

Court File No. 07-CV-

340633CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RHONDA TETEFKSY, JENNIFER BESTER, DAVID BAIN, HARVEY ERLICH,
AKIVA MEDJUK, DANIEL BERKOVITS, ALEXANDER SACSON

Plaintiffs

-and-

**GENERAL MOTORS CORPORATION, GENERAL MOTORS OF CANADA,
LTD., AMERICAN HONDA MOTOR COMPANY, INC., HONDA CANADA, INC.
CHRYSLER CANADA, INC., CHRYSLER LLC, NISSAN NORTH AMERICA
INC., NISSAN CANADA INC., CANADIAN AUTOMOBILE DEALERS
ASSOCIATION, BMW CANADA INC., BMW OF NORTH AMERICA LLC,
FORD CANADA INC., FORD MOTOR COMPANY**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Amended:

Amended: August 26th, 2008

Date: October 21, 2007
by:.....
Local Registrar

Issued

Address of court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: **GENERAL MOTORS CORPORATION**
100 Renaissance Center
Detroit, Michigan
48243

GENERAL MOTORS OF CANADA, LTD.
1908 Colonel Sam Drive,
Oshawa, Ontario
L1H 8P7

AMERICAN HONDA MOTOR COMPANY, INC.
1919 Torrance Blvd.
Torrance, California

90501

HONDA CANADA, INC.

715 Milner Avenue
Toronto, Ontario
M1B 2K8

NISSAN NORTH AMERICA, INC.

PO Box 685003
Franklin, TN
37064-5093

NISSAN CANADA INC.

5290 Orbitor Drive
Mississauga, Ontario
L4W 4Z5

CHRYSLER LLC

1000 Chrysler Drive,
Auburn Hills, Michigan
48326

CHRYSLER CANADA INC.

1 Riverside Dr. West
Windsor, Ontario
N9A 4H6

CANADIAN AUTOMOBILE DEALERS ASSOCIATION

84 Renfrew Drive
Markham, Ontario
L3R 0N9
22102

FORD MOTOR COMPANY

1 American Road
Dearborn, Michigan
48124

FORD CANADA INC.

1 The Canadian Road
Oakville, Ontario
L6J 5E4

|

BMW of North America, LLC
~~PO Box 1227~~
~~Westwood, NJ 07675-1227~~

BMW CANADA INC.
~~920 Champlain Court~~
~~Whitby, Ontario~~
~~L1N6K9~~

CLAIM

1. The plaintiffs claim on behalf of themselves and other persons in Canada who are similarly situated (the “Class”):
 - a. a declaration that the Conspiracy Defendants conspired each with the other, or as applicable, to raise, maintain, fix and stabilize the price of motor vehicles in Canada during the period beginning at least as early as January 1, 2001 to the present (the “Conspiracy Period”);
 - b. a declaration that the Defendant Manufacturers engaged in unlawful activities or enacted policies or took actions to influence upward, or to prevent the reduction of, the price at which their dealer networks sold the Defendant Manufacturers’ motor vehicles during the Class Period;
 - ~~b.c.~~ an order certifying this proceeding as a Class proceeding and appointing the Plaintiffs named herein as representative plaintiffs for the Class;
 - ~~c.d.~~ an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
 - ~~d.e.~~ \$2 billion in general damages for the Class, or such other sum as this Honourable Court deems just;

e.f. an interlocutory and a final mandatory order directing that Defendants comply with the *Competition Act*, R.S.C. 1985, c. C-34;

g. [an interlocutory and a final mandatory order directing that Defendants comply with the *Consumer Protection Act*, S.O., 2002, c.30;](#)

f.h. general damages for conspiracy, intentional interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act* in the amount of \$150 million;

g.i. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;

h.j. an order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information regarding the profits earned by Defendants through their course of conduct designed to unreasonably enhance the price of the motor vehicles they sold in Canada;

i.k. in the alternative to (c) a declaration that the Defendant [Manufacturers](#) have been unjustly enriched, to the deprivation of members of the Class, by the excess amount paid by the Class for Defendant [Manufacturers](#)'

motor vehicles over what such consumers would expect to pay for those motor vehicles had the Defendants not engaged in their unlawful conduct;

~~j.l.~~ pre-judgment and post-judgment interest on the amounts payable pursuant to subparagraphs (c) and, (f) pursuant to the *Courts of Justice Act*;

~~k.m.~~ _____ punitive, aggravated and exemplary damages in the amount of \$100 million, or such other amount as this Honourable Court deems just;

~~l.n.~~ costs of this action on a substantial indemnity basis plus Goods and Services Tax;

~~m.o.~~ _____ the costs of administering the plan of distribution of the recovery in this action in the sum of \$3 million or such other sum as this Honourable Court deems appropriate; and

~~n.p.~~ such further and other relief as may be required by the *Class Proceedings Act, 1992*, or as this Honourable Court may deem just.

SUMMARY OF THE ACTION

The Defendants committed unlawful acts ~~conspired~~ to lessen competition and to unreasonably enhance the price of new motor vehicles sold in Canada or to prevent the reduction of those prices.

2. Historically, the “Defendant Manufacturers”~~manufacturers~~ (defined below) have set the Canadian Dollar prices for their motor vehicles sold in Canada at a higher nominal price, than the US Dollar prices they set for their motor vehicles sold in the US.

3. Under historical pricing formulas set by the Defendant Manufacturers,~~manufacturers~~, the “absolute” price (expressed in either currency) for a substantially~~n~~ identical motor vehicle sold in the US and Canada will be comparable or approximately~~approximately~~ identical, when the Canadian Dollar trades at approximately 70 cents to the US dollar.

4. During the “Class Period” (defined below as being between September 2005 and September 2007), when the Canadian dollar appreciated strongly relative to the US dollar, the prices set by the Defendant Manufacturers~~manufacturers~~ for motor vehicles sold in Canada were have been set ~~by the Defendant manufacturers~~ 25% - - 40% higher, in absolute terms, than the prices the Defendant Manufacturers~~manufacturers~~ set for substantially identical motor vehicles destined for sale in the US.

5. This ~~action~~Action arises as a result of: i) the Conspiracy Defendants (defined below)~~Defendant manufacturers~~ conspiring amongst their related affiliates and each other, through a series of inter-company, and inter-affiliate agreements and directives to maintain and fix motor vehicle prices in Canada at artificially high levels, and to prevent the lower priced US motor vehicles from reaching Canada, in order to maintain the artificially high motor vehicle prices the Defendant Manufacturers had set for Canada, and ii) the Defendant Manufacturers (defined below) taking actions or instituting policies to influence upwards or or prevent the reduction of prices of their cars in Canada. ~~manufacturers had set for Canada.~~
6. ~~I~~In the United States there is currently similar ongoing Class Action litigation against some or all of the Defendants herein, arising out of the mirror-image currency fluctuation, i.e. when the Canadian Dollar depreciated against the US Dollar relative to historical trends, in or about 2002. The US Class Action litigation alleges that that some or all of the Defendant ~~Manufacturers~~manufacturers took similar steps to those detailed herein to prevent the then lower-priced Canadian vehicles from reaching the US market.~~]~~
7. As a result of the Defendants' ~~actions,~~conspiracy, during the ~~Class~~Conspiracy Period, Canadian consumers paid up to 40% more in absolute terms than did consumers in the United States for substantially identical motor vehicles.

8. For example, even in September, 2007, when the Canadian Dollar traded over 98 cents to the US dollar, Chrysler advertised its popular SUV, the Grand Cherokee Laredo in the US for \$29,215 when the same motor vehicle was advertised in Canada for \$36,215¹.
9. Honda Motor Company advertised its Odyssey Minivan for \$25,645 in the US when the same motor vehicle was advertised in Canada for ~~\$33,333~~. The ~~popular~~ Honda Accord was advertised in the US for \$20,800, when the same motor vehicle was advertised in Canada for ~~\$24,800~~.
10. Ford advertised its Jaguar XJ8 in the US for \$85,100, while in Canada it was advertised for ~~\$101,000~~.
11. The Range Rover Sport was advertised in the US for \$58,500 while in Canada it was advertised for ~~\$78,300~~.

THE PARTIES

The Representative Plaintiffs

12. Mr. Daniel Berkovits resides in Toronto, Ontario. Mr. Berkovits leased a Jeep Grand Cherokee Overland from a dealership in Ontario, during the Class Period. The sale price of the Jeep under the lease was \$58,645. Chrysler advertised that Jeep in the US at less than \$40,000.

¹ The prices quoted in paragraphs 8- 17 were quoted when the Dollar was over 98 cents, in September, and October, 2007. Prices for those motor vehicles may have been quoted differently at different times during the Class Period.

13. Dr. Harvey Erlich resides in Toronto, Ontario. Dr. Erlich leased two Honda Accords during the Class Period from a dealership in Ontario. The sale price of one of the Accords under one lease was \$32,971 and the price of the second Accord under the second lease was \$36,984. The same Accord as was leased by Dr. Erlich is advertised in the US at less than \$30,000.
14. Mr. David Bain resides in Toronto, Ontario. Mr. Bain purchased a GMC Yukon Denali during the Class Period from a dealership in Ontario. The sale price of the motor vehicle under the lease was \$69,615. The same motor vehicle was advertised in the US for approximately \$50,000.
15. Mr. Akiva Medjuck resides in Toronto, Ontario. Mr. Medjuck leased a Nissan Altima during the Class Period from a dealership in Ontario. The sale price of the motor vehicle was \$31,182. The same motor vehicle was advertised in the US for \$24,430.
- ~~16. Ms. Rhonda Tetefsky~~~~Mr. Alexander Saeson~~ resides in Richmond Hill, Ontario. ~~She~~~~Mr. Saeson~~ leased a BMW 328i in the Class Period from a dealership in Ontario. ~~The sale price of the motor vehicle was \$42,699. The same motor vehicle is advertised in the United States for \$35,900.~~
- ~~17.16. Ms. Jennifer Bester~~ resides in Georgetown, Ontario. ~~Ms. Bester~~ leased a Ford Escape in the Class Period from a dealership in Ontario. ~~The sale price of her motor vehicle was \$30,055. Ford advertised that motor vehicle in the US for \$19,770.~~

The Defendants

~~18.~~17. General Motors Corporation ("GM") is a corporation organized under the laws of Delaware, with its principal place of business at 300 Renaissance Center, Detroit, Michigan. GM manufactures and distributes several new motor vehicle brands, including Buick, Cadillac, Chevrolet, GMC, Hummer, Pontiac, Saab, and Saturn.

~~19.~~18. General Motors of Canada, Ltd. ("GM Canada") is a corporation organized under the laws of Canada and is a subsidiary of GM, with its principal place of business at 1908 Colonel Sam Drive, Oshawa, Ontario, Canada.

~~20.~~19. American Honda Motor Company, Inc. ("American Honda") is a subsidiary of Honda Motor Company, Ltd., a Japanese corporation, with its principal place of business at 1919 Torrance Blvd., Torrance, California.

~~21.~~20. Honda Canada, Inc. ("Honda Canada") is a corporation organized under the laws of Canada and is a subsidiary of Honda Motor Company, Ltd., with its principal place of business at 715 Milner Avenue, Toronto, Ontario, Canada.

~~22.~~21. Nissan North America, Inc. ("Nissan North America") is a subsidiary of Nissan Motor Company Ltd., a Japanese corporation, with its principal place of business at Franklin, Tennessee.

~~23.22.~~ Nissan Canada Inc. (“Nissan Canada”) is a corporation organized under the laws of Canada and is a subsidiary of Nissan Motor Company Ltd with its principal place of business at 5290 Orbitor Drive, Ontario, L4W 4Z5.

~~24.23.~~ Chrysler, LLC (“Chrysler”) is a Michigan registered entity with its principal address at 1000 Chrysler Drive, Auburn Hills, Michigan.

~~25.24.~~ Chrysler Canada, Inc. (“Chrysler Canada”) is a corporation organized under the laws of Canada and is a subsidiary of Chrysler with its principal place of business at 1 Riverside Drive West, Windsor, Ontario, Canada.

~~26.25.~~ The Canadian Automobile Dealers Association (“CADA”) is a Canadian association for franchised automobile and truck dealerships that sell new motor vehicles. As listed on CADA’s website its mission statement, and purpose is to “To deal with issues of a national nature which affect the well-being of franchised automobile and truck dealers in Canada”. CADA is headquartered in Mississauga, ~~Ontario, Ontario.~~

~~27.~~ BMW Canada Inc. (“BMW Canada”) is a corporation organized under the laws of Canada with its principal place of business at 920 Champlain Court, Whitby, Ontario.

~~28. BMW of North America LLC (“BMW North America”) is an entity organized under the laws of New Jersey with its principal place of business in Westwood, New Jersey.~~

~~29.~~26. Ford Canada Inc. (“Ford Canada”) is a corporation organized under the laws of Ontario with its principal place of business at 1 The Canadian Road, Oakville, Ontario.

~~30.~~27. Ford Motor Company (“Ford”) is a corporation organized under the laws of Delaware, with its principal place of business at 1 American Road, Dearborn, Michigan.

~~31.~~28. Ford manufactures and distributes vehicles under many brands in Canada and the United States such as Mazda, Jaguar, Mercury, Volvo, Lincoln, Aston Martin, and Land Rover.

~~32.~~29. The above-mentioned Defendants, with the exception of the Defendant CADA, are hereinafter ~~referred to~~ collectively referred to as the “Defendant Manufacturers”.~~manufacturers”.~~

30. The above mentioned Defendants with the exception of the Defendants Nissan Canada and Nissan North America are hereinafter collectively referred to as the “Conspiracy Defendants”.

~~33.~~31. ~~The Plaintiffs plead the Conspiracy~~The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators.

The Class

~~34.~~32. Plaintiffs bring this action on behalf of all persons resident in Canada that:

- a. Purchased or leased or intended to purchase or lease a new motor vehicle that was manufactured, distributed, sold, or assembled by one of the Defendant ~~Manufacturers~~Manufacturers listed above;
- b. Between September 2005 and September 2007 (the “Class Period”); and
- c. Who paid more in absolute terms (adjusted for exchange rate) than the ~~substantially comparable or~~ identical motor vehicle in the United States.

THE MOTOR VEHICLE INDUSTRY – NORTH AMERICA

~~35.~~33. In 1993, Canada, the US and Mexico entered into the North American Free Trade Agreement (“NAFTA”), which eliminated many of the duties, taxes, and tariffs imposed on trade between the parties to that agreement. NAFTA facilitated the free ~~of~~ flow of goods across the Canada/US border. As a result of NAFTA, it became easier and more cost efficient to ~~cross~~ ship high cost goods, including new motor vehicles, across the Canada/US border.

~~36.34.~~ Since approximately 1998, the safety and environmental regulations in both the US and Canada governing the manufacturesale of new motor vehicles have approximatedapproximate one another. Therefore, mostMost new motor vehicles manufactured sold in either the US or in Canada since 1998 are comparably or identically manufactured to meet nearly all of the same environmental, safety and other regulations. governing the sale of new motor vehicles in both countries.

~~37.~~ Consequently, since about 1998, motor vehicles manufactured for sale in the US and Canada have been substantially identical.

~~38.35.~~ Accordingly, the Defendant Manufacturersmanufacturers manufacture, assemble, distribute, and sell substantially identical motor vehicles in both the US and Canada through their networks of authorized dealers in the US and Canada.

~~36.~~ The Defendant Manufacturers' manufacturers' motor vehicles have historically been priced quoted 25% - 40% higher on average when quoted in Canadian dollars in Canada relative to the prices quoted on substantially identical or comparable motor vehicles in the US, quoted in US dollars.

~~39.37.~~ When the Canadian dollar trades at less than 70 cents to the US dollar, or when it trades at more than 82-83 cents to the US dollar, opportunities arise for purchasing goods in the other country at a lower absolute cost when adjusted for the applicable exchange rate.

~~40.38.~~ For example, between 1999-2003, when the Canadian dollar averaged less than 70 cents to the US dollar, consumers resident in the United States would have saved thousands of dollars by purchasing the Defendant Manufacturers' ~~manufacturers'~~ motor vehicles from those manufacturers' Canadian dealers in Canadian dollars at a lower absolute cost than had they purchased the manufacturers' motor vehicles from the manufacturers' US dealers in US dollars.

~~41. To prevent the above situation from occurring, the Defendant manufacturers and their related affiliates, with the aid of facilitators such as the Defendant CADA, conspired with each other to restrict the free flow of the Defendant manufacturers' motor vehicles across the US/Canada border. The Defendant manufacturers sought to maintain the price advantage they enjoyed in the US relative to Canada at that time by eliminating the lower priced competition from their motor vehicles being sold in Canada.~~

~~42.39.~~ Similarly, beginning in early 2005, when the Canadian dollar began to trade above 80 cents to the US dollar, Canadian residents that purchased their motor vehicles in Canada would have saved thousands of dollars by purchasing the motor vehicles from US dealers, or by importing the motor vehicles into Canada from the US because prices for substantially identical motor vehicles purchased in the US were up to ~~could be~~ 25%-40% lower on average than prices in Canada after adjusting for the exchange rate.

40. To prevent the above situation from occurring, the Conspiracy Defendants and their related affiliates, conspired with each other through a series of agreements, understandings, and directives (with the aid of facilitators such as the Defendant CADA), to restrict the free flow of the Conspiracy Defendants' motor vehicles across the US/Canada border, and to eliminate competition from lower priced US sourced vehicles.

41. The Conspiracy Defendants also co-ordinated their policies on local pricing, warranties, and sale restrictions for the same purpose.

43-42. Additionally, Defendant Manufacturers undertook actions or instituted policies (hereinafter sometimes referred to collectively as the "Price Maintenance Policies"); to maintain the price advantage they Defendant manufacturers enjoyed in either Canada or the US over the other country, when applicable, and to maintain and charge consumers artificially higher prices for the Defendant Manufacturers' manufacturers' motor vehicles than would have otherwise been available save for the conspiracy or Price Maintenance Policies. .- The Defendants co-ordinated their policies on local pricing, warranties, and sale restrictions so as to restrict the free flow of the Defendant manufacturers' motor vehicles across the US/Canada border.

44.43. The primary purpose and effect of this conspiracy and the Price Maintenance Policies was to increase the Defendant Manufacturers' manufacturers' profits and to prevent their profits from erosion due to:

- a. consumers purchasing the Defendant Manufacturers' manufacturers' motor vehicles in the neighbouring country for less than what those same motor vehicles sold for domestically due to fluctuations in the US/Canadian currency exchange rate, or;
- b. the appurtenant reduction in the Defendant Manufacturers' manufacturers' profits due to the natural reduction of the domestic price of the Defendant Manufacturers' manufacturers' motor vehicles as the price reacted to the competition of the imported goods.

45.44. The Conspiracy Defendants' conspiracy and course of conduct was aimed at buyers in both the United States and Canada and damageddamages consumers in Canada and the United States respectively, depending on the US/Canada currency exchange rate.

46.45. Currently, in order to maintain the price advantage the Defendant Manufacturersmanufacturers enjoy in Canada relative to the US, the Defendant Manufacturersmanufacturers have ordered their respective dealer networks in the US to not sell motor vehicles into Canada under threatpain of charges, and potential

loss of franchise, or desired motor vehicle allotments such as the Corvette motor vehicle.

47.46. The Defendant ~~Manufacturers also~~~~manufacturers~~ pressured their dealers to force consumers to sign no “export clauses” in their purchase agreements to prevent consumers from exporting the motor vehicles to the other country, or to refuse to sell motor vehicles to individuals who could ~~can~~ not provide a domestic address to register their purchase.

48.47. As a further example of the Defendant ~~Manufacturers~~' conduct in Canada to unreasonably enhance the prices of the Defendant ~~Manufacturers'~~~~manufacturers'~~ motor vehicles in Canada relative to their “natural” or expected level, certain of the Defendant ~~Manufacturers~~~~manufacturers~~ ordered their dealer networks in Canada not to honour the vehicle warranty provided by the applicable related US company affiliates, contrary to the Defendant ~~Manufacturers'~~~~manufacturers'~~ practice before they embarked on their Price Maintenance Policies~~conspiracy and course of~~ conduct described above.

49.48. Thus, in the ~~(unlikely)~~ event a Canadian resident is able to purchase a new motor vehicle in the United States from a dealer of one of, the Defendant Manufacturers, the applicable Defendant Manufacturers'~~manufacturers'~~ dealer network in Canada will not service the motor vehicle under the manufacturer's

warranty and the purchaser will be obligated to pay for the repairs on his or her vehicle purchased in the other country.

~~50.49.~~ The result of such agreement is that a Canadian consumer who desires to have the warranty protection typically offered by the [applicable](#) Defendant [Manufacturer](#)~~manufacturers~~ is required to pay between 25% to 40% more on average for a motor vehicle in Canada than would be required to import such motor vehicle from the United States.

~~51.50.~~ These inter-company conspiracies and agreements, and [/or Price Maintenance Policies](#) unreasonably enhanced the price of the Defendant [Manufacturers'](#)~~manufacturers'~~ motor vehicles in Canada to the detriment of all Canadian consumers of the Defendant [Manufacturers'](#)~~manufacturers'~~ motor vehicles.

THE CONSPIRACY

~~52.51.~~ The Plaintiffs allege that during the Conspiracy Period, the [Conspiracy](#) Defendants and unnamed conspirators conspired and/or agreed with each other to unreasonably enhance the prices of motor vehicles and to unduly lessen competition in the manufacture, sale and/or supply of motor vehicles in North America.

53.52. During the Conspiracy Period, senior executives and employees of the [Conspiracy](#) Defendants and unnamed co-conspirators, acting in their capacities as agents of the [Conspiracy](#) Defendants and unnamed co-conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiffs, and as a result of the communications and meetings the [Conspiracy](#) Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- a. enhance unreasonably the prices of motor vehicles in North America;
- b. exchange information in order to monitor and enforce adherence to the agreed upon prices for motor vehicles in North America; and,
- c. to lessen unduly competition in the production, manufacture, sale, price and supply of motor vehicles in North America.

54.53. To implement their conspiracy to artificially enhance the prices of the [Conspiracy Defendants'](#) ~~Defendant manufacturers'~~ motor vehicles sold in Canada and the US, as applicable, the [Conspiracy](#) Defendants, engaged in a series of concerted actions, agreements and directives amongst each other, their related Canadian, US, and foreign affiliates, and their US and Canadian dealer networks, intended to have the effect of, and having the effect of reducing competition in the US and [Canadian](#) ~~Canada~~ marketplace for new motor vehicles, thus enhancing the price of

the Conspiracy Defendants'~~Defendant manufacturers'~~ motor vehicles in the US and Canada, as applicable at various times.

~~55.~~54. In furtherance of the conspiracy, the Conspiracy Defendants controlled and limited the cross shipping of new motor vehicles from Canada to the US and from the US to Canada.

~~56.~~55. Beginning in at least December 2001, the Conspiracy Defendants communicated with one another through CADA and others and agreed amongst themselves and each other to act to prevent or limit the cross shipping of new motor vehicles across the Canada/US border.

~~57.~~56. For example, a memorandum of the Defendant Chrysler marked "Urgent" and dated December 20, 2001 from Lewis C. Scott, Daimler Chrysler's (as it then was) Zone Manager in Denver, Colorado to all dealers in the Denver zone, entitled "Imported Canadian Vehicles," states:

Following is the latest information on the Canadian vehicle issue: Our management has spoken to the corporate headquarters of several of our competitors regarding this issue and have copies of their policies. The issue is currently being reviewed by our legal department, and it appears as though our policy will greatly mirror that of our competitors. The probability is that we will suspend the warranty on vehicles that come into the U.S. for retail sale....The plan is to have a detailed policy in place during the first quarter of 2002. (the "Chrysler Memorandum").

~~58.~~57. As is clear from the Chrysler Memorandum, the policy of not honouring warranties on imported motor vehicles was implemented by Chrysler, and its

competitors, some of whom are [Conspiracy](#) Defendants in this action, to address the [Conspiracy](#) Defendants' "issue" with motor vehicles being cross shipped from Canada to the United States.

~~59.~~58. By mid-2002, [some of the Conspiracy Defendants](#)~~Defendant manufacturers~~ stopped honouring warranties for the service and repair of new vehicles exported from Canada to the United States. This policy was implemented through the [Conspiracy Defendants'](#)~~Defendant manufacturers'~~ United States dealers, in furtherance of the conspiracy.

~~60.~~59. The identical corporate policy not to honour warranties on imports was implemented by Chrysler's Canadian affiliate, the Defendant Chrysler Canada, which was intended to prevent or restrict motor vehicles from being imported to Canada from the US.

~~61.~~60. [Some of the Conspiracy](#)~~The~~ Defendants bolstered their conspiracy by instructing and directing their Dealer Networks in the US and Canada *inter alia*:

- a. not to honour warranties in one country on motor vehicles imported from the other country, or placing other warranty restrictions on imported motor vehicles;

- b. not to install properly calibrated United States or Canadian standard speedometers and odometers in new vehicles imported from the other country, for the purpose of impeding easy registration of the foreign vehicles in the other country as each respective country or province's, motor vehicle regulations require such speedometer, or odometer modification to permit a vehicle imported from the other country to be registered in that country or province as the case may be.

~~62.61.~~ In March 2002, ~~the Defendant~~ Ford informed its Canadian dealers that ~~it~~Ford would now:

- a. trace exports back to 1999 in order to impose chargebacks, restrict allocations of motor vehicles and otherwise punish exporting dealers;
- b. conduct VIN traces every 60 days to monitor exports and to enforce the applicable Ford regulations against exports; and fund and otherwise support Canadian Ford dealers in the event they are sued for refusing to sell automobiles based on export concerns.

~~63.62.~~ The Plaintiffs plead that the Defendant Ford took similar actions and gave similar directives to its US dealer network to prevent its motor vehicles from being exported from the US to Canada.

~~64.63.~~ Additionally, all the Conspiracy Defendants~~Defendant manufacturers~~ sought and obtained agreements from their Canadian and US dealers:

- a. to require new vehicle customers to execute "No Export" agreements, agreeing not to export the vehicle out of Canada or the US, as applicable, for a stated period. If violated, these agreements could require either the customer or the dealer to pay a substantial penalty of 10% to 50% of the vehicle's value;
- b. to conduct "due diligence" investigations of prospective buyers to identify those buyers intending to export the new vehicles to the other country, and not to sell to such buyers; and
- c. to refuse to provide new vehicle owners who imported or exported the motor vehicles to or from the other country with information regarding safety recalls.

~~65.64.~~ The Plaintiffs plead that the exact details of the directives given to the Conspiracy Defendants'~~Defendant manufacturers'~~ US Dealers are currently known only to the Conspiracy Defendants~~Defendant manufacturers~~ and their dealer networks.

~~66.~~ ~~Some or all of the Defendant manufacturers took numerous measures to enforce these constraints on their Canadian dealers, which included the following:~~

- a. ~~penalizing Canadian dealers that sold new vehicles that were exported to the United States through "chargebacks." These chargebacks took the form of either "liquidated damages" or some percentage of the value of the vehicle, which in either case amounted to several thousand dollars per vehicle;~~
- b. ~~threatening to withhold inventory of popular styles and colors of vehicles to Canadian dealers which did not comply with the export restrictions;~~
- c. ~~threatening to terminate the dealerships of Canadian dealers that refused to comply;~~
- d. ~~creating and exchanging "blacklists" of persons known to purchase vehicles for export into Canada;~~
- e. ~~attempting to persuade authorized parts dealers not to provide odometer packages to convert from kilometres to miles; and~~
- f. ~~using the dealer trade associations, including the Defendant CADA as a conduit to exchange information among themselves, including strategies and procedures for eliminating the "export problem."~~

67. ~~The Plaintiffs plead that the same or similar threats and directives were aimed at the US dealers to force them to comply with the "no export" restrictions. The Plaintiffs plead that the exact details of these threats are currently known only to the Defendant manufacturers and to their dealer networks.~~

68. ~~The agreements and conduct described herein have had the following effects, among others:~~

- a. ~~inter-brand price competition in the sale of new vehicles in Canada has been suppressed and restrained;~~
- b. ~~retail prices of vehicles purchased by the Plaintiffs and other members of the proposed Class have been unreasonably enhanced; and~~
- ~~the supply of new vehicles in Canada has been limited to quantities fewer than would be available in a competitive market.~~
- e. —

~~69.65.~~ CADA, together with unnamed conspirators (collectively the “Facilitators”), facilitated the conspiracy detailed above, and participated in unreasonably enhancing the prices of the Conspiracy Defendants~~Defendant manufacturers~~’ motor vehicles sold in Canada.

~~70.66.~~ CADA conspired with the Conspiracy Defendants~~Defendant manufacturers~~ to institute practices to eliminate the cross export of motor vehicles made for sale in Canada or the United States to the other country.

~~71.67.~~ In early 2001, CADA facilitated communications and discussions between the Conspiracy Defendants~~Defendant manufacturers~~ and their related foreign and domestic affiliates, regarding the prevention of motor vehicles being cross shipped across the Canada/US border.

~~72.68.~~ -As a result of CADA’s participation in and facilitation of communications between the Conspiracy Defendants~~Defendant manufacturers~~, in early 2001, ~~some~~

~~or all of the~~ Conspiracy Defendants~~Defendant manufacturers~~ took identical or similar actions and issued similar or identical directives to their respective dealer networks. Namely, the Conspiracy Defendants: ~~Defendant manufacturers:~~

- a. threatened their respective Canadian dealers with stricter enforcement of chargeback provisions;
- b. reinforced their requirements that Canadian dealers condition sales on consumers' entry into "No Export" agreements;
- c. used the same language and terms in "No Export" agreements as those used by competitors;
- d. imposed allocation restrictions on exporting Canadian dealers;
- e. pursued termination of Canadian dealers found selling motor vehicles for use in the United States; and
- f. required Canadian dealers to conduct "due diligence" investigations of prospective buyers to root out US citizens and other potential exporters.

~~73.69.~~ In May 2002, the Conspiracy Defendants'~~Defendant manufacturers'~~

representatives gathered at the 2002 New York Auto Show in New York City and met with senior representatives of both CADA and others to discuss the export

~~"problem". "problem."~~ The ~~Conspiracy Defendants~~~~Defendant manufacturers~~ suggested that CADA's members police non-compliant dealers. The discussions also covered a proposed checklist of practices Canadian dealers could employ to stop export sales.

~~74.~~70. The Facilitators also assisted the ~~Conspiracy Defendants~~~~Defendant manufacturers~~ in their conspiracy to lessen competition and to unreasonably enhance prices for their product by assisting in the creation of a litigation defence fund for the protection of dealers that incurred costs or legal fees arising out of the ~~Conspiracy Defendants'~~~~Defendant manufacturers'~~ directives, and in furtherance of the conspiracy.

~~75.~~71. The Defendant CADA's own literature implicates it in the facilitation of the conspiracy to prevent the cross shipping of motor vehicles across the Canada/US border, detailed herein.

~~76.~~72. A CADA Newsletter, dated April 2002, stated that in late 2001, CADA formed a new Industry Relations Committee to deal with ~~"industry"~~~~industry issues"~~~~issues"~~ such as ~~"export"~~~~export sales"~~~~sales."~~ It also noted that during 2001, CADA met ~~"with"~~~~with~~ a full compliment [sic] of Industry Representatives and Manufacturers Associations ~~representations"~~~~representations"~~ to ~~"attempt"~~~~attempt~~ to resolve the ~~issue"~~~~issue"~~ of export sales.

~~77.~~73. In April 2002, CADA announced that it would work with manufacturers and dealers to develop "~~general~~"~~general~~ industry guidelines, due diligence standards and best "~~practices~~"~~practices~~" for dealers to use to stop the export of new automobiles from Canada to the United States.

~~78.~~74. In June 2002, CADA announced that it "~~[was]~~"~~{was}~~ currently working closely with manufacturers ~~..~~"~~and ..~~" to find a solution to the export problem. Subsequently, CADA issued a report to its members in August 2002 entitled "~~Motor~~"~~Motor~~ Vehicle Industry Strategy Against Export ~~Sales~~".~~Sales.~~" That report describes the communication, collaboration, coordination, and agreement among the ~~Conspiracy Defendants~~,~~Defendant manufacturers~~, manufacturer trade associations, and dealer trade associations to stop export sales. The report describes "~~recent~~"~~recent~~ meetings between CADA and the manufacturers' ~~associations~~"~~associations~~" where "~~a~~"~~a~~ multi-faceted strategy was ~~discussed~~"~~discussed~~" and a "~~consensus~~"~~consensus~~ to work ~~together~~"~~together~~" was reached to prevent new automobile exports from Canada to the United States. Further, with respect to Canadian dealers' due diligence in investigating prospective customers, an "~~industry~~"~~industry~~ list that all manufacturers could agree ~~on~~"~~on~~" was discussed.

~~79.~~75. Finally, a CADA report states that at "~~the~~"~~the~~ most ~~recent~~"~~recent~~" CADA meeting, representatives of the ~~Conspiracy~~ Defendants discussed pursuit of an

industry-wide solution and "a" a united campaign against the unauthorized exporting of new vehicles into the U.S.A".U.S.A."

PRICE MAINTENANCE POLICIES

76. Some or all of the Defendant Manufacturers took the following steps to prevent the cross shipment of their motor vehicles from one country to the other, as applicable:

- a. penalizing Canadian dealers that sold new vehicles that were exported to the United States through "chargebacks". These chargebacks took the form of either "liquidated damages" or some percentage of the value of the vehicle, which in either case amounted to several thousand dollars per vehicle;
- b. threatening to withhold inventory of popular styles and colors of vehicles to Canadian dealers which did not comply with the export restrictions;
- c. threatening to terminate the dealerships of Canadian dealers that refused to comply;
- d. creating and exchanging "blacklists" of persons known to purchase vehicles for export from Canada; and

- e. attempting to persuade authorized parts dealers not to provide odometer packages to convert from kilometres to miles;
- f. Directing their respective dealer networks not to honour warranties in one country on motor vehicles imported from the other country, or placing other warranty restrictions on imported motor vehicles; and
- g. Directing their respective dealer networks not to install properly calibrated United States or Canadian standard speedometers and odometers in new vehicles imported from the other country, for the purpose of impeding easy registration of the foreign vehicles in the other country.

77. The Plaintiffs plead that the same or similar threats and directives were aimed at the US dealers to force them to comply with the “no export” restrictions. The Plaintiffs plead that the exact details of these threats are currently known only to the Defendant Manufacturers and to their dealer networks.

78. The agreements and conduct described herein have had the following effects, among others:

- a. inter-brand price competition in the sale of new vehicles in Canada has been suppressed and restrained;

b. retail prices of vehicles purchased by the Plaintiffs and other members of the proposed Class have been unreasonably enhanced; and

c. the supply of new vehicles in Canada has been limited to quantities fewer than would be available in a competitive market.

Economic Torts

~~80.~~79. The acts particularized in paragraphs ~~51~~~~[52]~~ to ~~75~~~~[79]~~ were unlawful acts directed towards the Plaintiffs and other purchasers of motor vehicles, which unlawful acts the Conspiracy Defendants knew in the circumstances would likely cause injury to the Plaintiffs and other purchasers of motor vehicles and, as such, the Conspiracy Defendants are liable for the tort of civil conspiracy.

~~81.~~80. Further, or in the alternative, the acts particularized in paragraphs ~~76~~~~[52]~~ to ~~78~~~~[79]~~ were unlawful acts undertaken by the Defendant Manufacturers with the intent to injure the Plaintiffs and other purchasers of motor vehicles and, as such, the Defendant Manufacturers are liable for the tort of intentional interference with economic interests.

CLAIMS UNDER THE *COMPETITION ACT*, R.S.C. 1985, C. C-34

~~82.~~81. The Plaintiffs incorporate by reference paragraphs ~~1 to 80~~~~[1]~~~~[81]~~ as though completely reproduced herein.

SECTION 45

~~83.~~82. The Plaintiffs plead that the Conspiracy Defendants'~~Defendants~~ conduct described herein is a violation of part VI of the *Competition Act*, and particularly, without limiting the generality of the forgoing, s. 45(1) of the *Competition Act* which provides in relevant part:

Every one who conspires, combines, agrees or arranges with another person

(a) ~~(a)~~ to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) ~~(b)~~ to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) ~~(c)~~ to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) ~~(d)~~ to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

~~84.~~83. The Plaintiffs claim that the conduct described herein above was a breach of s.

45(1) of the *Competition Act* in that:

- a. The Conspiracy Defendants'~~Defendants~~ conduct described herein amounts to a conspiracy, combination or arrangement to:

- i. enhance unreasonably the price of the Conspiracy Defendants' ~~Defendant manufacturers'~~ motor vehicles sold in Canada; and
- ii. lessen unduly the competition in the production, manufacture and, supply of motor vehicles; and
- iii. otherwise restrain competition unduly.

~~85.~~84. The Plaintiffs plead that as a result of the Conspiracy Defendants' conduct:

- a. Prices of the Conspiracy Defendants' ~~Defendant manufacturers'~~ motor vehicles were enhanced unreasonably in Canada; ~~and~~
- b. The Conspiracy Defendants lessened competition in the production and supply of the Conspiracy Defendants' ~~Defendant manufacturers'~~ motor vehicles; and
- c. There was a general lessening of competition that was undue.

~~86.~~85. The Plaintiffs claim that as a result of the Conspiracy Defendants' conduct, the Plaintiffs and the Class Members have suffered damages.

SECTION 61

86. The Plaintiffs plead that s.61(1) of the Competition Act applies to the Defendant Manufacturers in that the Defendant Manufacturers supply or produce products, namely, motor vehicles.

87. The Plaintiffs plead that the Defendant Manufacturers' ~~Defendants'~~ conduct described herein is also a violation of s. 61 (1) of the *Competition Act* which provides in relevant part:

61. (1) No person who is engaged in the business of producing or supplying a product, who extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards, or who has the exclusive rights and privileges conferred by a patent, trademark, copyright, registered industrial design or registered integrated circuit topography, shall, directly or indirectly,

(a) by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertises a product within Canada . . .

88. The Plaintiffs plead that the Defendant Manufacturers' conduct described herein violates s. 61(1) of the *Competition Act*, particularly, the Defendant Manufacturerss have "attempted to influence upwards" or "prevent the reduction of" the price at which the Defendant Manufacturers' ~~manufacturers'~~ Canadian dealer affiliates that do business in Canada supplied substantially identical ~~or similar~~ product in Canada by way of:

- a. the Defendant Manufacturers'~~manufacturers'~~ inserting clauses in their applicable Franchise Agreements with their respective US Dealer networks that prohibit the export of motor vehicles to Canada; and
- b. the Defendant Manufacturers'~~manufacturers'~~ appurtenant threats to their respective US dealer networks to cut off, or reduce the supply of the Defendant manufacturers' motor vehicles to US Dealers that are found to export to Canada.

SECTION 46

89. -In the alternative to the claims under ss. 45(1) and 61(1)(a) detailed above, the Plaintiffs claim that the Conspiracy Defendants based in Canada have acted upon the directives of their respective foreign affiliates or parent companies:

- a. in furtherance of a conspiracy to unreasonably enhance the price of the Conspiracy Defendants'~~Defendant manufacturers'~~ motor vehicles sold in Canada, and/or
- b. in furtherance of a conspiracy, or plan, or agreement to “influence upwards” or “prevent the reduction of” the price at which the Conspiracy Defendants'~~Defendant manufacturers'~~ motor vehicles is sold in Canada.

90. The Plaintiffs claim that the conduct described above violates s. 46 of the *Competition Act* which provides in relevant part:

46. (1) Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

91. The Plaintiffs plead that they and the Class may recover damages caused by the [Defendant Manufacturers and the Conspiracy](#) Defendants as a result of the violations of the *Competition Act* described herein under s. 36(1) of the *Competition Act* which provides in relevant part:

Any person who has suffered loss or damage as a result of (a) conduct that is contrary to any provision of Part VI, . . . may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

92. ~~The Defendant CADA and others facilitated this conspiracy by:~~

- ~~a.—sponsoring meetings to exchange information among manufacturers;~~
- ~~b.—promoting the development of an industry-wide checklist of practices dealers could employ to stop export sales; and~~

~~e. assisting the Defendant manufacturers in enforcing the agreements described above.~~

~~93. These actions violate ss. 45(1) and 61(1) of the *Competition Act* as described above.~~

~~94. The Plaintiffs plead that as a result of the actions of CADA, they have suffered damages as described above.~~

~~95-92.~~ The Plaintiffs plead that if the Defendants' conduct is not enjoined by this court, Canadian consumers will continue to suffer damages.

~~96-93.~~ Accordingly, the Plaintiffs request that this Court issue a mandatory injunction ordering the Conspiracy Defendants to stop their anti-competitive behaviour, and prevent the Defendant Manufacturerss from implementing policies designed to prevent new motor vehicles reaching Canada from the US, and requiring that the Defendant Manufacturerss allow the prices quoted for their product in Canada to fall to their natural level.

VIOLATION OF PROVINCIAL CONSUMER PROTECTION STATUTES

~~97-94.~~ The Plaintiffs incorporate by reference the allegations in paragraphs ~~{1-}~~ to ~~93-96}~~ as if they were fully reproduced herein.

~~98-95.~~ As a direct result of the Defendant Manufacturers' anticompetitive, deceptive, unfair, unconscionable conduct, the Plaintiffs and members of the Class were

denied access to an alternative channel of distribution of new motor vehicles and forced to pay artificially high prices for their new vehicles.

~~99.~~96. The Defendant [Manufacturers](#)' conduct described herein is an unfair business practice and accordingly violates s. 17 (1) of the *Consumer Protection Act, 2002*, *S.O. 2002, c. 30, Sch. A* which provides in relevant part: "No person shall engage in an unfair business practice".

~~100.~~97. Other provinces have enacted similar consumer protection legislation.

~~101.~~98. The Plaintiffs plead that as a result of the Defendant [Manufacturers](#)' conduct described herein, and as a result of the Defendant [Manufacturers](#)' unfair business practices, they and the Class Members have suffered damages.

~~102.~~99. The Defendant [Manufacturers](#), ~~except CADA,~~ have engaged in unfair competition or have committed unfair business practices in violation of the *Consumer Protection Act*, and other consumer protection legislation in other provinces.

UNJUST ENRICHMENT

~~103.~~100. The Plaintiffs incorporate by reference the allegations in paragraphs ~~{1 }-~~ to ~~99~~102 as though completely reproduced herein.

~~104.~~101. The Defendant ~~Manufacturers~~manufacturers have been unjustly enriched by their conduct described herein, which caused the Plaintiffs and the Class Members to pay artificially high and unreasonably enhanced prices for their vehicles in Canada.

~~105.~~102. There is no juristic reason for the enrichment.

~~106.~~103. The Plaintiffs and the Class Members have suffered a corresponding deprivation.

~~107.~~104. It would be inequitable for the Defendant ~~Manufacturers~~manufacturers to retain their profits they earned at the Plaintiffs' and the Class Members' expense through their unlawful conduct described herein.

WAIVER OF TORT

105. As a result of the Defendant Manufacturers wrongful conduct described herein, the plaintiff and Class Members reserve to themselves the right to elect at the trial of the common issues to waive the torts conspiracy, and unlawful interference with economic interest and to have damages assessed in an amount equal to the gross

revenues earned by the Defendant Manufacturers, or the net income received by the Defendant Manufacturers from the sale of the Motor Vehicles.

106. In the alternative, the Plaintiffs plead that as a result of the Defendants wrongful conduct particularized herein the Plaintiffs are entitled to restitution of all the Defendant Manufacturers business profits rationally related to the wrongful conduct herein described.

~~108.~~107. The originating process may be served without court order outside Ontario in that the claim is:

- a. In respect of a tort committed in Ontario (rule 17.02(g));
- b. In respect of damages sustained in Ontario arising from a tort however committed (rule 17.02(h));
- c. Against a person outside Ontario who is a necessary and proper party to a proceeding brought against another person served in Ontario (rule 17.02(o)); and
- d. Against a person carrying on business in Ontario (rule 17.02 (p)).

~~109.~~108. The Plaintiffs propose~~plaintiff proposes~~ that this action be tried in the City of Toronto.

LEGISLATION

~~110.109.~~ The Plaintiffs plead and rely on:

- a. *Consumer Protection Act, 2002, S.O. 2002, c. 30, Sch. A.*
- b. *Competition Act, R.S.C. 1985, c. C-34.*
- c. *Class Proceedings Act, 1992.*

October 21, 2007

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Rhonda Tetefsky, et. al. v. General Motors Corporation, et. al.
Plaintiff Defendant

Court File No: 07-CV-340633CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM

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