Sheet Metal Parts from each other, less so given the various alliances described hereinabove;
92. Because purchasers are aware of the mutual interchangeability of Respondents' respective AM Sheet Metal Parts along with the possibility that certain products that are not directly fungible can still replace each other, Respondents present purchasers a broad portfolio of product choices that can meet their needs. Accordingly, but-for Respondents' noncompetitive maintenance of pricing, price would be the primary means of competition among Respondents in the AM Sheet Metal Part market;

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

93. There are no reasonably interchangeable substitutes for AM Sheet Metal Parts. AM Sheet Metal Parts constitute a market distinct from parts supplied by third



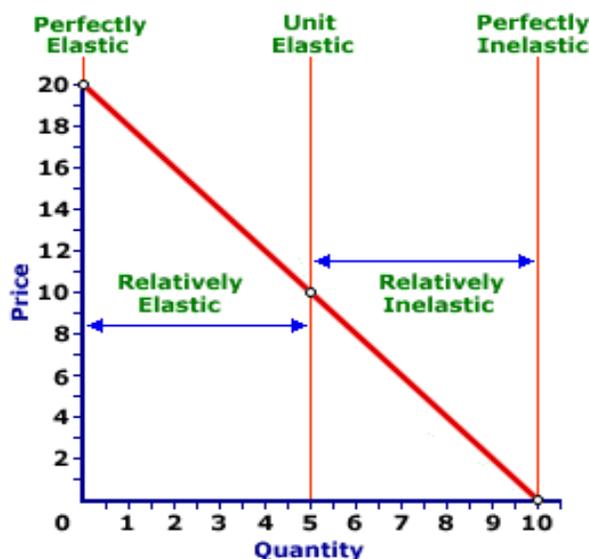
parties to vehicle manufacturers for incorporation into new vehicles, and also distinct from the market for OEM parts made by the manufacturers of automobiles, or for those manufacturers by third parties;

94. 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;
95. The lack of reasonably interchangeable substitutes facilitated the collusion because it enabled the Respondents to set supracompetitive prices without fear that customers would switch to other alternatives;

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

96. "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;
97. 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;





98. 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;
99. 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 will purchase 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**

100. 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 profit 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;



101. 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;
102. Significant market power is concentrated in the Respondents 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**

103. 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;
104. 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**

105. 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;
106. 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 Respondents experience comparable demand;

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

107. 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;
108. In the market for AM Sheet Metal Parts, the Respondents each have historically sold and currently sell to a wide number of purchasers;



109. Respondents therefore had many reasons during the Class Period to coordinate pricing and market supply availability with each other within the auspices of their cartel;
110. Respondents concertedly priced their respective AM Sheet Metal Parts during the Class Period;

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

111. Because of their common and open membership in the various trade industry groups and “alliances” detailed above, there were many opportunities during the Class Period for the Respondents 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. Respondents 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;
112. 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;
113. A number of industry trade associations exist in the AM Sheet Metal Part industry, some of which the Respondents 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”);

#### **III. Concealment**

114. Petitioner 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;
115. The Respondents engaged in a secret cartel that did not give rise to facts that would put the Petitioner 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, Respondents gave pretextual justifications for the pricing changes and the reductions in output that occurred during the Class Period;
116. Indeed, the Respondents relied on a variety of market-based explanations for pricing changes and reductions in output in order to conceal their conduct;



117. Even if the explanations that the Respondents provided could be grounded partly in fact, Respondents still disproportionately manipulated prices beyond any reasonably justifiable adjustments necessary to account for any actual pricing impact. Indeed, the excuses given by Respondents for their price changes were always misleading (if not outright false), because they lulled the Petitioner 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 Respondents 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 (Exhibit R-9);
118. Respondents' explanations for price changes were pretextual and materially false and/or misleading and served only to cover up Respondents' anticompetitive conduct. As a result of Respondents' concealment, the running of any statute of limitations/ prescriptive period has been tolled/ suspended with respect to any claims that Petitioner and the Class members have as a result of the anticompetitive and unlawful conduct alleged herein;

#### **D) The Fault**

119. To formalize their agreement, combination, collusion, and/or conspiracy, the Respondents:
- (a) 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) Agreed, during those meetings, conversations and communications, prices for AM Sheet Metal Parts sold in Canada and elsewhere;
  - (c) Agreed, during those meetings, conversations and communications, to depress the supply of AM Sheet Metal Parts;
  - (d) Agreed, during those meetings, conversations and communications, to coordinate prices for AM Sheet Metal Parts sold in Canada and elsewhere;
  - (e) Sold AM Sheet Metal Parts in Canada and elsewhere at collusive and non-competitive prices;
  - (f) Accepted payment for AM Sheet Metal Parts at collusive and non-competitive prices;
  - (g) Engaged in meetings, conversations and communications in Canada and elsewhere for the purpose of exchanging information on sales of AM



Sheet Metal Parts to monitor and enforce adherence to the agreed-upon price-fixing scheme; and

- (h) 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;

120. The predominate purpose of the Respondents' conduct was:

- (i) To harm the Petitioner and members of the Class by requiring them to pay artificially high prices for AM Sheet Metal Parts; and
- (ii) To unlawfully increase their profits on the sale of AM Sheet Metal Parts;

121. As a result of the Respondents' price-fixing conspiracy:

- (a) Price competition has been restrained or eliminated with respect to AM Sheet Metal Parts;
- (b) The prices of AM Sheet Metal Parts have been fixed, raised, maintained, and/or stabilized at artificially inflated and non-competitive levels;
- (c) The supply of Respondents' AM Sheet Metal Parts available for sale during the Class Period to purchasers in Canada has been artificially and unjustifiably restrained;
- (d) Direct and Indirect purchasers of AM Sheet Metal Parts have been deprived of the benefits of free and open competition; and
- (e) Competition between and among the Respondents and their co-conspirators in the sale of AM Sheet Metal Parts has been unreasonably restrained;

122. By reason of the alleged violations, the Petitioner 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 Respondents' illegal contract, combination, and/or conspiracy, and, as a result, have suffered damages in an amount presently undetermined;

123. The Respondents, 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 Quebec;

124. The Respondents' conduct as alleged herein was intended to, and did in fact, cause the members of the class to suffer a prejudice in Canada, including in the



province of Quebec, by means of having to pay artificially inflated prices for AM Sheet Metal Parts;

125. Petitioner contends that the Respondents failed in their duties, both legal and statutory, notably with respect to sections 45, 46 (1), 47 and 61 (from the period of January 1, 2003 to March 11, 2009), of the *Competition Act* (R.S.C., 1985, c. C-34) ("*Competition Act*"), thereby rendering them liable to pay damages under section 36 of same;
126. In addition, Petitioner alleges that the Respondents failed in their obligations as provided for in the *Civil Code of Québec*, LRQ, c C-1991 ("C.C.Q."), more specifically with respect to the duty to act in good faith at article 7 of the C.C.Q. and to not cause damage to others at article 1457 of the C.C.Q.;

### **E) The Foreign Procedures**

127. Numerous class actions have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of said Complaints, produced herein *en liasse* as **Exhibit R-14**;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

128. On or about June 6, 2012, Petitioner had a repair done to the body of his vehicle with an AM Sheet Metal Part at Garage Arcaro & Frères à Rivière-des-Prairies at 9125 Gouin Boulevard East, in Montreal, Quebec for approximately \$500 plus taxes, the whole as appears more fully from a copy of the invoice dated June 6, 2012, produced herein as **Exhibit R-15**;
129. The repair that he had done was to replace the driver side floor (i.e. the front left side of the automobile) with an Aftermarket Automotive Sheet Metal floor panel;
130. Due to the Respondents' conduct, Petitioner was deprived of the benefit of free market competition, and because of this, he was charged a higher price for the part that he purchased;
131. Petitioner has suffered damages in the amount of the difference between the artificially inflated price that he paid for the AM Sheet Metal Part and the price that he would have paid in a competitive market;
132. The conduct of the Respondents was kept a secret and was not known to the Petitioner at the time that he made his purchase nor could it have been discovered, even through the exercise of reasonable diligence;



133. Petitioner has since discovered that several class actions have been instituted in the United States relating to the Respondents' anticompetitive conduct as alleged herein (Exhibit R-14);
134. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
135. In consequence of the foregoing, Petitioner is justified in claiming damages;

### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

136. Every member of the class has purchased an AM Sheet Metal Part;
137. Each member of the class has paid an artificially inflated price for their AM Sheet Metal Parts due to the collusion by the Respondents and the impact of that collusion on competition;
138. Every member of the class has suffered damages equivalent to the difference between the artificially inflated price that they paid for an AM Sheet Metal Part and the price that they would have paid in a competitive market;
139. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;
140. In consequence of the foregoing, members of the class are justified in claiming damages;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
141. AM Sheet Metal Parts are widespread in Canada, including the province of Quebec;
142. Petitioner is unaware of the specific number of persons who purchased AM Sheet Metal Parts; however, it is safe to estimate that it is in the hundreds of thousands. The Respondents, on the other hand, should have sales figures as well as information on direct purchasers readily available to them;
143. Class members are numerous and are scattered across the entire province and country;



144. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, it would place an unjustifiable burden on the court system. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;
145. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;
146. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
147. 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;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
148. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the litigation;
149. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
150. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of AM Sheet Metal Parts?
  - b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?
  - c) Did the Respondents' conduct cause the prices of AM Sheet Metal Parts to be sold at artificially inflated and supracompetitive levels?
  - d) Were members of the class prejudiced by the Respondents' 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, and, if so, what is the nature and extent of such injunctive relief?
  - f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?
151. The interests of justice favour that this motion be granted in accordance with its conclusions;

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

152. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief and declaratory judgment;

153. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of AM Sheet Metal Parts;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;



ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

154. Petitioner is a member of the class;

155. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

156. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

157. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;

158. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

159. Petitioner is acting in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

160. Petitioner understands the nature of the action;

161. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal



162. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

163. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

164. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages, injunctive relief and declaratory judgment;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada that purchased an Aftermarket Automotive Sheet Metal Part (an "AM Sheet Metal Part") manufactured by a Respondent or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2003 and the present (the "Class Period"), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec that purchased an Aftermarket Automotive Sheet Metal Part (an "AM Sheet Metal Part") manufactured by a Respondent or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2003 and the present (the "Class Period"), or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of AM Sheet Metal Parts?
- b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?



- c) Did the Respondents' conduct cause the prices of AM Sheet Metal Parts to be sold at artificially inflated and supracompetitive levels?
- d) Were members of the class prejudiced by the Respondents' 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, and, if so, what is the nature and extent of such injunctive relief?
- f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of AM Sheet Metal Parts;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;



RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST;

**ORDER** that said notice be available on the Respondents' websites with a link stating "Notice to purchasers of AM Sheet Metal Parts";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs, including all publication fees.

Montreal, October 15, 2014

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioner