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Court File No.  
62732

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:



WESTMINSTER MUTUAL INSURANCE COMPANY

Plaintiff

- and -

TYC BROTHER INDUSTRIAL CO. LTD., GENERA CORPORATION,  
DEPO AUTO PARTS IND. CO., LTD., MAXZONE VEHICLE LIGHTING CORP.,  
EAGLE EYES TRAFFIC IND. CO. LTD., AND E-LITE AUTOMOTIVE INC.

Defendants

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

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' 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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$25,000 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 Plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

Date

**JUN 22 2009**

Issued by



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Local registrar

Address of Court House  
court office 80 Dundas Street  
London, ON N6A 6A1

- TO:** **TYC Brother Industrial Co. Ltd.**  
72-2 Shin-Leh Road, An-Ping Industrial District 708  
Tainan Taiwan
- AND TO:** **Genera Corporation**  
26 Centerpointe Drive, Suite 100  
La Palma, California 90623
- AND TO:** **Depo Auto Parts Ind. Co., Ltd.**  
20-3 Nan Shih Lane  
Lu Kang, Chang-Hwa Hsien, Taiwan 638
- AND TO:** **Maxzone Vehicle Lighting Corp.**  
11016 Mulberry Avenue, Suite B  
Fontana, California 92337
- AND TO:** **Eagle Eyes Traffic Ind. Co. Ltd.**  
No. 27 Lane 764 Chung Shan N. Rd.,  
Yung Kang City, Taiwan Hsien, Taiwan
- AND TO:** **E-Lite Automotive Inc.**  
14401 Monte Vista Avenue  
Chino, California 91710

### CLAIM

1. The Plaintiff, Westminster Mutual Insurance Company, claims on behalf of itself and other persons in Canada who are similarly situated:
  - (a) a declaration that the Defendants conspired each with the other to raise, maintain, fix and/or stabilize the price of aftermarket automotive lighting products, also known as AM lights and AM lamps (“Aftermarket Automotive Lighting Products”) during the period beginning at least January 1, 2004 to April 30, 2009 (“Conspiracy Period”);
  - (b) general damages for conspiracy and conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 in the amount of \$100,000,000.00;
  - (c) punitive and exemplary damages in the amount of \$10,000,000.00;
  - (d) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c. C-34;
  - (e) pre-judgment and post-judgment interest at the rate of 10% compounded annually or as otherwise ordered by the Honourable Court;
  - (f) costs of this action on a substantial indemnity basis; and
  - (g) such further and other relief as this Honourable Court awards.

### NATURE OF THE ACTION

2. This action arises from a conspiracy to fix, raise, maintain, and/or stabilize prices of Aftermarket Automotive Lighting Products sold in Canada and worldwide. During the Conspiracy Period, the Defendants and their senior executives participated in illegal and

secretive meetings and made agreements relating to the prices, market share divisions and production levels for Aftermarket Automotive Lighting Products.

3. Aftermarket Automotive Lighting Products include, but are not limited to, headlamps and bulbs, parking, tail and interior lights, spot lights, fog lights and auxiliary lights. The term "aftermarket" refers to the market for replacement or supplementary parts for a product that the consumer has previously acquired. Aftermarket Automotive Lighting Products are most often purchased following a collision.

#### **THE REPRESENTATIVE PLAINTIFF**

4. The plaintiff, Westminster Mutual Insurance Company ("Westminster") is an insurance company registered under the Ontario *Business Corporation Act*. Westminster has its registered head office in Belmont, Ontario. During the Conspiracy Period, Westminster purchased Aftermarket Automotive Lighting Products.

#### **THE DEFENDANTS**

5. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of Aftermarket Automotive Lighting Products to customers throughout Canada, not named as Defendants herein, including but not limited to Maxzone Auto Parts (Canada) Corp., may have participated as co-conspirators in the violation alleged herein and may have performed acts and made agreements in furtherance thereof. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, the unnamed co-conspirators.

##### **A. TYC/Genera**

6. The Defendant TYC Brother Industrial Co. Ltd. ("TYC") is a corporation with its principal place of business located in Taiwan. During the Conspiracy Period, TYC

manufactured, marketed, sold and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

7. The Defendant Genera Corporation (“Genera”) is a corporation with its principal place of business located in La Palma, California. Genera is a wholly or partially owned subsidiary of TYC. Genera is the exclusive North American distributor of TYC products. During the Conspiracy Period, Genera imported, sold and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
8. The businesses of each of TYC and Genera 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 Aftermarket Automotive Lighting Products in Canada and the conspiracy described hereinafter.

**B. DEPO/Maxzone**

9. The Defendant Depo Auto Parts Ind. Co., Ltd. (“DEPO”) is a corporation with its principal place of business located in Taiwan. During the Conspiracy Period, DEPO manufactured, marketed, sold and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
10. The Defendant Maxzone Vehicle Lighting Corp (“Maxzone”) is a corporation with its principal place of business located in Fontana, California. Maxzone is a wholly or partially owned subsidiary of DEPO. Maxzone is the exclusive North American distributor of DEPO products. During the Conspiracy Period, Maxzone imported, sold

and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

11. The businesses of each of DEPO and Maxzone 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 Aftermarket Automotive Lighting Products in Canada and the conspiracy described hereinafter.
12. Maxzone Auto Parts (Canada) Corp. ("Maxzone Canada") was a Canadian corporation located in Toronto, Ontario. Maxzone Canada was a wholly or partially owned subsidiary of DEPO. On December 18, 2008, Maxzone filed an "Intent to Dissolve". Although not named as a defendant, Maxzone Canada imported, sold and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, and the Defendants are jointly and severally liable for the conduct of Maxzone Canada.

**C. Eagle Eyes/E-Lite**

13. The Defendant Eagle Eyes Traffic Ind. Co. Ltd. ("Eagle Eyes") is a corporation with its principal place of business located in Taiwan. During the Conspiracy Period, Eagle Eyes manufactured, marketed, sold and/or distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
14. The Defendant E-Lite Automotive Inc. ("E-Lite") is a corporation with its principal place of business located in Chino, California. E-lite is a wholly or partially owned subsidiary of Eagle Eyes. E-Lite was formed by Eagle Eyes in 2006 to be its exclusive North American distributor. During the Conspiracy Period, E-Lite imported, sold and/or

distributed Aftermarket Automotive Lighting Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

15. The businesses of each of Eagle Eyes and E-Lite 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 Aftermarket Automotive Lighting Products in Canada and the conspiracy described hereinafter.

#### **THE AFTERMARKET AUTOMOTIVE LIGHTING INDUSTRY**

16. The Aftermarket Automotive Lighting Products industry has several characteristics that served to facilitate the conspiracy alleged herein.

##### **A. Market Share**

17. Cumulatively, the products of the Defendants, TYC, DEPO and Eagle Eyes (collectively, the "Manufacturing Defendants") comprise the vast majority of all Aftermarket Automotive Lighting Products sold in North America. Consequently, as the sole distributors of the products of the Manufacturing Defendants in North America, the Defendants, Genera, Maxzone and E-Lite (collectively, the "Distributor Defendants") controlled a very significant share of the Aftermarket Automotive Lighting Products market in North America.

##### **B. Substitutability**

18. Aftermarket Automotive Lighting Products are highly interchangeable and competitors compete mainly based on price.
19. There are no adequate substitutes for Aftermarket Automotive Lighting Products. Although some automobile manufacturers offer Aftermarket Automotive Lighting

Products, their wholesale price is often as much as 50% greater than those of the Manufacturing Defendants. As a result, products of automobile manufacturers are not reasonable substitutes.

20. Many insurers require the use of aftermarket replacement parts after the automobile reaches a certain age, typically one to three years old. In most circumstances, additional charges are levied if the insured specifies that only OEM replacement parts can be used.

### **C. Barriers to Entry**

21. The market for Aftermarket Automotive Lighting Products is subject to high barriers to entry. These barriers include high research and development costs, and the development and maintenance of a broad distribution network.
22. Another barrier to entry is the requirement of manufacturers of Aftermarket Automotive Lighting Products to obtain certain quality certifications. These quality certifications are necessary in order to compete effectively in the market. The most important quality certification is that of the Certified Automotive Parts Association ("CAPA"), a non-profit organization that tests the suitability and quality of automotive parts.
23. In order to be considered by the Insurance Bureau of Canada as a suitable replacement part, aftermarket replacement parts must have been approved by the CAPA as meeting or exceeding original equipment manufacturer specifications.
24. Aftermarket Automotive Lighting Products were first included in the CAPA certification program in January 2005. In September 2005, through extensive collaboration with

CAPA, TYC became the first manufacturer to achieve CAPA certification of Aftermarket Automotive Lighting Products.

25. The Manufacturing Defendants participate in the CAPA certification program. Only participants in the CAPA certification program can affix a CAPA quality seal to products complying with CAPA standards.

### **THE CONSPIRACY TO FIX PRICES OF AFTERMARKET AUTOMOTIVE LIGHTING PRODUCTS**

26. The Plaintiff alleges that during the Conspiracy Period, the Defendants and unnamed co-conspirators conspired and/or agreed with each other to enhance unreasonably the prices of Aftermarket Automotive Lighting Products and to lessen unduly competition in the production, manufacture, sale and/or supply of Aftermarket Automotive Lighting Products in North America.
27. During the Conspiracy Period, senior executives and employees of the Defendants and unnamed co-conspirators, acting in their capacities as agents for the 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 Plaintiff, and as a result of the communications and meetings the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:
  - (a) to enhance unreasonably the prices of Aftermarket Automotive Lighting Products in North America;
  - (b) exchange information in order to monitor and enforce adherence to the agreed-upon prices for Aftermarket Automotive Lighting Products;

- (c) allocate the market share, customers, and/or to set specific sales volumes of Aftermarket Automotive Lighting Products that each Defendant would supply in North America; and
- (d) to lessen unduly competition in the production, manufacture, sale and/or supply of Aftermarket Automotive Lighting Products in North America.

28. In furtherance of the conspiracy, during the Conspiracy Period, the following acts were done by the Defendants, their servants and agents, and unnamed co-conspirators:

- (a) they enhanced unreasonably the prices of Aftermarket Automotive Lighting Products in North America;
- (b) they allocated the volumes of sales of, and customers and markets Aftermarket Automotive Lighting Products among themselves;
- (c) they reduced the supply of Aftermarket Automotive Lighting Products;
- (d) they communicated secretly, in person and by telephone, to discuss and fix prices and volumes of sales of Aftermarket Automotive Lighting Products;
- (e) they exchanged information regarding the prices and volumes of sales of Aftermarket Automotive Lighting Products for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (f) they refrained from submitting truly competitive bids for Aftermarket Automotive Lighting Products in North America and elsewhere;

- (g) they submitted collusive, non-competitive and rigged bids for Aftermarket Automotive Lighting Products in North America and elsewhere;
  - (h) they took active steps to, and did, conceal the unlawful conspiracy; and
  - (i) they disciplined any corporation which failed to comply with the conspiracy.
29. The conspiracy took place at both the manufacturer and distributor levels. The Manufacturing Distributors met in Taiwan to fix the prices at which they would sell Aftermarket Automotive Lighting Products to the Distributor Defendants. Then, the Distributor Defendants met to conspire to fix prices of Aftermarket Automotive Lighting Products in North America. The Distributor Defendants are the exclusive distributor of Aftermarket Automotive Lighting Products made by a specific Manufacturer Defendant - Genera is the exclusive importer and seller of the Aftermarket Automotive Lighting Products manufactured by TYC in North America; Maxzone is the exclusive importer and seller of the Aftermarket Automotive Lighting Products manufactured by DEPO in North America; and E-Lite is the exclusive importer and seller of the Aftermarket Automotive Lighting Products manufactured by Eagle Eyes in North America.
30. Some of the Distributor Defendants' meetings took place at the offices of Genera in La Palma, California and at the Automotive Aftermarket Products Expo ("AAPEX"), an industry trade show in Las Vegas, Nevada. The Distributor Defendants met at the AAPEX in November 2004, November 2005, October 2006, and October 2007, in furtherance of the conspiracy.
31. At the Distributor Defendants' meetings, there was open discussion of the Manufacturing Defendants' meetings in Taiwan and the prices reached at those meetings. The North

American resale prices were fixed by the Manufacturing Defendants and then adjusted by the Distributor Defendants so as to reflect the market share or consumer preferences for brand.

32. The conspiracy was furthered by the Defendants' participation in international trade shows, which were used as opportunities to meet and conspire. For example, as least some Defendants met and conspired while attending the International Auto Parts & Accessories Show, the most recent of which was held in Taipei in April 2008.
33. The acts particularized in paragraphs 26 to 32 were unlawful acts directed towards the Plaintiff and other purchasers of Aftermarket Automotive Lighting Products, which unlawful acts the Defendants knew in the circumstances would likely cause injury to the Plaintiff and other purchasers of Aftermarket Automotive Lighting Products and, as such, the Defendants are liable for the tort of civil conspiracy.
34. Further, or alternatively, the acts particularized in paragraphs 26 to 32 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*.
35. 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

36. The Plaintiff suffered the following damages:
- (a) the price of Aftermarket Automotive Lighting Products has been enhanced unreasonably at artificially high and non-competitive levels; and
  - (b) competition in the sale of Aftermarket Automotive Lighting Products has been unduly restrained.
37. During the period covered by this claim, the Plaintiff purchased Aftermarket Automotive Lighting Products. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff paid more for Aftermarket Automotive Lighting Products than it would have paid in the absence of the illegal conspiracy and, as a result, it has been injured in its business and property and has suffered damages in an amount presently undetermined.
38. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiff's rights and the rights of others who are similarly situated, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.
39. The Plaintiff's damages and those of other persons who are similarly situated have been suffered in the Province of Ontario and elsewhere in Canada.
40. The Plaintiff pleads and rely on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), ss. 36, 45 and 46.

41. The Plaintiff pleads and rely on section 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario on the basis 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 breach of contract wherever committed (rule 17.02(h));
  - (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)).
42. The Plaintiff pleads and rely on the *Class Proceedings Act, 1992*.
43. The Plaintiff states that it is representative of persons in Canada who purchased Aftermarket Automotive Lighting Products in Canada during the Conspiracy Period.
44. The Plaintiff proposes that this action be tried at London, Ontario.

**JUN 22 2009**

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Westminster Mutual Insurance Company v. TYC Brother Industrial Co. Ltd. et al

Court File No: 62732

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

(Proceeding under the *Class Proceedings Act, 1992*)

**STATEMENT OF CLAIM**

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