

FEB 26 2021



SE 211884

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between

KEVIN CHARLTON

PLAINTIFF

and

MUSASHI BOCKENAU GMBH & CO. KG, HIRSCHVOGEL UMFORMTECHNIK GMBH,
BHARAT FORGE CDP GMBH, AND BHARAT FORGE GLOBAL HOLDING GMBH

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM
(Price Fixing – Forged Steel Products)

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. Beginning at least as early as October 2002 and continuing until at least December 2016 (“**Class Period**”), senior executive and employees of the Defendants (as described below) conspired amongst themselves and with others not presently known to the Plaintiff, to 1) fix, maintain, increase or control the price for the supply of certain Forged Steel Products (as defined below), 2) to allocate sales, territories, customers or markets for the production or supply of certain Forged Steel Products, 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of certain Forged Steel Products, and/or 4) to rig bids for certain Forged Steel Products (collectively the “**Conspiracy**”, as further defined below). In February 2021, the Defendants were fined and censured by the German competition authorities for their participation in the Conspiracy.

2. The Defendants are competitors in the worldwide market for Forged Steel Products, including in the European, Asian and North American automotive sectors. The Conspiracy affected Forged Steel Products installed in a variety of makes and models of automobiles manufactured for, exported to, purchased and driven in Canada and, specifically, in British Columbia. To the knowledge of the Defendants, the Conspiracy also affected Forged Steel Products sold directly to end consumers in British Columbia and Canada, as replacement parts, after-market or upgrade parts for a variety of makes and models of automobiles (“**Replacement Parts**”). The Replacement Parts were capable of direct installation on a vehicle and could be purchased by end consumers as standalone products.

3. The Conspiracy was directed at:

- a. manufacturers of vehicles including cars, trucks and motorcycles (“**Automotive Manufacturers**”) who purchased Forged Steel Products directly or indirectly from the Defendants, or one of them, to in turn sell directly to consumers as constituent parts of a vehicle;
 - b. original equipment manufacturers (“**OEMs**”), who purchased Forged Steel Products directly or indirectly from the Defendants, or one of them, before further processing the Forged Steel Products or selling the Forged Steel Products to Automotive Manufacturers;
 - c. component manufacturers (“**Tier I and Tier II Manufacturers**”) who purchased the Forged Steel Products directly or indirectly from the Defendants, or one of them, before further processing the Forged Steel Products or selling the Forged Steel Products to OEMs;
 - d. purchasers of Replacement Parts.
4. As a consequence of the Defendants’ collusive conduct, the Defendants and their co-conspirators eliminated or reduced competition for Forged Steel Products in *inter alia* the automotive sector. Through their conduct, the Defendants effectuated an overcharge for the Forged Steel Products purchased by Automotive Manufacturers, OEMs and Tier I and Tier II Manufacturers, and Replacement Parts purchased by end consumers, including the Plaintiff and Class Members.
5. The artificially inflated prices that Automotive Manufacturers, OEMs and Tier I and Tier II Manufacturers paid for the Forged Steel Products were passed on to indirect purchasers of the Forged Steel Products, including persons who purchased or leased vehicles containing the Forged Steel Products or Replacement Parts (the “**Overcharge**”).
6. Persons including Class Members who acquired Replacement Parts for their vehicles from re-sellers of Forged Steel Products were also affected by the Overcharge.

7. The Conspiracy therefore raised prices for all members of the proposed Class, all of whom suffered losses as a consequence of the Defendants' unlawful conduct. The Defendants obtained benefits in the form of the Overcharge as a result of their wrongdoing.

8. Through this suit Canadian direct and indirect purchasers seek to hold the Defendants accountable for their unlawful conduct.

The Parties

The Plaintiff

9. The Plaintiff, Kevin Charlton, is a resident of British Columbia. He owns a 2014 Audi A4 purchased in British Columbia (the "**Vehicle**"). The Vehicle contains Forged Steel Products manufactured, marketed, distributed and/or sold by the Defendants or some of them. The Plaintiff was therefore an indirect purchaser – and ultimate consumer – of the Defendants' Forged Steel Products.

10. The Plaintiff brings this claim on behalf of himself and on behalf of:

All persons resident in Canada during the Class Period who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Steel Products manufactured, marketed, distributed and/or sold by the Defendants (the "**Class**" and "**Class Members**")

11. The Class definition may be further refined in the Plaintiff's application for class certification upon compliance by the Defendants with section 5(5) of the *Class Proceedings Act* in particular with respect to affected makes and models of vehicles and the identity of Replacement Parts sold in Canada during the Class Period.

The Defendants

12. The Defendant Musashi Bockenau GmbH & Co. KG f/k/a Johann Hay GmbH & Co. KG Automobiltechnik ("**Musashi**") is a German corporation with a registered office in Bad Sobernheim, Germany. During the Class Period, Musashi manufactured, marketed, sold, and/or

distributed Forged Steel Products including *inter alia* engine, transmission, axle and suspension automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

13. The Defendant Bharat Forge Global Holding GmbH f/k/a CDP Bharat Forge GmbH (“**Bharat Forge Global**”) is a German corporation with a registered office in Ennepetal, Germany. During the Class Period, Bharat Forge Global manufactured, marketed, sold, and/or distributed Forged Steel Products including *inter alia* chassis and drive train automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Bharat Forge Global cooperated with German competition authorities in their investigation of the Conspiracy.

14. The Defendant Bharat Forge CDP GmnH (“**Bharat Forge CDP**”) is a German corporation with a registered office in Ennepetal, Germany. During the Class Period, Bharat Forge CDP manufactured, marketed, sold and/or distributed Forged Steel Products including *inter alia* chassis and engine components to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Bharat Forge CDP cooperated with German competition authorities in their investigation of the Conspiracy.

15. The Defendant Hirschvogel Umformtechnik GmbH (“**Hirschvogel**”) is a German corporation with a registered office in Denklingen, Germany. During the Class Period, Hirschvogel manufactured, marketed, sold, and/or distributed Forged Steel Products including *inter alia* brake calipers, damper forks, wheel hubs, control arms, steering knuckles and wheel carrier automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Hirschvogel cooperated with German competition authorities in their investigation of the Conspiracy and no fine was imposed on this company.

16. Each of the Defendants was an agent of the other for the purposes of manipulating the market and prices for Forged Steel Products. At all material times, the Defendants functioned as

a joint enterprise in the Conspiracy to suppress and eliminate competition in the Forged Steel Products industry.

Unnamed Co-Conspirators

17. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading, because their identities are currently unknown to the Plaintiff, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy (the “**Co-conspirators**”). The Co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, been likely to have competed with the Defendants with respect to Forged Steel Products.

18. Whenever reference is made in this pleading to any act, communication, agreement or transaction of a corporation, the Plaintiff is alleging that the corporation engaged in the act, communication, agreement or transaction by or through its directors, officers, employees and/or agents while they were actively engaged in the direction, management and/or control of the corporation’s business.

The Automobile Industry

19. The automobile industry has certain important economic characteristics. In particular, demand for components used by Automotive Manufacturers is inelastic. Demand is said to be “inelastic” if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. Customers have nowhere to turn for alternative products of similar quality. Demand for Forged Steel Products is highly inelastic because there are no close substitutes for these products.

20. In addition, the ultimate purchaser of a vehicle must purchase components made of Forged Steel Products as an essential part of the vehicle. Because of the intensely competitive nature of the automobile industry, the costs of inputs, including Forged Steel Products, are passed on by the Automotive Manufacturers to the ultimate purchasers of vehicles, in whole or in part.

Forged Steel Products

21. Steel forging is a manufacturing process whereby iron and carbon, or semi-processed steel billets, are compressed under extreme pressure to make a very hard and strong substance. Forged steel has less surface porosity, a finer grain structure, more tensile and fatigue strength, and greater ductility than other processed steel. When the steel is heated to forging temperature, it becomes ductile and malleable, allowing it to be molded into specific shapes through the application of force and pressure.

22. Forged Steel Products include forged steel and steel alloys in various states of processing, from semi-finished steel products in need of further machine processing, to finished steel products that require no further machine processing for use as parts in motor vehicles (the “**Forged Steel Products**”).

23. There are a number of costs associated with producing Forged Steel Products. In addition to the raw materials and labour, considerable amounts of energy costs are required to produce the temperatures and pressure required to make Forged Steel Products. A variety of equipment is required, including dies, hammers, mechanical and screw presses and hydraulic presses. Collectively these costs are the “**Production Costs**”.

24. The Production Costs create a high barrier to entry that made it less likely that new competitors would enter the Forged Steel Product market and undercut the Defendants’ cartel prices.

25. The Defendants’ collusive activity described herein engages all aspects of the manufacture of Forged Steel Products from partial forging of steel and steel alloys to be further processed by Tier I and Tier II Manufacturers and OEMs to the design and manufacture of semi-finished and finished steel products to be included in vehicles and other machines.

26. The Defendants’ Forged Steel Products are sold in the automotive sectors worldwide, including in Canada.

27. The sale of the Forged Steel Products and the Conspiracy which led to the Overcharge resulted in substantial revenues and/or cost savings for the Defendants during the Class Period.

28. The Forged Steel Products at issue are standard features of every new vehicle and are installed by OEMs in new vehicles as part of the manufacturing process. Replacement Parts are also installed in vehicles to replace worn out, defective or damaged Forged Steel Products. Forged Steel Products are typically manufactured for specific automobiles, and are developed over a year in advance of an automobile model entering the market.

29. Before ordering Forged Steel Products, prospective purchasers such as Automotive Manufacturers, OEMs and, in some circumstances, Tier I and Tier II Manufacturers, request pricing from part suppliers through requests for quotation (“**RFQs**”).

30. Once a supplier is awarded a contract to supply parts for a particular automobile model or other machine, the supplier typically supplies the parts for the duration of the model. Once production of the model-specific part has begun, purchasers issue annual price reduction requests (“**APRs**”) to the part suppliers throughout the term of the supply contract.

31. In response to RFQs for certain Forged Steel Products, the Defendants and their Co-conspirators submitted price quotes to various Automotive Manufacturers, OEMs and Tier I and Tier II Manufacturers. In response to their submitted quotes, the Defendants and their Co-conspirators were awarded certain supply contracts.

32. Pursuant to these supply contracts, the Defendants and their Co-conspirators manufactured certain Forged Steel Products and then supplied the Forged Steel Products to various Automotive Manufacturers, OEMs and Tier I and Tier II Manufacturers for installation 1) in vehicles manufactured in Europe and elsewhere and sold worldwide, including in Canada, and/or 2) as Replacement Parts.

33. The identities of all affected Automotive Manufacturers, OEMs and Tier I and Tier II Manufacturers who entered into supply contracts with the Defendants and their Co-conspirators are currently unknown to the Plaintiff but well known to the Defendants. A list of makes and models of vehicles sold in Canada and known by the Plaintiff to contain the Defendants’ Forged Steel Products is included as **Schedule “A”** to this pleading.

The Conspiracy

34. The Defendants willingly colluded as between themselves and with their Co-conspirators to use unlawful means to injure the economic interests of

- a. Automotive Manufacturers;
- b. OEMs;
- c. Tier I and Tier II Manufacturers;
- d. indirect purchasers of Forged Steel Products and Replacement Parts, including the Plaintiff and Class Members.

35. Beginning at least as early as October 2002 and continuing until at least December 2016, the exact dates being unknown to the Plaintiff but well known to the Defendants, the Defendants and their Co-conspirators knowingly entered into a continuing agreement, understanding and concert of action to: increase or maintain the prices of certain Forged Steel Products; suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of certain Forged Steel Products; and to conceal their collusive conduct from Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, industry stakeholders, regulators, and consumers (the “**Agreement**”).

36. The substantial terms of the Agreement included:

- a. -fixing, maintaining, increasing or controlling the price for the supply of certain Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- b. allocating sales, territories, customers or markets for the production or supply of certain Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;

- c. fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of certain Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere, and/or
 - d. engaging in bid-rigging with respect to quotes for the supply of certain Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere.
37. With respect to the Conspiracy, “price” includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the Forged Steel Products.
38. Bid-rigging, with respect to the Conspiracy, means
- a. an agreement or arrangement between or among the Defendants and their Co-conspirators whereby one or more of those persons agreed or undertook not to submit a bid or tender in response to a call or request for bids or tenders, or agreed or undertook to withdraw a bid or tender submitted in response to such a call or request; or
 - b. the submission, in response to a call or request for bids or tenders, of bids or tenders arrived at by the agreement or arrangement between or among the Defendants and their Co-conspirators;

where the agreement or arrangement was not made known to Automotive Manufacturers, OEMs Tier I and Tier II Manufacturers and/or purchasers of Replacement Parts calling for or requesting the bids or tenders for Forged Steel Products at or before the time when any bid or tender was submitted or withdrawn by the Defendants or their Co-conspirators.

39. For the purpose of carrying out the Conspiracy, the Defendants and their Co-conspirators engaged in conduct that included, among other things:

- a. participating in meetings, conversations and other communications to discuss the bids and price quotations to be submitted to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- b. participating in meetings, conversations and other communications to discuss the allocation among the companies of certain sales, territories, customers or markets for the production or supply of Forged Steel Products;
- c. agreeing, during those meetings, conversations and communications on bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere or, alternatively, agreeing that one or more of the companies not submit bids in response to RFQs or that one or more companies withdraw bids submitted in response to RFQs;
- d. agreeing, during those meetings, conversations and communications to fix, maintain, increase or control the price (including APRs) for the supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- e. agreeing, during those meetings, conversations and communications to allocate among the companies certain sales, territories, customers or markets for the production or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- f. agreeing, during those meetings, conversations and communications to fix, maintain, control, prevent, lessen or eliminate the production or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- g. in order to effectuate the Agreement, exchanging information on:

- i. bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
 - ii. the allocation of certain sales, territories, customers or markets for the production or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere; and/or
 - iii. the production and supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- h. in accordance with the Agreement, submitting bids and price quotations (including APRs) to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere or, alternatively, declining to submit bids in response to RFQs or withdrawing bids submitted in response to RFQs;
- i. in accordance with the Agreement, fixing, maintaining, increasing and/or controlling the price (including APRs) for the supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- j. in accordance with the Agreement, allocating among the companies certain sales, territories, customers and/or markets for the production or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- k. in accordance with the Agreement, fixing, maintaining, controlling, preventing, lessening and/or eliminating the production and/or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or

purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;

- l. selling Forged Steel Products to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices; and
- m. accepting payment for Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices which resulted in increased revenues for the Defendants.

40. The acts in furtherance of the Conspiracy were carried out, at least in part, within Canada and were an unreasonable restraint of trade and commerce.

41. Each of the Defendants aided, abetted and/or counselled the other Defendants and Co-conspirators in the commission of the Conspiracy.

42. The conduct of the Defendants and their Co-conspirators was also contrary to the competition laws of the United States, Japan and various European nations including Germany, where it was illegal and contrary to Section 1 of the *Sherman Antitrust Act*, Article 101 of the *Treaty of the Functioning of the European Union*, Article 53 of the *European Economic Area Agreement*, section 1 of the *German Act Against Restraint of Competition*, and Article 19 of the *Japanese Antimonopoly Act*.

43. Further, for the purpose of giving effect to the Conspiracy, beginning at least as early as October 2002 and continuing until at least December 2016, the exact dates being unknown to the Plaintiff but well known to the Defendants, the Defendants wherever incorporated who carried on business in Canada (including through sales and deliveries to customers in Canada), implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from representatives of the Defendants in Germany who had knowledge of the conspiracy, combination, agreement or arrangement.

44. The conduct of the Defendants and their Co-conspirators increased the price of Forged Steel Products in Canada, including in the province of British Columbia, and in Europe, the United States, Mexico, Japan and elsewhere. The Plaintiff and Class Members were overcharged for Forged Steel Products.

45. As a consequence of the Overcharge, economic losses and damages were incurred by direct purchasers of the Forged Steel Products, including the Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts.

46. Economic losses and damages were also incurred by indirect purchasers of Forged Steel Products who 1) purchased and/or leased vehicles containing Forged Steel Products, and/or 2) purchased Replacement Parts for their vehicles, including the Plaintiff and Class Members.

47. The Defendants and their Co-conspirators intended to cause damage to the Plaintiff and Class Members. Alternatively, the Defendants and their Co-conspirators knew or ought to have known that their actions would injure the Plaintiff and Class Members as the ultimate purchasers and consumers of the Forged Steel Products.

48. The conduct of the Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Defendants realized as a consequence of artificially inflating the prices of Forged Steel Products are ill-gotten profits.

49. The Defendants are each responsible for the actions of all of the Co-conspirators, even if a particular Defendant did not manufacture a particular Forged Steel Product, because the Conspiracy affected all the Forged Steel Products.

Investigations into Cartel and Resulting Fines

50. On February 4, 2021, the German Bundeskartellamt announced that it had imposed fines totaling approximately €35 million on the Defendants Musashi, Bharat Forge CDP and Bharat Forge Global in relation to their participation in the Conspiracy. No fine was imposed on the Defendant Hirschvogel for its participation in the Conspiracy in accordance with German whistleblower protection legislation, under which Hirschvogel successfully applied for leniency.

Discoverability

51. Forged Steel Products are not exempt from competition regulation and thus, the Plaintiff reasonably considered the Forged Steel Products industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the Defendants' prices for Forged Steel Products. Accordingly, the Plaintiff and Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the Conspiracy before its initial public disclosure on February 4, 2021.

52. The Defendants and their Co-conspirators actively, intentionally and fraudulently concealed the existence of the Conspiracy from the public, including the Plaintiff and Class Members. The Defendants and their Co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiff. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the Conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

53. The Defendants and their Co-conspirators' anti-competitive Conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the Conspiracy. Because the Defendants and their Co-conspirators' agreements, understandings and conspiracies were kept secret, the Plaintiff and Class Members were unaware of the Defendants and their Co-conspirators' unlawful conduct during the relevant period, and they did not know, at the time, that they were paying supra-competitive prices for Forged Steel Products and/or new vehicles containing Forged Steel Products.

Part 2: RELIEF SOUGHT

54. The Plaintiff claims, on his own behalf and on behalf of a Class of similarly situated persons:

- (a) an order certifying this action as a class proceeding and appointing him as representative plaintiff under the *Class Proceedings Act*, RSBC 1996, c 50;
- (b) general damages and special damages for civil conspiracy;

- (c) statutory damages pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34;
- (d) restitution for unjust enrichment or, alternatively, disgorgement;
- (e) punitive damages;
- (f) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
- (g) investigative costs and the costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34; and
- (h) such further and other relief this Honourable Court deems just.

Part 3: LEGAL BASIS

Generally

55. The Plaintiff pleads and relies *inter alia* on the *Class Proceedings Act*, the *Competition Act*, the *Court Order Interest Act*, the *Court Jurisdiction and Proceedings Transfer Act*, the *Limitation Act*, the *Criminal Code*, and the common law generally, including civil conspiracy and unjust enrichment.

Breaches of Part VI of the *Competition Act*

56. The conduct of the Defendants and their Co-conspirators was contrary to Part VI of the *Competition Act*. In particular, the Defendants have breached the *Competition Act*, s 45, as amended from time to time, through their actions and the Conspiracy.

From the beginning of the Class Period up to and including March 11, 2010

57. The Defendants were “persons” within the meaning of the *Competition Act*, s 45 as it stood prior to its amendment on March 12, 2010 (the “Former *Competition Act*”).

58. Forged Steel Products were “products” within the meaning of the Former Competition Act, ss 2(1) and 45.

59. As set out above, by means of the Conspiracy, the Defendants conspired, combined, agreed and arranged to:

- a. limit unduly the facilities for supplying or dealing in Forged Steel Products;
- b. unreasonably enhance the price of Forged Steel Products;
- c. prevent or lessen unduly competition in the sale and supply of Forged Steel Products;
and
- d. otherwise restrain or injure competition unduly in the market for Forged Steel Products;

whether or not the Conspiracy eliminated all or virtually all competition in the market for Forged Steel Products.

60. The Defendants breached the *Competition Act*, s 46 in each instance in which they implemented the terms of the Conspiracy in Canada, including by way of sales and deliveries to customers in this country, acting on instructions from representatives of the Defendants with knowledge of the Conspiracy.

61. As a result of the Defendants’ breaches of the former *Competition Act*, ss 45(1) and 46, the Plaintiff and Class Members suffered loss and damage in the form of the Overcharge.

62. The Plaintiff and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the former *Competition Act*, s 36(1)(a), as well as the costs of investigation for the portion of the Class Period ending March 11, 2010.

From March 12, 2010 to the end of the Class Period

63. The Defendants are and were “competitors” within the meaning of the *Competition Act*, s-s 45(1) and (8).

64. Forged Steel Products are “products” within the meaning of the *Competition Act*, ss 2 and 45(1).

65. The worldwide, European, German, and Canadian automotive sectors are “territories” or “markets” in the worldwide market for Forged Steel Products, within the meaning of the *Competition Act*, s 45(1)(b).

66. As set out above, by means of the Conspiracy, the Defendants have conspired, agreed and arranged to:

- a. fix, maintain, increase or control the price for the supply of Forged Steel Products;
- b. allocate sales, territories, customers or markets for the supply of Forged Steel Products; and
- c. fix, maintain, control, prevent, lessen or eliminate the supply of Forged Steel Products.

67. The Defendants breached the *Competition Act*, s 46 in each instance in which they implemented the terms of the Conspiracy in Canada, including by way of sales and deliveries to customers in this country, acting on instructions from representatives of the Defendants with knowledge of the Conspiracy.

68. As a result of the Defendants’ breaches of the *Competition Act*, ss 45 and 46, the Plaintiff and Class Members have suffered loss and damage in the form of the Overcharge.

69. The Plaintiff and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the *Competition Act*, s 36(1)(a), as well as the costs of investigation for the portion of the Class Period beginning March 12, 2010.

Civil Conspiracy

70. Civil conspiracy requires 1) an agreement between two or more persons, 2) concerted action taken pursuant to the agreement, and 3) actual damage suffered by the plaintiff. If the defendant's action is lawful, the conspirators must have intended to cause damage to the plaintiff. If the defendant's action is unlawful, the conspirators must have or ought to have known that their action would injure the plaintiff.

71. In this case, each of the Defendants entered into a continuing agreement with each of the other Defendants to 1) increase or maintain the prices of Forged Steel Products, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Forged Steel Products, and to conceal their Agreement from Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, purchasers of Replacement Parts and industry stakeholders.

72. The Defendants also entered into a continuing agreement with their Co-conspirators, who were their competitors with respect to Forged Steel Products, to:

- a. increase or maintain the prices of Forged Steel Products, and/or
- b. suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Forged Steel Products, and to conceal their Agreement from Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, purchasers of Replacement Parts and industry stakeholders.

73. Pursuant to the Agreement, the Defendants and their Co-conspirators:

- a. fixed, maintained, increased and/or controlled the price for the supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere,

- b. allocated sales, territories, customers or markets for the production and/or supply of the Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- c. fixed, maintained, controlled, prevented, lessened and/or eliminated the production or supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere; and/or
- d. engaged in bid-rigging with respect to quotes for the supply of Forged Steel Products sold to Automotive Manufacturers, OEMs, Tier I and Tier II Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere.

74. The conduct of the Defendants and their Co-conspirators was unlawful, in breach of the *Competition Act* and the U.S., European and Japanese legislation set out in Part 1, and the Defendants and their Co-conspirators knew or ought to have known that their actions would injure the Plaintiff and Class Members.

75. The Plaintiff and Class Members suffered loss and damage as a consequence of the Agreement and the concerted action of the Defendants taken pursuant to the Agreement.

76. The Plaintiff and Class Members should be compensated for their losses by an award of damages.

Unjust Enrichment

77. As a result of the unlawful conduct of the Defendants and their Co-conspirators, the Defendants benefited from the increased prices of Forged Steel Products which resulted in increased revenue for the Defendants or some of them.

78. The Plaintiff and Class Members suffered a corresponding deprivation as a consequence of the inflated prices of Forged Steel Products.

79. There was no juristic reason or justification for the enrichment of the Defendants; conversely, the conduct of the Defendants and their Co-conspirators was unlawful. In particular, any contracts by which the Defendants received their enrichment are void or voidable as a result of the breaches of the *Competition Act*, the U.S., European and Japanese legislation set out in Part 1, the *Criminal Code*, and as a common law restraint of trade.

80. Restitution should be made to the Plaintiff and Class Members. Alternatively, the Defendants should be compelled to disgorge the profits of their wrongdoing in the form of the Overcharge.

Joint and Several Liability

81. The Defendants are jointly and severally liable for the actions of all of the Co-conspirators and for the damages allocated to each Defendant.

Punitive Damages

82. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Defendants and to achieve the goals of both specific and general deterrence.

83. The Defendants and their Co-conspirators intentionally engaged in unlawful conduct for their personal financial gain. The conduct of the Defendants was planned and deliberate. It lasted for years. The Defendants profited from their misconduct. Their conduct was high-handed and represented a marked departure from ordinary standards of decent behaviour.

84. Compensatory damages are insufficient in this case. The conduct of the Defendants merits punishment and warrants a claim for punitive damages.

Limitation Period

85. The Defendants willfully concealed the unlawfulness of their scheme and actions from the Plaintiff and Class Members, and the public. The Plaintiff and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*, 2019 SCC 42.

86. In addition, the Plaintiffs or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until February 4, 2021.

87. The Plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until February 4, 2021.

88. The Plaintiffs and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiffs and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020 to March 25, 2021.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the grounds that:

- (a) this action concerns restitutionary obligations that, to a substantial extent, arose in British Columbia section 10(f) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28;
- (b) this action concerns a tort committed in British Columbia pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28; and
- (c) this action concerns a business carried on in British Columbia, pursuant to section 10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

Plaintiff's address for service:

Slater Vecchio LLP
18th Floor, 777 Dunsmuir Street
Vancouver, BC
V7Y 1K4

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: February 26, 2021



For: Lawyer for the Plaintiff
Anthony A. Vecchio, Q.C.
Slater Vecchio LLP

And

Mathew Good
Mathew P Good Law Corp

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

SCHEDULE A

Vehicles Sold in Canada Containing the Forged Steel Products at Issue

Audi			
A4	A6	A7	
Q3	Q5	Q7	Q8
Mercedes-Benz			
S-Class	E-Class		
Porsche			
Cayman	Macan		
Daimler			
Unknown at time of filing			
MAN			
Unknown at time of filing			
DAF Scania			
Unknown at time of filing			
Volvo			
Unknown at time of filing			
John Deere			
Unknown at time of filing			
BMW			
Unknown at time of filing			
Renault-Nissan			
Unknown at time of filing			
Ford			
Unknown at time of filing			
JLR Group			
Unknown at time of filing			

Stellantis
Unknown at time of filing
Volkswagen
Unknown at time of filing
Hino
Unknown at time of filing
General Motors
Unknown at time of filing

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action is a proposed class proceeding concerning violations of Part VI of the *Competition Act*, RSC 1985, c C-34 as well as civil conspiracy, unjust enrichment in the forged steel products market.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 50

Competition Act, RSC 1985, c C-34

Court Order Interest Act, RSBC 1996, c 79

Court Jurisdiction and Proceeding Transfer Act, SBC 2003, c 28