

Court File No. 58276 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

URLIN RENT A CAR LTD.

Plaintiff

- and -

CHAMPION LABORATORIES, INC., UIS INC., PUROLATOR FILTERS N.A. L.L.C.,
BOSCH U.S.A., ROBERT BOSCH 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., and WILLIAM G. BURCH

Defendants

Proceeding under the *Class Proceedings Act, 1992*

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, 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


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: UIS Inc.
15 Exchange Plaza, Suite 1120
Jersey City, NJ 07302

AND TO: Purolator Filters N.A. L.L.C
3200 Natal St.
Fayetteville, NC 28306-2845

AND TO: Bosch U.S.A.
38000 Hills Tech Drive
Farmington Hills, MI 48331

AND TO: Robert Bosch Inc.
6955 Creditview Rd
Mississauga, ON L5N 1R1

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: William G. Burch
8616 S. 66th East Avenue
Tulsa, OK 74133

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, or stabilize the prices of oil, air, fuel and transmission filters in the aftermarket ("Filters") in Canada from at least January 1, 1999 to April 1, 2008 ("Conspiracy Period");
 - (b) a declaration that the Defendants conspired and/or agreed to lessen unduly 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, or alternatively, damages assessed equal to the Defendants' ill-gotten gains;
 - (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, fuel, air and transmission filters in order to properly maintain its motor vehicles. Such oil, fuel, air and transmission filters include the 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.

6. The Defendant UIS, Inc, is a privately-held corporation with a business address in Jersey City, New Jersey. Prior to June 2003, Champion Laboratories was owned by UIS, Inc. and UIS Industries, Inc, and UIS is responsible for the acts of Champion Laboratories prior to June 2003.

Purolator

7. The Defendant Purolator Filters N.A. L.L.C. is a limited liability corporation with its principal place of business in Fayetteville, North Carolina. During the Conspiracy Period, Purolator Filters N.A. L.L.C. 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. Purolator Filters N.A. L.L.C. is a joint venture between Bosch U.S.A. and Mann + Hummel U.S.A. Inc.

Bosch

8. The Defendant Bosch U.S.A. ("Bosch") is a company headquartered in Broadview, Illinois, with a business address in Farmington Hills, Michigan. Bosch manufactured and sold / distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affiliates and / or subsidiaries.
9. The Defendant Robert Bosch Inc ("Robert Bosch") is an Ontario corporation with its registered office in Mississauga, Ontario. Robert Bosch 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.
10. The businesses of each of Bosch and Robert Bosch 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

11. 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. (Honeywell International, Honeywell Consumer Products, and FRAM are herein collectively referred to as "Honeywell.")
12. 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.

Wix

13. The Defendant Wix Filtration Products ("Wix") 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 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 Affinia Group Inc. is a Delaware corporation with its head office in Ann Arbor, Michigan. Wix is a wholly-owned subsidiary of Affinia Group Inc. (Wix and Affinia Group Inc. are herein collectively referred to as "Wix.")
15. The businesses of each of Wix and Affinia Group 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

16. 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.
17. Cummins Filtration International Corp. ("Cummins Filtration Canada") is an Ontario corporation with its principal place of business in Mississauga, Ontario. Cummins Filtration Canada manufactured, sold and/or distributed Filters to customers throughout North America, either directly or indirectly through the control of its predecessors, affilitates and/or subsidiaries.
18. 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 is a wholly-owned subsidiary of Cummins Inc. (Cummins Filtration, Cummins Filtration Canada and Cummins Inc. are herein collectively referred to as "Cummins.")

19. The businesses of each of Cummins Filtration, Cummins Filtration 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.

Donaldson

20. 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

21. 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.

Burch

22. The Defendant William G. Burch ("Burch") is a citizen of Oklahoma. He was employed by the Defendant Champion, as a division manager, throughout much of the Conspiracy Period. Burch implemented, facilitated, and participated in much of the conspiracy described hereinafter.

23. Champion, Purolator, Honeywell, Wix, Donaldson, Cummins, Baldwin and Burch are herein collectively referred to as "Defendants."

THE FILTERS INDUSTRY

24. During the Conspiracy Period, the Filters industry was structured in such a manner as to encourage and facilitate the conspiracy alleged within.
25. 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.
26. Fuel filters are used in nearly every motor vehicle sold in North America. Fuel filters are located in the fuel lines of motor vehicles, and screen out harmful particulate matter from the fuel of motor vehicles. The filtration of fuel is essential for performance and efficiency in the operation of motor vehicles.
27. 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.
28. Transmission filters are used in nearly every motor vehicle sold in North America. Transmission filters trap metal chips created in transmission components, and prevent them from causing a catastrophic transmission failure.
29. All of the above filters ("Filters") are typically detachable units that require regular replacement. They are essentially fungible products.
30. 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).

31. 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.
32. The Defendants are the primary manufacturers of aftermarket Filters 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.
33. Annual revenues for the Filters aftermarket are approximately \$3.5 - \$5.5 billion in North America.

Substitutability

34. Although Filters may vary in some manners, they are generally standardized products such that, for example, many manufacturers produce oil filters able to be used in any particular motor vehicle, such that Filters of one manufacturer are readily substitutable for the Filters of another manufacturer. 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

35. 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. This concentration of market share facilitated the Defendants' ability to implement the conspiracy alleged within.

Barriers to Entry

36. 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

37. The Defendants used common memberships in trade associations as a means for discussing and agreeing upon prices for construction flat glass. For example, the Filter Manufacturers Council holds regular meetings around North America, including in Canada, and common membership among the Defendants created an opportunity for the Defendants to meet and discuss the conspiracy alleged herein.
38. 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

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

40. 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.
41. 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.
42. 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.
43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. As a result of the Defendants' unlawful conspiracy, the Plaintiff has been forced to pay supracompetitive prices for Filters.

**Conspiracy, Tortious Interference with Economic Interests and Breach of the
*Competition Act***

49. The acts particularized in paragraphs 39 to 48 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, as such, the Defendants are liable for the tort of civil conspiracy.

50. Further, or alternatively, the acts particularized in paragraphs 39 to 48 were unlawful acts undertaken by the Defendants with the intent to injure the Plaintiff and other purchasers of Filters and, as such, the Defendants are liable for the tort of intentional interference with economic interests.

51. Further, or alternatively, the acts particularized in paragraphs 39 to 48 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*.

DAMAGES

52. 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.

53. 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 has been injured in its business and property and has suffered damages in an amount presently undetermined.

54. The Plaintiff asserts that its damages and the damages of other persons who are similarly situated are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the Defendants and the prices which would have been obtained in the absence of the unlawful conspiracy.

55. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in 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.

56. 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.
57. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), ss. 36, 45 and 46.
58. The Plaintiff pleads and relies 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)).
59. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.
60. The Plaintiff states that it is representative of persons in Canada who purchased Filters in Canada during the Conspiracy Period.

61. The Plaintiff proposes that this action be tried at London, Ontario.

DATE: May 21, 2008

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Counsel for the Plaintiff

URLIN RENT A CAR LTD.
Plaintiff

CHAMPION LABORATORIES, INC et al..
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Defendants

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STATEMENT OF CLAIM

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