

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) TUESDAY, THE 7TH DAY
)
JUSTICE BELOBABA) OF OCTOBER, 2014

B E T W E E N :

**SHERIDAN CHEVROLET CADILLAC LTD., PICKERING AUTO MALL LTD., FADY
SAMAHA and URLIN RENT A CAR**

Plaintiffs

- and -

**TOYO TIRE & RUBBER CO. LTD., TOYO TIRE U.S.A. CORP, and TOYO TIRE
CANADA INC.**

Defendants



Proceeding under the *Class Proceedings Act, 1992*

**ORDER
- Anti-Vibration Rubber Part Claim #2 -
(Consolidation and Discontinuance as against Toyo Tire U.S.A. Corp and Toyo Tire
Canada Inc.)**

THIS MOTION made by the Plaintiffs for an Order to consolidate claims in Court File No. CV-13-472262-00CP (“Anti-Vibration Rubber Parts Claim #1”), Court File No. CV-14-497476-00CP (“Anti-Vibration Rubber Parts Claim #2”), and Court File No. CV-14-506755-00CP (“Anti-Vibration Rubber Parts Claim #3”), and to discontinue the within proceeding on a without costs and without prejudice basis as against the defendants, Toyo Tire U.S.A. Corp. and Toyo Tire Canada Inc., was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, and on hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants:

1. **THIS COURT ORDERS** that Anti-Vibration Rubber Parts Claim #1, Anti-Vibration Rubber Parts Claim #2 and Anti-Vibration Rubber Parts Claim #3 be consolidated and the consolidated action shall bear Court File No. CV-13-472262-00CP.

2. **THIS COURT ORDERS** that leave is hereby granted to issue, in Anti-Vibration Rubber Parts Claim #1, a Fresh as Amended Consolidated Statement of Claim in the form attached as Schedule "A".
3. **THIS COURT ORDERS** that notwithstanding that leave is granted to issue the Fresh as Amended Consolidated Statement of Claim in Anti-Vibration Rubber Parts Claim #1, the date on which a statement of claim was issued against any defendant is the date or dates of the relevant Anti-Vibration Rubber Parts Claim #1, Anti-Vibration Rubber Parts Claim #2, and Anti-Vibration Rubber Parts Claim #3, and not the date of the Fresh as Amended Consolidated Statement of Claim.
4. **THIS COURT ORDERS** that the within proceeding be discontinued on a without costs and without prejudice basis as against the defendants, Toyo Tire U.S.A. Corp. and Toyo Tire Canada Inc.
5. **THIS COURT ORDERS** that this Order and any reasons given by the Court in connection thereto are without prejudice to any position, objection or defence the defendants may take or assert in this or in any other proceeding with respect to the statement of claim issued in this matter and the fresh statement of claim to be issued hereunder (including, without limiting the generality of the foregoing, with respect to any statutory, common law, or equitable limitations issues or defences, jurisdictional issues, whether any of the aforesaid statements of claim satisfy the requirements of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 or whether the rules of pleading have been complied with).
6. **THIS COURT ORDERS** that this order is made without notice to the Defendants who have not been served or who have been served, but whose counsel have not formally appeared on the record.

Date:

October 7, 2014

Eden Belobaba J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO: _____
LE / DANS LE REGISTRE NO. _____
The Honourable Justice Belobaba

OCT 07 2014

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**SHERIDAN CHEVROLET CADILLAC LTD.,
PICKERING AUTO MALL LTD., FADY SAMAHA and URLIN RENT A CAR LTD.**

Plaintiffs

- and -

**YAMASHITA RUBBER CO., LTD., YUSA CORPORATION, SUMITOMO RIKO
COMPANY LIMITED F/K/A TOKAI RUBBER INDUSTRIES, LTD., DTR INDUSTRIES,
INC., BRIDGESTONE CORPORATION, BRIDGESTONE ELASTECH CO., LTD.,
BRIDGESTONE APM COMPANY, TOYO TIRE & RUBBER CO. LTD., TOYO TIRE
NORTH AMERICA OE SALES LLC and TOYO AUTOMOTIVE PARTS (USA) INC.**

Defendants

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

**FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM
(Anti-Vibration Rubber Parts)**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date:

Issued by: _____
Local Registrar

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

TO: YAMASHITA RUBBER CO., LTD.
1239 Kamekubo
Fujimino, Saitama, 356-0051, Japan

AND TO: YUSA CORPORATION
151 Jamison Road S.W.
Washington C.H., OH 43160, USA

AND TO: SUMITOMO RIKO COMPANY LIMITED F/K/A TOKAI RUBBER INDUSTRIES, LTD.
3-1, Higashi
Komaki-shi, Aichi, 485-8550, Japan

AND TO: DTR INDUSTRIES, INC.
320 Snider Road,
Bluffton, OH 48517, USA

AND TO: BRIDGESTONE CORPORATION
1-1, Kyobashi 3-chome,
Chuo-ku, Tokyo 104-8340, Japan

AND TO: BRIDGESTONE ELASTECH CO., LTD.
4560 Chihama
Kakegawa, 437-1412, Japan

AND TO: BRIDGESTONE APM COMPANY
1800 Industrial Drive
Findlay, OH 45840, USA

AND TO: TOYO TIRE & RUBBER CO. LTD.
1-17-18 Edobori, Nishi-ku,
Osaka 550-8661, Japan

AND TO: TOYO TIRE NORTH AMERICA OE SALES LLC
3660 Highway 411 NE,
White, GA 30184, USA

AND TO: TOYO AUTOMOTIVE PARTS (USA) INC.
521 Page Drive,
Franklin, KY 42134, USA

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 8 below):

- (a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price of Anti-Vibration Rubber Parts (as defined in paragraph 2 below) sold in Canada and elsewhere during the Class Period (as defined in paragraph 8 below);
- (b) A declaration that the defendants and their co-conspirators did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Anti-Vibration Rubber Parts were sold in Canada and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$100,000,000:
 - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*");
 - (ii) for civil conspiracy;
 - (iii) for unjust enrichment; and
 - (iv) for waiver of tort;
- (d) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;
- (e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("*Courts of Justice Act*"), as amended;

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

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices, rig bids and allocate the market and customers in Canada and elsewhere for anti-vibration rubber parts used in automobiles and other light-duty vehicles (“**Anti-Vibration Rubber Parts**”). Anti-Vibration Rubber Parts are comprised primarily of rubber and metal, and are installed in automotive vehicles to reduce engine and road vibration. The unlawful conduct occurred from at least as early as March 1, 1996 and continued until at least June 1, 2012 and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive industry, raising prices to all members of the Proposed Class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Anti-Vibration Rubber Parts and/or new vehicles containing Anti-Vibration Rubber Parts manufactured, marketed, sold and/or distributed during the Class Period and have thereby suffered losses and damages.

The Plaintiffs

4. The plaintiff, Sheridan Chevrolet Cadillac Ltd. (“**Sheridan**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited (“**GMCL**”) from 1977 to 2009.

5. The plaintiff, Pickering Auto Mall Ltd. (“**Pickering**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.

6. The plaintiff, Fady Samaha, a resident of Newmarket, Ontario, purchased a new Honda Civic in 2009.

7. The plaintiff, Urlin Rent A Car Ltd. (“**Urlin**”), is a motor vehicle rental company located in London, Ontario, that has been in operation since the early 1990s. In that time, Urlin purchased several Toyota, Ford, GM and Chevrolet vehicles.

8. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

All persons in Canada that purchased Anti-Vibration Rubber Parts and/or purchased and/or leased a new vehicle containing Anti-Vibration Rubber Parts in Canada between March 1, 1996 and June 1, 2012 and/or during the subsequent period during which prices were affected by the alleged conspiracy (the “**Class Period**”). Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

The Defendants

Yamashita

9. The defendant, Yamashita Rubber Co., Ltd. (“**Yamashita Rubber**”), is a Japanese corporation. During the Class Period, Yamashita Rubber manufactured, marketed, sold and/or

distributed Anti-Vibration Rubber Parts throughout Canada, either directly or indirectly through its predecessors, affiliates and subsidiaries, including the defendant, YUSA Corporation (“YUSA”).

10. YUSA is an American corporation and has its principal place of business in Washington Court House, Ohio. During the Class Period, YUSA manufactured, marketed, sold, and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. YUSA is owned and controlled by Yamashita Rubber.

11. The business of each of Yamashita Rubber and YUSA is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Anti-Vibration Rubber Parts in Canada and for the purposes of the conspiracy described hereinafter. Yamashita Rubber and YUSA are referred to herein as “**Yamashita.**”

Sumitomo Riko

12. The defendant, Sumitomo Riko Company Limited f/k/a Tokai Rubber Industries, Ltd. (“**Sumitomo Riko Company**”), is a Japanese corporation. During the Class Period, Sumitomo Riko Company manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts throughout Canada, either directly or indirectly through its predecessors, affiliates and subsidiaries, including the defendant, DTR Industries, Inc. (“**DTR**”).

13. DTR is an American corporation and has its principal place of business in Bluffton, Ohio. During the Class Period, DTR manufactured, marketed, sold, and/or distributed Anti-Vibration

Rubber Parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. DTR is owned and controlled by Sumitomo Riko Company.

14. The business of each of Sumitomo Riko Company and DTR is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Anti-Vibration Rubber Parts in Canada and for the purposes of the conspiracy described hereinafter. Sumitomo Riko Company and DTR are collectively referred to herein as “**Sumitomo Riko.**”

Bridgestone

15. The defendant, Bridgestone Corporation, is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Bridgestone Corporation manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries, including the defendants, Bridgestone Elastech Co., Ltd. (“**Bridgestone Elastech**”) and Bridgestone APM Company (“**Bridgestone APM**”).

16. Bridgestone Elastech is a Japanese corporation with its principal place of business in Kakegawa, Japan. During the Class Period, Bridgestone Elastech manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Bridgestone Elastech is owned and controlled by Bridgestone Corporation.

17. Bridgestone APM is an American corporation with its principal place of business in Findlay, Ohio. During the Class Period, Bridgestone APM manufactured, marketed, sold and/or

distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Bridgestone APM is owned and controlled by Bridgestone Corporation.

18. The business of each of Bridgestone Corporation, Bridgestone Elastech and Bridgestone APM is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Anti-Vibration Rubber Parts in Canada and for the purposes of the conspiracy described hereinafter. Bridgestone Corporation, Bridgestone Elastech and Bridgestone APM are hereinafter collectively referred to as “**Bridgestone.**”

Toyo

19. The defendant, Toyo Tire & Rubber Co. Ltd. (“**Toyo Tire**”), is a Japanese corporation with its principal place of business in Osaka, Japan. During the Class Period, Toyo Tire manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries, including the defendants, Toyo Tire North America OE Sales LLC (“**Toyo Sales**”) and Toyo Tire Automotive Parts (USA) Inc. (“**Toyo Parts**”).

20. Toyo Sales is an American corporation with its principal place of business in White, Georgia. During the Class Period, Toyo Sales manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries. Toyo Sales is owned and controlled by Toyo Tire.

21. Toyo Parts is an American corporation with its principal place of business in Franklin, Kentucky. During the Class Period, Toyo Parts manufactured, marketed, sold and/or distributed Anti-Vibration Rubber Parts to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries. Toyo Parts is owned and controlled by Toyo Tire.

22. The business of each of Toyo Tire, Toyo Sales and Toyo Parts is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Anti-Vibration Rubber Parts in Canada and for the purposes of the conspiracy described hereinafter. Toyo Tire, Toyo Sales and Toyo Parts are hereinafter collectively referred to as “**Toyo.**”

Unnamed Co-conspirators

23. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

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

25. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they

were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

The Anti-Vibration Rubber Parts Industry

26. Anti-Vibration Rubber Parts are comprised primarily of rubber and metal, and are installed in automobiles to reduce engine and road vibration. Anti-Vibration Rubber Parts are installed in suspension systems and engine mounts, as well as other parts of an automobile.

27. Anti-Vibration Rubber Parts are typically custom-designed to fit specific automobiles, and are developed over a year in advance of an automobile model entering the market. Anti-Vibration Rubber Parts are installed by automobile original equipment manufacturers ("OEMs") in new vehicles as part of the automotive manufacturing process. They are also installed by OEMs in vehicles to replace worn out, defective or damaged Anti-Vibration Rubber Parts.

28. For new vehicles, the OEMs – mostly large automotive manufacturers such as Honda, General Motors, Toyota and others – purchase Anti-Vibration Rubber Parts directly from the defendants. Anti-Vibration Rubber Parts may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called "**Tier I Manufacturers**" in the industry. A Tier I Manufacturer supplies Anti-Vibration Rubber Parts directly to an OEM.

29. When purchasing Anti-Vibration Rubber Parts, OEMs issue Requests for Quotation ("**RFQs**") to automotive parts suppliers on a model-by-model basis for model-specific parts. In at least some circumstances, the RFQ is sought from pre-qualified suppliers of the product. Typically, the RFQ would be made when there has been a major design change on a

model-by-model basis. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically the production life of the parts program is between two and five years. Typically, the bidding process begins approximately three years before the start of production of a new model. OEMs procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

30. During the Class Period, the defendants and their unnamed co-conspirators supplied Anti-Vibration Rubber Parts to OEMs for installation in vehicles manufactured and sold in Canada and elsewhere. The defendants and their unnamed co-conspirators manufactured Anti-Vibration Rubber Parts: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in vehicles manufactured in North America and sold in Canada, (c) outside North America for installation in vehicles manufactured outside North America for export to and sale in Canada, and (d) as replacement parts.

31. By virtue of their market shares, the defendants are some of the dominant manufacturers and suppliers of Anti-Vibration Rubber Parts in Canada and the world. Their customers include Toyota, Nissan, Subaru, Suzuki, and Isuzu.

32. The defendants and their unnamed co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Anti-Vibration Rubber Parts and new vehicles containing Anti-Vibration Rubber Parts sold in North America and elsewhere.

33. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Anti-Vibration Rubber Parts and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Anti-Vibration Rubber Parts would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their unnamed co-conspirators were aware that, by unlawfully increasing the prices of Anti-Vibration Rubber Parts, the prices of new vehicles containing Anti-Vibration Rubber Parts would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Anti-Vibration Rubber Parts and purchasers and lessees of new vehicles containing Anti-Vibration Rubber Parts. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Anti-Vibration Rubber Parts.

34. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Anti-Vibration Rubber Parts in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

35. In the United States, three of the defendants have agreed to plead guilty and pay fines for their involvement in price-fixing schemes related to Anti-Vibration Rubber Parts.

36. The defendant Yamashita Rubber Co., Ltd. has agreed to plead guilty and pay a fine of US\$11 million in respect of its role in the alleged conspiracy to fix the prices of Anti-Vibration Rubber Parts from as early as April 2003 and continuing until at least May 2012.

37. The defendant Toyo Tire has agreed to plead guilty and pay a fine of US\$120 million fine in respect of its role in the alleged conspiracy to fix the prices of Anti-Vibration Rubber Parts and one other automotive part from as early as March 1996 and continuing until at least May 2012.

38. The defendant Bridgestone Corporation has agreed to plead guilty and pay a fine of US\$425 million in respect of its role in the alleged conspiracy to fix the prices of Anti-Vibration Rubber Parts from as early as January 2001 and continuing until at least December 2008.

Plaintiffs Purchased New Vehicles Containing Anti-Vibration Rubber Parts

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

40. During the Class Period, Sheridan also purchased for resale vehicles manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company and Daewoo Motor Co.

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

42. During the Class Period, Pickering also purchased for resale vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG and Subaru Canada Inc.

43. During the Class Period, Urlin purchased, for use as part of its fleet of rental vehicles, the following brands of vehicles: Toyota, Ford, General Motors, Chevrolet, Mazda, Dodge, Jeep, Mercedes, Nissan, Volkswagen and Hyundai.

44. The vehicles purchased by Sheridan, Pickering, and Urlin were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States, Japan and other parts of the world.

45. Sheridan, Pickering, and Urlin purchased new vehicles containing Anti-Vibration Rubber Parts.

46. In 2009, Fady Samaha purchased a new Honda Civic, which contained Anti-Vibration Rubber Parts.

Breaches of Part VI of *Competition Act*

47. From at least as early as March 1996 until at least June 2012, the defendants and their unnamed co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase or control the prices of Anti-Vibration Rubber Parts sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Anti-Vibration Rubber Parts and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Anti-Vibration Rubber Parts in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Anti-Vibration Rubber Parts and new vehicles containing Anti-Vibration Rubber Parts.

48. The defendants and their unnamed co-conspirators carried out the conspiracy by:
- (a) participating in meetings, conversations, and communications in the United States, Japan, and elsewhere to discuss the bids (including RFQs) and price quotations to be submitted to OEMs selling automobiles in North America and elsewhere;
 - (b) agreeing, during those meetings, conversations, and communications, on bids (including RFQs) and price quotations to be submitted to OEMs in North America and elsewhere (including agreeing that certain defendants or co-conspirators would win the RFQs for certain models);
 - (c) agreeing on the prices to be charged and to control discounts for Anti-Vibration Rubber Parts in North America and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;
 - (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Anti-Vibration Rubber Parts sold to OEMs in North America and elsewhere on a model-by-model basis;
 - (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America and elsewhere;
 - (f) submitting bids (including RFQs), price quotations, and price adjustments to OEMs in North America and elsewhere in accordance with the agreements reached;
 - (g) enhancing unreasonably the prices of Anti-Vibration Rubber Parts sold in North America and elsewhere;

- (h) selling Anti-Vibration Rubber Parts to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Anti-Vibration Rubber Parts in North America and elsewhere;
- (i) allocating the supply of Anti-Vibration Rubber Parts sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Anti-Vibration Rubber Parts sold to OEMs in North America and elsewhere at collusive and supra-competitive prices;
- (k) engaging in meetings, conversations, and communications in the United States, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent “paper trails,” abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale and/or distribution of Anti-Vibration Rubber Parts.

49. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid unreasonably enhanced/supra-competitive prices for Anti-Vibration Rubber Parts and/or new vehicles containing Anti-Vibration Rubber Parts.

50. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs claim loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

51. Such conduct further constituted an offence under section 61(1) of the *Competition Act* for the period from March 1, 1996 until the repeal of that section on March 12, 2009. The plaintiffs claim damages under section 36(1) of the *Competition Act* in respect of conduct contrary to section 61(1) of the *Competition Act* for the period from March 1, 1996 to March 12, 2009.

Civil Conspiracy

52. The defendants and their unnamed co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiffs and other members of the Proposed Class. The unlawful means include the following:

(a) entering into agreements to rig bids and fix, maintain, increase or control prices of Anti-Vibration Rubber Parts sold to customers in Canada and elsewhere in contravention of sections 45(1), 46(1), 47(1) and (during the period in which it was in force) 61(1) of the *Competition Act*; and

(b) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

53. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 48 above.

54. The defendants and their unnamed co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class by requiring them to pay artificially high prices for Anti-Vibration Rubber Parts, and to illegally increase their profits on the sale of Anti-Vibration Rubber Parts.

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

Discoverability

56. Anti-Vibration Rubber Parts are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Anti-Vibration Rubber Parts industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Anti-Vibration Rubber Parts.

57. Accordingly, the plaintiffs and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

Fraudulent Concealment

58. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiffs and other members of the Proposed Class. The defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading

the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

59. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 48 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

60. Because the defendants' agreements, understandings and conspiracies were kept secret, plaintiffs and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying supra-competitive prices for Anti-Vibration Rubber Parts and/or new vehicles containing Anti-Vibration Rubber Parts.

Unjust Enrichment

61. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Anti-Vibration Rubber Parts. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Anti-Vibration Rubber Parts and/or new vehicles containing Anti-Vibration Rubber Parts. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place.

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

63. The plaintiffs and other members of the Proposed Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

Waiver of Tort

64. In the alternative to damages, in all of the circumstances, the plaintiffs plead an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants as a result of their unlawful conspiracy.

65. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Anti-Vibration Rubber Parts. As a result of the unlawful conspiracy, the defendants profited from the sale of Anti-Vibration Rubber Parts at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

Damages

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

- (a) price competition has been restrained or eliminated with respect to Anti-Vibration Rubber Parts sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;

- (b) the prices of Anti-Vibration Rubber Parts sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the plaintiffs and other members of the Proposed Class have been deprived of free and open competition for Anti-Vibration Rubber Parts in Ontario and the rest of Canada.

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

68. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Anti-Vibration Rubber Parts and/or new vehicles containing Anti-Vibration Rubber Parts than they would have paid in the absence of the illegal conduct of the defendants and their unnamed co-conspirators. As a result, the plaintiffs and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

Punitive, Aggravated and Exemplary Damages

69. The defendants and their unnamed co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Anti-Vibration

Rubber Parts. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Proposed Class. The conduct of the defendants and their unnamed co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

70. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

Service of Statement of Claim Outside Ontario

71. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:

- (a) Rule 17.02 (g) – the claim relates to a tort committed in Ontario;
- (b) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (c) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

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

DATE:

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED CONSOLIDATED
STATEMENT OF CLAIM
(Anti-Vibration Rubber Parts)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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**ORDER
- Anti-Vibration Rubber Parts Claim #2 -
Motion to Consolidate and Discontinue as against Toyo Tire U.S.A. Corp.
and Toyo Tire Canada Inc.**

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