

ONTARIO
SUPERIOR COURT OF JUSTICE

AMENDED THIS 18 DAY OF Jan. 2014
PURSUANT TO THE ORDER OF Justice LeBel
DATED THE 17 DAY OF Jan. 2014
LOCAL JUDGE OF THE SUPERIOR COURT OF JUSTICE
MODIFIÉ CE
CONFORMÉMENT À L'ORDONNANCE DE:
LE 17 JANVIER 2014
LE JUGE LOCAL DU COUR SUPÉRIEUR DE JUSTICE

BETWEEN

135741 ONTARIO INC. operating as ZERO ZONE MECHANICAL
and SERVICERITE INC.

Plaintiffs

-and-

TECUMSEH PRODUCTS OF CANADA LIMITED; TECUMSEH PRODUCTS
CO.; TECUMSEH COMPRESSOR COMPANY; DANFOSS A/S; DANFOSS,
INC.; DANFOSS COMMERCIAL COMPRESSORS LTD.; DANFOSS SCROLL
TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.;
DANFOSS COMPRESSOR, LLC; APPLIANCES COMPONENTS COMPANIES
SPA; ACC USA LLC; PANASONIC CORPORATION; PANASONIC CANADA
INC.; WHIRLPOOL CANADA LP; EMBRACO NORTH AMERICA; and
WHIRLPOOL CORPORATION

Defendants

Proceeding Under the *Class Proceedings Act*, 1992.

SECOND 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 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 March 20/09 Issued by: R. BAKER
Local Registrar
80 Dundas Street
London, ON N6A 6A3

TO: **Tecumseh Products of Canada Limited**
185 Asland Avenue
London
Ontario
N5W 4E1

AND TO: **Tecumseh Products Co.**
1136 Oak Valley Drive
Ann Arbor
Michigan
United States
48108

AND TO: **Tecumseh Compressor Company**
1136 Oak Valley Drive
Ann Arbor
Michigan
United States
48108-9624

AND TO: **Danfoss A/S**
Nordborgvej 81
6430 Nordborg
Denmark

AND TO: **Danfoss, Inc.**
7941 Corporate Drive
Baltimore,
Maryland
United States
21236

AND TO: **Danfoss Commercial Compressors Ltd.**
1775 MacLeod Drive
Lawrenceville
Georgia
United States
30043

AND TO: **Danfoss Turbocor Compressors, Inc.**
1769 E. Paul Dirac Drive
Tallahassee
Florida
United States
32310

AND TO: **Danfoss Scroll Technologies, LLC**
1 Scroll Drive
Arkadelphia
Arkansas
United States
71923

AND TO: **Danfoss Compressor, LLC**
1 Scroll Drive
Arkadelphia
Arkansas
United States
71923

AND TO: **Appliances Components Companies SpA**
Viale Lino Zanussi
11 - 33170
Pordenone - Italy113
Jetplex Circle, Suite B1

AND TO: **ACC USA LLC**
113 Jetplex Circle, Suite B1
Madison
Alabama
United States
35758

AND TO: **Panasonic Corporation**
1006, Oaza Kadoma,
Kadoma-shi, Osaka 571-8501
Japan

AND TO: **Panasonic Canada Inc.**
5770 Ambler Drive
Mississauga
Ontario
L4W 2T3

AND TO: **Whirlpool Canada LP**
1901 Minnesota Court
Mississauga
Ontario
L5N 3A7

AND TO: **Embraco North America, Inc.**
2800 Vista Ridge Drive NE
Suwanee
Georgia
United States
30024-3510

AND TO: **Whirlpool Corporation**
Whirlpool Center
2000 North M-63
Benton Harbor
Michigan
United States
49022-2692

CLAIM

1. **THE PLAINTIFFS CLAIM** on behalf of themselves and the class:
 - (a) an Order pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, certifying this action as a class proceeding and appointing the Plaintiffs as the Representative Plaintiffs;
 - (b) a declaration that the Defendants conspired and/or agreed with each other to fix, maintain, or stabilize the prices of hermetically sealed cooling compressors of less than one horsepower ("Cooling Compressors") from at least January 1, 2004, through December 31, 2008 (the "Relevant Period"). Cooling Compressors do not include compressors used in air conditioners;
 - (c) a declaration that the Defendants conspired and/or agreed to lessen unduly, competition in the production, manufacture, sale and/or supply of Cooling Compressors in Canada during the Relevant Period;
 - (d) general damages on an aggregate basis or otherwise for conspiracy and conduct which is contrary to Part VI of *Competition Act*, RSC 1985, C-34, in an amount sufficient to compensate the Plaintiffs and the class members for the harm done to them as a result of the Defendants' illegal conduct;
 - (e) an accounting, restitution, disgorgement and the creation of a constructive trust for unjust enrichment, waiver of tort and the taking of inequitable

profit by unlawful conduct;

- (f) punitive, aggravated and exemplary damages;
- (g) costs of investigation and prosecution of these proceedings pursuant to Section 36(1) of the *Competition Act*, RSC 1985, C-34;
- (h) an equitable rate of interest on all sums found due and owing to the Plaintiffs and the class members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c 43;
- (i) costs of this action on a substantial indemnity scale including applicable taxes; and,
- (j) such further and other relief as this Honourable Court deems just.

THE PLAINTIFFS AND THE CLASS

2. The Plaintiff, 1355741 Ontario Inc. operating as Zero Zone Mechanical (“Zero Zone”), is an Ontario corporation with its principal place of business located in the City of Toronto, in the Province of Ontario. During the Relevant Period, Zero Zone purchased Cooling Compressors and products containing Cooling Compressors (“Cooling Compressors Products”). Cooling Compressor Products do not include air conditioners.
3. The Plaintiff, Servicerite Inc. (“Servicerite”), is an Ontario corporation with its principal place of business located in the City of London, in the Province of Ontario. During the Relevant Period, Servicerite purchased Cooling

Compressors and Cooling Compressor Products.

4. The Plaintiffs seek to represent a class consisting of all persons in Canada who Cooling Compressors and/or Cooling Compressor Products during the Relevant Period.

THE DEFENDANTS

The “Tecumseh” Defendants

5. The Defendant, Tecumseh Products of Canada Limited, is a Canadian corporation with its principal place of business in the City of London, in the Province of Ontario. Tecumseh Products of Canada Limited is a subsidiary of the Defendant, Tecumseh Products Co. During the Relevant Period, Tecumseh Products of Canada Limited manufactured, sold and distributed Cooling Compressors throughout Canada.
6. The Defendant, Tecumseh Products Co., is a Michigan corporation with its principal place of business in the City of Ann Arbor, in the State of Michigan. During the Relevant Period, Tecumseh Products Co. manufactured, sold and distributed Cooling Compressors throughout Canada.
7. The Defendant, Tecumseh Compressor Company, is a Delaware corporation with its principal place of business in Ann Arbor, Michigan. Tecumseh Compressor Company is a wholly-owned subsidiary of Tecumseh Products Co. During the Relevant Period, Tecumseh Compressor Company manufactured, sold and distributed Cooling Compressors throughout Canada.

8. The business and operations of the Defendants, Tecumseh Products of Canada Limited, Tecumseh Products Co. and Tecumseh Compressor Company (together "Tecumseh"), and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The "Danfoss" Defendants

9. The Defendant, Danfoss A/S is a privately-held Danish company with its principal place of business in Nordborg, Denmark. During the Relevant Period, Danfoss A/S manufactured, sold and distributed Cooling Compressors throughout Canada.
10. The Defendant, Danfoss, Inc., is a Delaware corporation with its principal place of business in the City of Baltimore, in the State of Maryland. Danfoss, Inc. Danfoss, Inc. is an indirectly-owned subsidiary of Danfoss A/S. Danfoss, Inc. operates a place of business in Canada in the City of Mississauga in the Province of Ontario. During the Relevant Period, Danfoss, Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.
11. The Defendant, Danfoss Commercial Compressors Ltd., is a Delaware corporation with its principal place of business in the City of Lawrenceville, in the State of Georgia. Danfoss Commercial Compressors Ltd. is a wholly-owned subsidiary of Danfoss, Inc. During the Relevant Period, Danfoss Commercial Compressors Ltd. manufactured, sold and distributed Cooling Compressors

throughout Canada.

12. The Defendant, Danfoss Scroll Technologies, LLC, is a Delaware limited liability company with its principal place of business in the City of Arkadelphia, in the State of Arkansas. Danfoss Scroll Technologies, LLC is a subsidiary of Danfoss, Inc. During the Relevant Period, Danfoss Scroll Technologies, LLC manufactured, sold and distributed Cooling Compressors throughout Canada.
13. The Defendant, Danfoss Turbocor Compressors, Inc., is a Delaware corporation with its principal place of business in the City of Tallahassee, in the State of Florida. Danfoss Turbocor Compressors, Inc. is a subsidiary of Danfoss, Inc. During the Relevant Period, Danfoss Turbocor Compressors, Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.
14. The Defendant, Danfoss Compressor, LLC, is a limited liability company with its principal place of business in the City of Arkadelphia, in the State of Arkansas. Danfoss Compressor, LLC is a subsidiary of Danfoss, Inc. During the Relevant Period, Danfoss Compressor, LLC manufactured, sold and distributed Cooling Compressors throughout Canada.
15. The business and operations of the Defendants, Danfoss A/S, Danfoss, Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC, Danfoss Turbocor Compressors, Inc. and Danfoss Compressor, LLC (together “Danfoss”), and their respective parent corporations, subsidiaries, and affiliates in

respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The “ACC” Defendants

16. The Defendant, Appliances Components Companies SpA (“ACC SpA”), is an Italian company with its principal place of business in Pordenone, Italy. During the Relevant Period, ACC SpA manufactured, sold and distributed Cooling Compressors throughout Canada.
17. The Defendant, ACC USA LLC is a Delaware limited liability company with its principal place of business in Alabama. ACC USA LLC is a wholly-owned subsidiary of ACC SpA. During the Relevant Period, ACC USA LLC manufactured, sold and distributed Cooling Compressors throughout Canada.
18. The business and operations of the Defendants, ACC SpA and ACC USA LLC (together “ACC”) and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The “Panasonic” Defendants

19. The Defendant, Panasonic Corporation (formerly known as Matsushita Electric Industrial Co., Ltd.), is a Japanese corporation with its headquarters in Osaka Japan. During the Relevant Period, Panasonic Corporation manufactured, sold and distributed Cooling Compressors throughout Canada.

20. The Defendant, Panasonic Canada Inc., is a Canadian corporation with its principal place of business in the City of Mississauga in the Province of Ontario. Panasonic Canada Inc. is an indirect subsidiary of Panasonic Corporation. During the Relevant Period, Panasonic Canada Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.
21. The business and operations of the Defendants, Panasonic Corporation and Panasonic Canada Inc. (together "Panasonic"), and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The "Whirlpool" Defendants

22. The Defendant, Whirlpool Canada LP, is a Canadian limited partnership with its principal place of business in the City of Mississauga in the Province of Ontario. Whirlpool Canada LP is a subsidiary of the Defendant, Whirlpool Corporation. During the Relevant Period, Whirlpool Canada LP manufactured, sold and distributed Cooling Compressors throughout Canada.
23. The Defendant, Embraco North America, Inc. ("Embraco NA"), is a Delaware corporation with its principal place of business in the City of Suwanee, in the State of Georgia. Embraco NA is a subsidiary of the Defendant, Whirlpool Corporation. During the Relevant Period, Embraco NA manufactured, sold and distributed Cooling Compressors throughout Canada.

24. The Defendant, Whirlpool Corporation, is a Delaware corporation with its principal place of business in the City of Benton Harbor, in the State of Michigan. During the Relevant Period, Whirlpool Corporation manufactured, sold and distributed Cooling Compressors throughout Canada.
25. The business and operations of the Defendants, Whirlpool Canada LP, Embraco NA and Whirlpool Corporation (together "Whirlpool"), and their respective parent corporations, subsidiaries, and affiliates, specifically including but not limited to Whirlpool S.A., in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The Defendants' Co-Conspirators

26. The identity of each of the Defendants' co-conspirators is not known to the Plaintiffs at this time. During the Relevant Period, each of the Defendants' co-conspirators was engaged in the business of manufacturing, distributing and selling Cooling Compressors in Canada.
27. Whirlpool S.A. is alleged to be a co-conspirator acting in concert with the Defendants, specifically Whirlpool Corporation, its parent corporation, and Whirlpool Canada LP, its affiliated corporation.

THE NATURE OF THE ACTION

28. This class proceeding arises out of a conspiracy in Canada and around the world existing during the Relevant Period.

29. It is alleged that:

- (a) the Defendants and their co-conspirators combined, agreed, and/or conspired with each other and their co-conspirators to fix, raise, maintain and/or stabilize prices and allocate customers and markets for Cooling Compressors sold in Canada and elsewhere;
- (b) the purpose and/or effect of the acts alleged herein was to suppress or eliminate competition, to restrain trade, and/or to affect, fix, control, and/or maintain the prices charged for Cooling Compressors sold in Canada and elsewhere;
- (c) the Defendants and their co-conspirators took steps to conceal the conspiracy from the Plaintiffs and the class members;
- (d) the agents, officers, employees, and representatives of the Defendants and their co-conspirators participated in correspondence, discussions and meetings in furtherance of the illegal conspiracy alleged herein and, in doing so, such agents, officers, employees and representatives of the Defendants and their co-conspirators were acting within the scope of their authority and in furtherance of the Defendants' and/or their co-conspirators' business interests; and,
- (e) the conduct of the Defendants and their co-conspirators caused injury to the Plaintiffs and the class members.

FACTUAL BACKGROUND

Compressors

30. A cooling compressor is a device which forms the central component of a cooling, refrigeration or air conditioning apparatus. The device operates by compression and expansion of gas contained in it. Through this operation the device is able to absorb and transfer heat, thus producing a cooling effect.

31. There are four basic types of cooling compressors in production today:
 - (a) Reciprocating compressors, which are the most common type, are designed for a variety of household and commercial applications including refrigerators, ice makers, water coolers, and room air conditioners;
 - (b) Screw compressors are designed primarily for heavy commercial and industrial applications including chillers, food process preparation, and cold storage rooms;
 - (c) Scroll compressors are designed for use in large residential air conditioner units, typically between 1½ and 5 tons, and for larger commercial applications such as commercial refrigerators and chillers used by supermarkets; and
 - (d) Rotary compressors are designed for use in small residential and commercial applications including air conditioning units, dehumidifiers, small commercial refrigerators, and wine/beer refrigerators.

32. Rotary and scroll-type compressors are almost exclusively produced as hermetically sealed. Reciprocating and screw-type compressors are produced as hermetically sealed, semi-hermetically sealed and open:

- (a) Hermetically sealed, which are devices sealed in a metal casing that use a piston-like mechanism to compress refrigerant gases. When the compressed gas moves through other components of the refrigerant system and is permitted to expand, it removes heat from its surroundings, creating a cooling effect. Between 2002 and 2006, hermetically sealed compressors accounted for more than 95% of all cooling compressors produced worldwide. Hermetically sealed compressors are used for refrigeration and air conditioning applications.

Hermetically sealed compressors are sold either on their own or as part of a condenser/condensing unit. A condenser/condensing unit consists of the compressor, fan and motor assembly.

The hermetically sealed compressors at issue in this litigation (less than one horsepower) are used for refrigeration purposes or in refrigeration products, such as refrigerators, freezers, and water coolers.

- (b) Semi-hermetic, which is made up of a compressor-motor assembly contained in a casting with cover plates allowing access to key parts, such as valves and connecting rods.

- (c) Open compressor, which contains a shaft seal and an external shaft for coupling connection to a belt or direct-drive, using an electric motor or gas engine and which typically is used for ammonia refrigeration applications and for engine-driven units.
33. Hermetically sealed compressors are not easily repaired because it is difficult to access the motor assembly. As a result, non-functioning hermetically sealed compressors are most often replaced, rather than repaired.

The Market

34. In 2008, the North American market for Cooling Compressors consisted of approximately 39,720,000 units sold with a total value of approximately \$6,570,000,000 (USD).
35. Cooling Compressors are distributed and sold through two main channels:
- (a) to original equipment manufacturers to be included in Cooling Compressor Products; and
 - (b) through wholesalers and distributors as replacement parts.

The Defendants' Conduct

36. During the Relevant Period, the exact dates being unknown to the Plaintiffs, the Defendants and their co-conspirators, and their senior executives, employees and agents, conspired and agreed together to wrongfully, unlawfully, maliciously and without good faith:
- (a) charge prices for Cooling Compressors sold in Canada and elsewhere at

- certain levels and to otherwise fix, increase, maintain or stabilize the prices charged for Cooling Compressors sold in Canada and elsewhere;
- (b) to allocate customers and markets for Cooling Compressors in Canada and elsewhere;
 - (c) prevent or lessen, unduly, competition in the market for Cooling Compressors sold in Canada and elsewhere;
 - (d) sell Cooling Compressors in Canada and elsewhere at the agreed upon prices; and
 - (e) monitor compliance with the agreements as among the members of the cartel.
37. The anti-competitive conduct of the Defendants was motivated by the predominant purpose of harming the Plaintiffs and the class members by requiring them to pay artificially high prices for Cooling Compressors and to illegally increase the Defendants' profits on the sale of Cooling Compressors.
38. In giving effect to the anti-competitive agreements between the Defendants, the following acts were done by the Defendants and their co-conspirators, and their senior executives, employees and agents without limitation:
- (a) they participated in meetings, conversations and communications in Canada and elsewhere in person, by telephone, facsimile, mail and electronic mail to discuss the sale of, and prices to be charged for, Cooling

Compressors sold in Canada and elsewhere;

- (b) they agreed during such meetings, conversations and communications, to charge prices at specified levels and to allocate customers and markets and to otherwise fix increase, maintain, or stabilize the prices for Cooling Compressors in Canada and elsewhere;
 - (c) they sold Cooling Compressors in Canada and elsewhere at collusive and non-competitive prices pursuant to the agreement reached;
 - (d) they participated in meetings, conversations and communications to monitor compliance with the agreements;
 - (e) they authorized or consented to the participation of their employees in the conspiracy; and
 - (f) they concealed the conspiracy and conspiratorial contacts.
39. The purpose of the Defendants' conduct during the Relevant Period was to foreclose price competition and to maintain artificially high prices for Cooling Compressors in Canada and elsewhere. Absent their co-ordinated activity, the Defendants would have been forced to price Cooling Compressors competitively or risk losing the business of their customers.
40. As a direct and proximate result of the Defendants' conspiracy, the Plaintiffs and each class member have been forced to pay supra-competitive prices for Cooling Compressors and Cooling Compressor Products.

Regulatory Investigations

41. The United States Department of Justice Antitrust Division (the "DOJ"), Canadian Competition Bureau and European Commission are investigating possible price-fixing in the compressor industry.
42. On October 25, 2010 and November 2, 2010 respectively, Embraco NA and Panasonic Corporation entered into guilty pleas in Canada in respect of the sale and supply of hermetic refrigeration compressors of less than one horsepower. In particular, Embraco NA and Panasonic Corporation pleaded guilty to conduct that was contrary to section 45(1)(c) of the *Competition Act*.
43. On September 30, 2010, Embraco NA entered into guilty plea in the United States regarding price fixing in the market for "household and light commercial compressors".
44. On September 30, 2010, Panasonic Corporation entered into guilty plea in the United States regarding price fixing in the market for "household compressors".
45. In its 2009 Annual Report, Tecumseh Products Co. disclosed it received conditional amnesty from the DOJ and is cooperating with the DOJ in its investigation.
46. In its 2009 Annual Report, the Danfoss Group indicated that it was being investigated by the DOJ and European Commission.
47. ACC is being investigated by the European Commission and DOJ in respect of pricing in the compressor market.

BREACH OF SECTION 45 OF THE *COMPETITION ACT*

48. The Defendants' unlawful activities, as described herein, have deprived the Plaintiffs and the class members of free and open competition in the purchase and distribution of Cooling Compressors and Cooling Compressor Products in Canada.
49. The Plaintiffs and the class members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the claims sued upon until recently, because the Defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the Plaintiffs and others.
50. The acts of the Defendants and their co-conspirators particularized herein were in breach of s 45 of the *Competition Act* and render the Defendants liable to pay damages to the Plaintiffs and the class members pursuant to s 36 of the *Competition Act*. Further or alternatively, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiffs and the class members for a breach of s 46(1) of the *Competition Act* and are liable to pay damages pursuant to s 36 of the *Competition Act*.

COMMON LAW CONSPIRACY

51. Further, or alternatively, the acts particularized herein were unlawful acts directed towards the Plaintiffs and other purchasers and distributors of Cooling Compressors and Cooling Compressor Products in Canada. The Defendants and

their co-conspirators knew, or ought to have known, that the unlawful acts alleged herein would cause injury to the Plaintiffs and the class members. The Plaintiffs and the class members have suffered damages as a result of the unlawful acts of the Defendants and their co-conspirators. The Defendants are liable to the Plaintiffs and the class members for the tort of civil conspiracy.

THE RESULTING DAMAGES TO THE PLAINTIFFS AND THE CLASS MEMBERS

52. The Plaintiffs and the class members have suffered damages in an amount presently undetermined which should be paid by the Defendants as a result of the illegal and anti-competitive conduct of the Defendants and their co-conspirators particularized herein.
53. The combined damages of the Plaintiffs and those of the other class members are capable of being, and should be, quantified on an aggregate basis as the difference between the prices actually obtained by the Defendants and their co-conspirators and the prices which would have been obtained in the absence of the unlawful conspiracy. The Defendants are liable to the Plaintiffs and other class members for damages incurred as a result of the conduct of both the Defendants and their co-conspirators.
54. Damages should be made payable to the class members through a plan of distribution established under the *Class Proceedings Act, 1992*, SO 1992, c 6.

PUNITIVE DAMAGES

55. The Plaintiffs state that the Defendants' conduct in implementing the conspiracy

was outrageous, disgraceful, reckless, deliberate, willful, high-handed and arrogant conduct constituting grounds for a punitive, aggravated or exemplary damages award.

THE RELEVANT STATUTES

56. The Plaintiffs plead and rely upon the *Class Proceedings Act, 1992*, SO 1992, c 6 as amended and the *Competition Act*, RSC 1985, c 19 as amended.

SERVICE OUTSIDE ONTARIO

57. This originating process may be served without Court order outside of 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 or a breach of contract wherever committed (Rule 17.02 (h));
- (c) against a person outside of Ontario who is a necessary and proper party to this proceeding properly 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)).

THE PLAINTIFFS propose that this action be tried in the City of London, in the Province of Ontario.

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Lawyers for the Plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED
STATEMENT OF CLAIM**

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