

Court File No. 58276CP

ONTARIO
SUPERIOR COURT OF JUSTICE

URLIN RENT A CAR LTD.

Plaintiff

- and -

CHAMPION LABORATORIES, INC., HONEYWELL INTERNATIONAL INC.,
WIX FILTRATION PRODUCTS, AFFINIA GROUP INC., CUMMINS FILTRATION INC.,
CUMMINS FILTRATION INTERNATIONAL CORP., CUMMINS INC.,
THE DONALDSON COMPANY, BALDWIN FILTERS, INC.,
ARVINMERITOR INC., ARVINMERITOR FILTERS OPERATING COMPANY LLC
(f/k/a PUROLATOR PRODUCTS NA, LLC), ARVINMERITOR HOLDING COMPANY
(f/k/a PUROLATOR PRODUCTS COMPANY LLC) and ARVINMERITOR CANADA.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

AMENDED THIS 23RD DAY OF NOVEMBER 2009
PURSUANT TO THE ORDER OF THE JUSTICE COURT
DATED THE 10TH DAY OF NOVEMBER 2009
LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE
MODIFIÉ CE 19
CONFORMÉMENT À L'ORDONNANCE DE: 19
FAIT LE 19
GRATIER LOCAL COUR SUPÉRIEUR DE JUSTICE

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date May 21, 2008

Issued by "G. Caetano"
Local registrar

Address of court office London Court House
Civil, Landlord/Tenant Section
Group Floor, Unit "A"
80 Dundas Street
London, ON N6A 6A3

- TO: Champion Laboratories, Inc.**
200 S. Forth St.
Albion, IL 62806
- AND TO: Honeywell International Inc.**
100 Columbia Road,
Morristown, NJ 07962
- AND TO: WIX Filtration Products**
One Wix Way
Gastonia, NC 28054
- AND TO: Affinia Group Inc.**
1101 Technology Drive,
Ann Arbor, MI 48108
- AND TO: Cummins Filtration Inc.**
2931 Elm Hill Pike
Nashville, TN 37214
- AND TO: Cummins Filtration International Corp.**
2300 Southfield Road
Mississauga, ON L5N 2W8
- AND TO: Cummins Inc.**
500 Jackson Street, Box 3005
Columbus, IN 47202

AND TO: The Donaldson Company
1400 West 94th St
Minneapolis, MN 55431

AND TO: Baldwin Filters, Inc.
4400 E Hwy. 30
Kearney, NE 68848-6010

AND TO: ArvinMeritor Inc.
2135 West Maple Road
Troy, MI 48084

AND TO: ArvinMeritor Filters Operating Company LLC
(f/k/a Purolator Products NA, LLC)
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

AND TO: ArvinMeritor Holding Company
(f/k/a Purolator Products Company LLC)
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

AND TO: ArvinMeritor Canada
199 Bay Street, Suite 2800
Toronto, ON M5L 1A9

CLAIM

1. The Plaintiff claims on behalf of itself and other persons in Canada who are similarly situated:
 - (a) a declaration that the Defendants conspired and/or agreed with each other to fix, maintain, and/or stabilize the prices of oil and air filters in the aftermarket (i.e., the market for replacement filters) ("Filters") in Canada from at least January 1, 1999 to April 1, 2008 (the "Conspiracy Period");
 - (b) a declaration that the Defendants conspired and/or agreed to lessen undue competition in the production, manufacture, sale and/or supply of Filters in Canada during the Conspiracy Period;
 - (c) general damages for conspiracy, intentional interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 in the amount of \$150,000,000.00;
 - (d) punitive and exemplary damages in the amount of \$15,000,000.00;
 - (e) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c. C-34;
 - (f) pre-judgment and post-judgment interest at the rate of 10% compounded annually or as otherwise ordered by this Honourable Court;
 - (g) costs of this action on a substantial indemnity basis; and
 - (h) such further and other relief as this Honourable Court awards.

NATURE OF THE ACTION

2. This action arises from an agreement among the Defendants to unreasonably enhance the prices of Filters and to lessen unduly competition in the production, manufacture, sale and/or supply of Filters in North America during the Conspiracy Period. The Defendants participated in illegal and secretive meetings and made agreements relating to the prices, market share divisions and production levels for Filters.

THE PLAINTIFF

3. The plaintiff, Urlin Rent A Car Ltd., is located in London, Ontario. Urlin Rent A Car Ltd. is a motor vehicle rental company that rents motor vehicles to the public. In the course of its business, it regularly replaces oil and air filters in order to properly maintain its motor vehicles. These oil and air filters include filters manufactured, distributed and sold by the Defendants herein.

THE DEFENDANTS

4. Various persons and/or firms, not named as Defendants herein, may have participated as co-conspirators in the conspiracy alleged herein and may have performed acts and made statements in furtherance thereof. The Defendants named herein are jointly and severally liable for the acts and liability of all co-conspirators.

Champion

5. The Defendant Champion Laboratories, Inc. ("Champion") is a corporation with its head office in Albion, Illinois, with a business address in Albion, Illinois, and a distribution facility in Toronto, Ontario. During the Conspiracy Period, Champion manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

Honeywell

6. The Defendant Honeywell International Inc. ("Honeywell International") is a Delaware corporation with its head office in Morristown, New Jersey and a manufacturing facility in Stratford, Ontario. Honeywell International manufactured and sold/distributed Filters in North America during the Conspiracy Period, through the Honeywell Consumer Products Group ("Honeywell Consumer Products") of its Transportation Systems unit, and its FRAM business unit. FRAM is located in Danbury, Connecticut.

7. The businesses of each of Honeywell International, Honeywell Consumer Products, and FRAM are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Filters in North America and the conspiracy described hereinafter. Honeywell International, Honeywell Consumer Products, and FRAM are herein collectively referred to as "Honeywell".

Wix

8. The Defendant Wix Filtration Products ("Wix Filtration") is a limited liability company with its head office in Gastonia, North Carolina, and a distribution facility in Ayr, Ontario. During the Conspiracy Period, Wix Filtration manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

9. The Defendant Affinia Group Inc. ("Affinia") is a Delaware corporation with its head office in Ann Arbor, Michigan. Wix Filtration is a wholly-owned subsidiary of Affinia and Affinia is responsible for the acts of Wix Filtration.

10. The businesses of each of Wix Filtration and Affinia are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Filters in North America and the conspiracy described hereinafter. Wix Filtration and Affinia are herein collectively referred to as "Wix".

ArvinMeritor/Purolator

11. The Defendant ArvinMeritor Inc. is a corporation with its head office in Troy, Michigan. During the Conspiracy Period, ArvinMeritor Inc. manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. In 1999, Arvin Industries Inc. purchased the Purolator Products Filters business from Mark IV Industries Inc. In 2000, ArvinMeritor, Inc. was created by the merger of Meritor Automotive Inc. and Arvin Industries Inc.
12. The Defendant ArvinMeritor Filters Operating Company LLC (f/k/a Purolator Products NA, LLC) is a corporation with its registered agent in Wilmington, Delaware. ArvinMeritor Filters Operating Company LLC (f/k/a Purolator Products NA, LLC) is a subsidiary of ArvinMeritor Inc. During the Conspiracy Period, ArvinMeritor Filters Operating Company LLC (f/k/a Purolator Products NA, LLC) manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
13. The Defendant ArvinMeritor Holding Company (f/k/a Purolator Products Company LLC) is a corporation with its registered agent in Wilmington, Delaware. ArvinMeritor Holding Company (f/k/a Purolator Products Company LLC) is a subsidiary of

ArvinMeritor Inc.. During the Conspiracy Period, ArvinMeritor Holding Company (f/k/a Purolator Products Company LLC) manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

14. The Defendant ArvinMeritor Canada is a general partnership with its registered office in Toronto, Ontario. ArvinMeritor Canada is a subsidiary of ArvinMeritor Inc. During the Conspiracy Period, ArvinMeritor Canada manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
15. The businesses of each of ArvinMeritor Inc., ArvinMeritor Filters Operating Company LLC (f/k/a Purolator Products NA, LLC), ArvinMeritor Holding Company (f/k/a Purolator Products Company LLC) and ArvinMeritor Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Filters in North America and the conspiracy described hereinafter. ArvinMeritor Inc., ArvinMeritor Filters Operating Company LLC (f/k/a Purolator Products NA, LLC), ArvinMeritor Holding Company (f/k/a Purolator Products Company LLC) and ArvinMeritor Canada are herein collectively referred to as "ArvinMeritor".
16. Until 2006, ArvinMeritor operated in the Filters industry through the Purolator business and using the Purolator name. In 2006, ArvinMeritor sold the Purolator business, including the Purolator name, to a joint venture created by the Bosch Group and Mann + Hummel Group. As part of the transaction, ArvinMeritor retained the liabilities at issue in this claim.

Cummins

17. The Defendant Cummins Filtration Inc. ("Cummins Filtration") is a corporation with its head office in Nashville, Tennessee. During the Conspiracy Period, Cummins Filtration manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
18. Cummins Filtration International Corp. ("Cummins Canada") is an Ontario corporation with its principal place of business in Mississauga, Ontario. Cummins Canada manufactured, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
19. The Defendant Cummins Inc. is a corporation with its head office in Columbus, Indiana and distribution facilities in Montreal, Quebec and Vancouver, British Columbia. Cummins Filtration and Cummins Canada are wholly-owned subsidiaries of Cummins Inc.
20. The businesses of each of Cummins Filtration, Cummins Canada and Cummins Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Filters in North America and the conspiracy described hereinafter. Cummins Filtration, Cummins Canada and Cummins Inc. are herein collectively referred to as "Cummins".

Donaldson

21. The Defendant The Donaldson Company ("Donaldson") is a Delaware corporation with its head office in Minneapolis, Minnesota. During the Conspiracy Period, Donaldson

manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

Baldwin

22. The Defendant Baldwin Filters, Inc. ("Baldwin") is a corporation with its head office in Kearney, Nebraska. During the Conspiracy Period, Baldwin manufactured, marketed, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

THE FILTERS INDUSTRY

23. During the Conspiracy Period, the Filters industry was structured in such a manner as to encourage and facilitate the conspiracy alleged within.
24. Oil filters decontaminate the oil used in nearly every motor vehicle sold in North America. The filtration of engine oil is essential for enhancing longevity and performance of motor vehicles.
25. Air filters are used in nearly every motor vehicle sold in North America. Air filters prevent abrasive particulates from entering the combustion chamber, which is essential for performance and efficiency in the operation of motor vehicles.
26. Oil and air filters are typically detachable units that require regular replacement. They are essentially fungible products.
27. Filter manufacturers, such as the Defendants, sell Filters to original equipment manufacturers (i.e. motor vehicle manufacturers for installation into new motor vehicles

on the production floor) and to "aftermarket" sellers (i.e. sellers for professional or self-installation of replacement Filters).

28. The allegations contained herein involve the Filters aftermarket, which is comprised of: retailers who sell primarily to vehicle owners who replace their own Filters; distributors who sell to professional mechanics and garages; heavy-duty vehicle owners (i.e. commercial truck owners); and manufacturer service facilities.
29. Annual revenues for the Filters aftermarket are approximately \$3.5 - \$5.5 billion in North America.

Substitutability

30. Although Filters may vary in some manners, they are generally standardized products, such that Filters of one manufacturer are readily substitutable for the Filters of another manufacturer. For example, for any particular motor vehicle, it is often the case that Filters from many, if not all, of the Defendants are compatible with that motor vehicle. Price is the primary factor driving customer choice between Filters of the different manufacturers, and is the most important competitive factor for manufacturers of Filters.

Concentrated Market

31. The Filters market in North America and worldwide is highly concentrated. During the Conspiracy Period, the Defendants controlled an overwhelming percentage of the Filters business in North America. Defendants Champion, Honeywell, Purolator, and Wix control approximately 90% of the automotive Filters aftermarket. Defendants Cummins, Donaldson, and Baldwin are the dominant manufacturers in the heavy-duty Filters aftermarket. This concentration of market share facilitated the Defendants' ability to implement the conspiracy alleged within.

Barriers to Entry

32. There exist substantial barriers to entry in the Filters market. Production of Filters is capital intensive, requiring an initial investment of many millions of dollars. Potential competitors could not readily enter the market without making very significant investments. In addition, there are significant regulatory and other hurdles that face potential entrants to the Filters industry. These barriers to entry served to ensure that new competitors would not enter the market and undercut the Defendants' unreasonably enhanced prices.

Trade Associations

33. The Defendants used common memberships in trade associations as a means for discussing and agreeing upon prices for Filters. For example, the Filter Manufacturers Council holds regular meetings throughout North America, including in Canada, and common membership among the Defendants created an opportunity for the Defendants to meet and discuss anticompetitive matters, including the pricing of Filters.
34. Through this and other trade associations and in meetings relating to these trade associations, the Defendants shared information that would normally be considered proprietary and competitively-sensitive. This exchange of information was used to implement and monitor the conspiracy alleged herein.

FILTERS PRICES DURING THE CONSPIRACY PERIOD

35. The Defendants implemented their agreement to unreasonably enhance prices of Filters primarily by coordinating price increases.

36. During the Conspiracy Period, the Defendants and their co-conspirators conspired, contracted, or combined to fix, raise, maintain or stabilize prices, rig bids, and allocate customers for Filters in North America. They accomplished this through, among other things, face-to-face meetings at industry trade shows and other locations, and exchanges of confidential communications regarding pricing. Many of these conversations occurred at the annual Filter Manufacturers Council and other industry meetings, which were used as a vehicle to further the anticompetitive purposes of the Defendants' unlawful conspiracy.
37. At least as early as 1999, the Defendants and their co-conspirators had numerous confidential meetings and discussions with each other and exchanged extensive communications regarding pricing and customers. This conspiratorial conduct resulted in an unlawful agreement to fix, raise, maintain, or stabilize prices, rig bids, and allocate customers for Filters in North America.
38. The purpose of these secret, conspiratorial meetings, discussions and communications was to ensure that all of the Defendants agreed to participate in and implement an unlawful, continuing price-fixing scheme.
39. As a result of their unlawful agreement, the Defendants implemented at least three coordinated price increases, rigged bids, and allocated customers for Filters during the Conspiracy Period. Pursuant to this agreement, the Defendants each instituted similar price increases for Filters during the Conspiracy Period, including at least in 1999, early 2004 and late 2004/early 2005. These price increases were approximately 4-6% each.

40. In formulating and effectuating their contract, combination or conspiracy, the Defendants and their co-conspirators engaged in anticompetitive activities, including:
- (i) Attending meetings or otherwise engaging in discussions in North America and elsewhere by telephone, facsimile, and electronic mail regarding the sale of Filters;
 - (ii) Agreeing to charge prices for Filters at specified levels and to allocate customers and otherwise fixing, increasing, maintaining, or stabilizing the prices of Filters sold to purchasers in North America;
 - (iii) Agreeing not to compete for one another's customers by, among other things, not submitting prices or bids to certain customers or by submitting intentionally high prices or bids to certain customers;
 - (iv) Selling Filters to customers in North America at collusive and non-competitive prices pursuant to the agreement reached;
 - (v) Communicating with one another to discuss the prices, customers, markets and price levels of Filters sold in North America;
 - (vi) Authorizing or consenting to the participation of employees in the conspiracy; and
 - (vii) Concealing the conspiracy and conspiratorial contacts through various means.
41. The Defendants' conduct during the Conspiracy Period in collusively fixing, increasing, maintaining, or stabilizing prices, rigging bids, and allocating customers was for the sole

purpose of foreclosing price competition in order to maintain artificially high prices for their Filters.

42. By coordinating their pricing activities and allocating customers, the Defendants have removed from the Plaintiff and others similarly situated the ability to constrain the Defendants' pricing by moving (or threatening to move) any Filters business from one Defendant to another in response to price increases.
43. Absent their coordinated activity, the Defendants would have been forced to price Filters competitively or risk losing the significant business of their customers, including the Plaintiff and others similarly situated. With unrestrained competition, the Defendants would have been forced to forego their price increases altogether, implement smaller ones, or even decrease their prices in order to retain these customers.
44. As a result of the Defendants' unlawful conspiracy, the Plaintiff has been forced to pay supracompetitive prices for Filters.
45. The Defendants and unnamed co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:
 - (a) to harm the Plaintiff and others similarly situated by requiring them to pay artificially high prices for Filters; and
 - (b) to illegally increase their profits on the sale of Filters.
46. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

47. The acts particularized in paragraphs 39-50 were unlawful acts directed towards the Plaintiff and other purchasers of Filters, which unlawful acts the Defendants knew in the circumstances would likely cause injury to the Plaintiff and other purchasers of Filters and, as such, the Defendants are liable for the tort of civil conspiracy.
48. Further, or alternatively, the acts particularized in paragraphs 39-50 are in breach of s. 45 of the *Competition Act* and render the Defendants liable to pay damages pursuant to s. 36 of the *Competition Act*. Further, or alternatively, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.
49. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

DAMAGES

50. The Plaintiff suffered the following damages:
- (a) the price of Filters has been enhanced unreasonably at artificially high and non-competitive levels; and
 - (b) competition in the sale of Filters has been unduly restrained.
51. During the Conspiracy Period, the Plaintiff purchased Filters. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff paid more for Filters than it would have paid in the absence of the illegal conspiracy and, as a result, it

- (c) against a person outside 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)).
57. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.
58. The Plaintiff states that it is representative of persons in Canada who purchased Filters in Canada during the Conspiracy Period.
59. The Plaintiff proposes that this action be tried at London, Ontario.

DATE:

Siskinds^{LLP}
680 Waterloo Street
London, ON N6A 3V8
Charles M. Wright LSUC #36599Q
Andrea L. DeKay LSUC # 43818M
Tel: (519) 672-2121
Fax: (519) 672-6065

Sutts, Strosberg^{LLP}
600 - 251 Goyeau Street
Windsor, Ontario N9A 6V4
Harvey T. Strosberg, Q.C. LSUC#
Tel: (519) 258-9333
Fax: (519) 258-9527

Counsel for the Plaintiff

URLIN RENT A CAR LTD.
Plaintiff

and
CHAMPION LABORATORIES, INC et al..
Defendants

Court File No: 58276CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED
STATEMENT OF CLAIM**

Siskinds ^{LLP}

680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright LSUC# 36599Q
Andrea DeKay LSUC#:43818M
Tel: (519) 672-2121
Fax: (519) 672-6065

Sutts, Strosberg ^{LLP}

600 - 251 Goyeau Street
Windsor, Ontario N9A 6V4

Harvey T. Strosberg, Q.C. LSUC#
Tel: (519) 258-9333
Fax: (519) 258-9527

Solicitors for the Plaintiff