

COUR SUPÉRIEURE
(Chambre des actions collectives)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

Nos. : 200-06-000146-129
200-06-000143-126
200-06-000201-163

DATE : 30 mars 2020

SOUS LA PRÉSIDENTE DE L'HONORABLE CLÉMENT SAMSON, j.c.s.

200-06-000146-129

SERGE ASSELIN

Demandeur

c.

DENSO CORPORATION ET ALS.

Défenderesses

200-06-000143-126

GAËTAN ROY

Demandeur

c.

DENSO CORPORATION ET ALS.

Défenderesses

200-06-000201-163

SERGE ASSELIN

Demandeur

c.

DENSO CORPORATION ET ALS.

Défenderesses

et

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FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mis en cause

JUGEMENT SUR DEMANDE POUR OBTENIR L'APPROBATION D'UN PROTOCOLE DE DISTRIBUTION

[1] **ATTENDU** que les parties sont impliquées dans un litige de la nature d'une action collective;

[2] **ATTENDU** qu'une entente de règlement, laquelle a été approuvée ce jour, a été conclue le 25 novembre 2019 avec les Défenderesses Denso Corporation, Denso International America Inc., Denso Manufacturing Canada, inc., Denso Sales Canada, Inc., Denso Korea Corporation, Denso Products and Services Americas, Inc., Denso Automotive Deutschland GmbH, Asmo Co., Ltd., Asmo North America, LLC., Asmo North Carolina, Inc., Amso Greenville Of North Carolina, Inc., Asmo Manufacturing, Inc., Korea Wiper Blade Co., Ltd. et Techma Corporation, dans le cadre des actions collectives nationales et/ou québécoises suivantes :

- 1) Capteurs de niveaux de carburant (200-06-000146-129);
- 2) Unités de contrôle électroniques (200-06-000143-126);
- 3) Débitmètres d'air (200-06-000201-163);
- 4) Ventilateurs de refroidissement (CV-14-506635-00CP);
- 5) Moteurs de vitres électriques (CV-14-506679-00); et
- 6) Systèmes de lave-glace (CV-14-506669-00CP);

(ci-après l' « **Entente Denso** »);

[3] **ATTENDU** que l'Entente Denso met un terme définitif aux actions collectives énumérées au paragraphe 2 du présent jugement;

[4] **ATTENDU** que les Demandeurs demandent au Tribunal :

- a) d'approuver le Protocole de Distribution; et

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- b) de nommer la firme RicePoint Administration Inc. à titre d'Administrateur des Réclamations.

[5] **CONSIDÉRANT** l'expiration de l'échéance fixée pour s'opposer au Protocole de Distribution, sans qu'il n'y ait eu objection écrite à l'encontre du Protocole de Distribution;

[6] **CONSIDÉRANT** qu'aucun Membre du Groupe au Québec ne s'est présenté devant cette Cour afin de s'opposer à l'approbation du Protocole de Distribution;

[7] **CONSIDÉRANT** le jugement rendu le 28 février 2020 par la Cour supérieure de justice de l'Ontario dans les affaires suivantes :

- a) *Sheridan Chevrolet Cadillac Ltd. et als. v. Hitachi, Ltd. et als.*, numéro de dossier de Cour CV-14-506641-00CP;
- b) *Sheridan Chevrolet Cadillac Ltd. et als. v. Sumitomo Electric Industries, Ltd. et als.*, numéro de dossier de Cour CV-13-482967-00CP;
- c) *Sheridan Chevrolet Cadillac Ltd. et als. v. Denso Corporation et als.*, numéro de dossier de Cour CV-14-506635-00CP;
- d) *Sheridan Chevrolet Cadillac Ltd. et als. v. Yazaki Corporation et als.*, numéro de dossier de Cour CV-13-482959-00CP);
- e) *Sheridan Chevrolet Cadillac Ltd. et als. v. Denso Corporation et als.*, numéro de dossier de Cour CV-14-506679-00CP; et
- f) *Sheridan Chevrolet Cadillac Ltd. et als. v. Denso Corporation et als.*, numéro de dossier de Cour CV-14-506669-00CP.

[8] **CONSIDÉRANT** l'article 590 du *Code de procédure civile*;

[9] **CONSIDÉRANT** que la demande a dûment été notifiée au Fonds d'aide aux actions collectives;

[10] **CONSIDÉRANT** les représentations des avocats;

[11] **APRÈS EXAMEN**, il y a lieu de faire droit à la demande des Demandeurs;

POUR CES MOTIFS, LE TRIBUNAL :

[12] **ACCUEILLE** la demande;

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[13] **APPROUVE** le Protocole de Distribution, joint en Annexe A au présent jugement, en conformité avec l'article 590 du *Code de procédure civile* et **ORDONNE** qu'il soit appliqué conformément à ses dispositions;

[14] **DÉCLARE** qu'au surplus des définitions utilisées ailleurs dans le présent jugement, aux fins du présent jugement, les définitions contenues au Protocole de Distribution s'appliquent et forment partie intégrante du présent jugement;

[15] **DÉCLARE** que le Protocole de Distribution régira l'administration de l'Entente Denso;

[16] **NOMME** la firme RicePoint Administration Inc. pour agir à titre d'Administrateur des Réclamations aux fins d'administration du Protocole de Distribution;

[17] **ORDONNE** que le Fonds de Règlement devant être payé conformément à l'Entente Denso soit distribué par l'Administrateur des Réclamations en conformité avec le Protocole de Distribution;

[18] **ORDONNE** que tous les renseignements reçus, recueillis, utilisés et conservés par l'Administrateur des Réclamations, aux fins de de l'Entente Denso, y compris l'évaluation de l'admissibilité des Membres du Groupe en conformité avec l'Entente Denso, soient protégés en vertu de la *Loi sur la protection des renseignements personnels et les documents électroniques*, LC 2000, ch. 5.;

[19] **ORDONNE** que les renseignements fournis par les Membres du Groupe demeureront strictement privés et confidentiels et ne seront pas divulgués sans le consentement écrit exprès du Membre du Groupe concerné, si ce n'est en conformité avec l'Entente Denso, les jugements rendus par cette Cour et/ou le Protocole de Distribution;

[20] **PREND ACTE** du jugement rendu le 28 février 2020 par la Cour supérieure de justice de l'Ontario;

[21] **DÉCLARE** que le présent jugement est rendu sous réserve que des ordonnances similaires soient rendues par le Tribunal de la Colombie-Britannique et que les dispositions du présent jugement seront sans effet tant que ces ordonnances ne seront pas rendues;

[22] **LE TOUT** sans frais de justice.



CLÉMENT SAMSON, j.c.s.

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Siskinds, Desmeules, Avocats, Casier #15
Me Karim Diallo
43, rue de Buade, bureau 320
Québec (Québec) G1R 4A2
Avocats des Demandeurs

DLA Piper (Canada) LLP
Me Tania Da Silva
1501, avenue McGill College, bureau 1400
Montréal (Québec) H3A 3M8
Avocats de Hitachi, Ltd., Hitachi Automotive Systems, Ltd., Hitachi Automotive Systems Americas, Inc. et Furukawa Electronic Co. Ltd.

Blake, Cassels & Graydon S.E.N.C.R.L./s.r.l.
Me Francis Rouleau
1, Place Ville Marie, bureau 3000
Montréal (Québec) H3B 4N8
Avocats de Yazaki Corporation et Yazaki North America Inc.

Davies Ward Phillips & Vineberg s.e.n.c.r.l., s.r.l.
Me Nick Rodrigo
1501, avenue McGill College, 26^e étage
Montréal (Québec) H3A 3N9
Avocats de Denso Manufacturing Canada, Inc. et Denso Sales Canada, Inc., Denso Corporation et Denso International America, Inc.

Société d'avocats Torys s.e.n.c.r.l.
Me Geneviève Bertrand
Me Sylvie Rodrigue
1, Place Ville Marie, bureau 1919
Montréal (Québec) H3B 2C3
Avocats de Mitsubishi Electric Corporation et Mitsubishi Electric Automotive America Inc.

McMillan s.e.n.c.r.l., s.r.l.
Me Andrei Pascu
1000, rue Sherbrooke Ouest, bureau 2700
Montréal (Québec) H3A 3G4
Avocats de Sumitomo Electric Industries Ltd., Sumitomo Wiring Systems Ltd., Sumitomo Electric Wiring Systems Inc., Sumitomo Wiring Systems (U.S.A.) Inc., et Sews Canada, Ltd.

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Fonds d'aide aux actions collectives
Me Frikia Belogbi
1, rue Notre-Dame Est, bureau 10.30
Montréal (Québec) H2T 1B6

Date d'audience : 23 mars 2020

Annexe A : Protocole de Distribution

**PROTOCOLE DE DISTRIBUTION DES FONDS DE RÈGLEMENT DANS LE CADRE
DES ACTIONS COLLECTIVES CANADIENNES RELATIVES À LA FIXATION DES
PRIX DES PIÈCES AUTOMOBILES**

AVIS

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PRINCIPES GÉNÉRAUX

1. Les procédures énoncées dans le présent document visent à régir l'administration des ententes de règlement intervenues dans le cadre des actions collectives canadiennes suivantes relatives à la fixation des prix des véhicules automobiles :
 - (a) Débitmètres d'air;
 - (b) Unités de contrôle électroniques;
 - (c) Ventilateurs de refroidissement;
 - (d) Capteurs de niveau de carburant;
 - (e) Moteurs de vitres électriques; et
 - (f) Systèmes de lave-glace;(les « Ententes de Règlement »).

2. L'administration devra :
 - (a) Mettre en œuvre les Ententes de Règlement, les jugements des Tribunaux et le présent Protocole de Distribution et s'y conformer;
 - (b) Utiliser des moyens sécurisés, sans papier et des moyens électroniques d'inscription et de conservation des données, lorsque possible; et
 - (c) S'appuyer, si cela est possible, sur les informations fournies dans le cadre de la distribution relative aux Gaines de fils électriques.

3. Les Membres du Groupe visé par le Règlement qui réclament une indemnité doivent divulguer et consentir à une réduction pour toute indemnité reçue dans le cadre de d'autres procédures ou de règlements à l'amiable en lien avec leurs achats de Véhicules Visés. Toutefois, si dans le cadre de ces autres procédures ou règlements à l'amiable, la réclamation du Membre du Groupe visé par le Règlement a été quittancée dans son intégralité, le Membre du Groupe visé par le Règlement sera réputé ne pas être admissible à l'obtention de toute autre indemnité.

DÉFINITIONS

4. Les définitions énoncées dans les Ententes de Règlement s'appliquent et sont intégrées au présent Protocole de Distribution. Lorsqu'un terme est défini à la fois dans les Ententes de Règlement et dans le présent Protocole de Distribution, la définition contenue au Protocole de Distribution prévaudra.

5. Aux fins du Protocole de Distribution, les définitions suivantes s'appliquent, ainsi que celles énoncées au paragraphe 10 :

(a) *Véhicule Visé* signifie :

- (i) En ce qui concerne les Débitmètres d'air, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2002 et le 31 décembre 2009, se rapportant aux marques suivantes : Honda/Acura, Nissan/Infiniti et Toyota/Lexus;
- (ii) En ce qui concerne les Unités de contrôle électroniques, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2000 et le 31 décembre 2008, se rapportant aux marques suivantes : Toyota/Lexus;
- (iii) En ce qui concerne les Ventilateurs de refroidissement, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2001 et le 31 décembre 2008, se rapportant aux marques suivantes : Honda/Acura, Nissan/Infiniti et Subaru;
- (iv) En ce qui concerne les Capteurs de niveau de carburant, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2004 et le 31 décembre 2010, se rapportant aux marques suivantes : Toyota/Lexus;
- (v) En ce qui concerne les Moteurs de vitres électriques, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2000 et le 31 décembre 2005, se rapportant aux marques suivantes : Honda/Acura et Nissan/Infiniti; et
- (vi) En ce qui concerne les Systèmes de lave-glace, les voitures pour passagers, véhicules utilitaires sport, fourgonnettes et camions légers (jusqu'à 10 000 lbs) neufs, achetés et/ou loués entre le 1^{er} janvier 2000 et le 31 décembre 2010, se rapportant aux marques suivantes : Nissan/Infiniti et Subaru;

(b) *Achats de Véhicule Visé* signifie la valeur totale attribuée aux achats et/ou aux locations des Véhicules Visés effectués par un Membre du Groupe visé par le Règlement, calculée conformément aux paragraphes 8 à 11;

(c) *Avis de Décision* a le sens qui lui est attribué au paragraphe 20.

(d) *Fonds Net de Règlement* signifie, pour chaque action collective identifiée au paragraphe 1, l'ensemble des Montants de Règlement obtenus conformément aux Ententes de Règlement, plus les intérêts courus, moins :

- (i) les Honoraires des Avocats du Groupe approuvés par les Tribunaux;

- (ii) les Frais d'administration;
 - (iii) les impôts cumulés à l'égard du revenu générés par le fonds de règlement avant la distribution (incluant les intérêts et les pénalités); et
 - (vi) toute autre déduction approuvée par les Tribunaux.
- (e) **Ententes de Règlement** a le sens qui lui est attribué au paragraphe 1.
- (f) **Membres du Groupe visé par le Règlement** signifie toutes les personnes au Canada qui ont acheté et/ou loué un Véhicule Visé. Les personnes suivantes sont exclues :
- (i) les Défenderesses et leurs sociétés mères, filiales, sociétés affiliées, dirigeants et administrateurs; et
 - (ii) les personnes qui se sont valablement, et en temps opportun, exclues des procédures applicables.
- (g) **Distribution relative aux Gains de fils électriques** signifie le protocole de distribution approuvé par les Tribunaux à l'égard des ententes de règlement conclues dans le cadre de l'action collective relative à la fixation des prix des gaines de fils électriques, lequel est joint au présent Protocole comme Annexe A.

DISTRIBUTION DES FONDS DE RÈGLEMENT

Calcul des Paiements

6. Pour chaque action collective identifiée au paragraphe 1, le Fonds Net de Règlement sera distribué aux Membres admissibles du Groupe visé par le Règlement, et ce, au *prorata* (ou proportionnellement) en fonction de la valeur des achats de Véhicules Visés effectués par le Membre admissible du Groupe visé par le Règlement, comparativement à la valeur des achats de Véhicules Visés effectués par tous les Membres admissibles du Groupe visé par le Règlement.
7. Les Membres du Groupe visé par le Règlement pourraient être admissibles à l'obtention d'indemnités dans plus d'une action collective identifiée au paragraphe 1. Dans ce cas, des calculs séparés seront effectués pour chaque action collective concernée. Par exemple, si un Membre du Groupe visé par le Règlement est admissible à la distribution des fonds de règlement dans le cadre des actions collectives relatives aux Débitmètres d'air et aux Alternateurs, des calculs séparés seront effectués pour chacune de ces actions collectives.

8. Aux fins de la distribution au *prorata*, les achats de Véhicules Visés seront calculés en fonction :
- (a) du prix d'achat du Véhicule Visé (voir le paragraphe 9 de l'Annexe A); et
 - (b) de la catégorisation du Membre du Groupe visé par le Règlement (voir les paragraphes 10 et 11 de l'Annexe A).

Le Prix d'achat du Véhicule Visé

9. Le Prix d'achat du Véhicule Visé sera calculé en fonction du prix d'achat déterminé dans la Distribution relative aux Gaines de fils électriques (voir les paragraphes 14 à 17 de l'Annexe A), ajusté afin de tenir compte des années visées seulement. Par exemple, dans le cadre de l'action collective relative aux Systèmes de lave-glace, le prix d'achat du Membre du Groupe visé par le Règlement serait calculé en fonction de ses achats entre 2000 et 2010 (tel que déterminé dans la Distribution relative aux Gaines de fils électriques).

Catégorisation des Membres du Groupe visé par le Règlement

10. Les Membres du Groupe visé par le Règlement seront catégorisés dans les groupes d'acheteurs suivants, en fonction de leur position dans la chaîne de distribution :
- (a) **Importateurs de Marque Nationale** signifie Toyota Canada Inc., Honda Canada Inc., Nissan Canada Inc. et Subaru Canada Inc.;
 - (b) **Concessionnaire** signifie un Membre du Groupe visé par le Règlement qui a acheté des Véhicules Visés auprès d'un Importateur de Marques Nationales ou d'une filiale de celui-ci, aux fins de revente aux Utilisateurs Finaux; et
 - (c) **Utilisateur Final** signifie un Membre du Groupe visé par le Règlement qui a acheté ou loué un Véhicule Visé pour son usage personnel et non aux fins de revente commerciale.
11. Aux fins de calcul des achats de Véhicules Visés, les valeurs suivantes seront appliquées pour tenir compte du titre en vertu duquel le Véhicule Visé a été acheté :
- (a) les achats ou les locations effectués par un Importateur de Marques Nationales seront évalués à 7.5%;
 - (b) les achats ou les locations effectués par un Concessionnaire seront évalués à 25%; et
 - (c) les achats ou les locations effectués par un Utilisateur Final seront évalués à 67.5%.

Exemple de Calcul

12. Si un Utilisateur Final a acheté des Véhicules Visés pour un prix d'achat totalisant 150 000 \$, ses achats de Véhicules Visés, aux fins du calcul de sa part au *pro rata* du Fonds Net de Règlement, seraient calculés comme suit :

$$150\ 000\ \$ \text{ (représentant le prix d'achat)} \times 0.675 \text{ (représentant la catégorisation de l'acheteur en tant qu'Utilisateur Final)} = 101\ 250\ \$$$

13. En supposant que la valeur de tous les achats de Véhicules Visés par les Membres du Groupe visé par le Règlement totalise 10 millions de dollars, ce Membre du Groupe visé par le Règlement aurait droit à 1% (101 250 \$/10 millions de dollars) du Fonds Net de Règlement.

Distribution

14. En consultation avec les Avocats du Groupe, l'Administrateur des Réclamations pourra demander des instructions au Tribunal de l'Ontario concernant la distribution du Fonds Net de Règlement afin de s'assurer d'une distribution juste et efficace de celui-ci.
15. La Distribution relative aux Gaines de fils électriques prévoit un paiement minimal de 25\$ (voir le paragraphe 23 de l'Annexe A). Tout paiement effectué conformément au présent Protocole de Distribution sera ajouté au paiement fait dans le cadre de la Distribution relative aux Gaines de fils électriques, et ce, avant toute augmentation du paiement minimal. Par exemple, si un Membre du Groupe visé par le Règlement a droit à 17 \$ en vertu de la Distribution relative aux Gaines de fils électriques et à 6 \$ supplémentaires en vertu du présent Protocole de Distribution, le Membre du Groupe visé par le Règlement recevrait une augmentation de 2 \$, pour un paiement total de 25\$. Si un Membre du Groupe visé par le Règlement a droit à 20 \$ en vertu de la Distribution relative aux Gaines de fils électriques et à 7 \$ supplémentaires en vertu du présent Protocole de Distribution, le Membre du Groupe visé par le Règlement ne recevrait pas d'augmentation et recevrait un paiement total de 27 \$.
16. Dans la mesure où le plein montant du Fonds Net de Règlement n'est pas versé en raison de transferts ou de chèques non encaissés, d'intérêts résiduels ou autre, sous réserve d'instructions supplémentaires du Tribunal de l'Ontario, ce montant sera distribué conformément au paragraphe 24 de la Distribution relative aux Gaines de fils électriques (Annexe A).

LE PROCESSUS DE RÉCLAMATION

Processus de dépôt des Réclamations

17. Le Membre du Groupe visé par le Règlement qui a déposé une réclamation en vertu de la Distribution relative aux Gaines de fils électriques sera automatiquement considéré aux fins d'admissibilité dans le cadre du présent Protocole de Distribution.

18. L'admissibilité du Membre du Groupe visé par le Règlement sera évaluée en fonction des informations transmises en vertu de la Distribution relative aux Gaines de fils électriques et conformément aux procédures prévues dans la Distribution relative aux Gaines de fils électriques (voir les paragraphes 25 à 27 et 32 à 43 de l'Annexe A).

Décision de l'Administrateur des Réclamations

19. Pour chaque Membre du Groupe visé par le Règlement qui a déposé une Réclamation en vertu de la Distribution relative aux Gaines de fils électriques, l'Administrateur des Réclamations devra :
 - (a) Décider si le Membre du Groupe visé par le Règlement est admissible à recevoir une indemnité payable en vertu du Fonds Net de Règlement, conformément aux Ententes de Règlement, aux ordonnances des Tribunaux et du Protocole de Distribution;
 - (b) Classer les achats de Véhicules Visés effectués par le Membre du Groupe visé par le Règlement, comme ayant été faits par l'Importateur de Marque Nationale, le Concessionnaire ou l'Utilisateur Final; et
 - (c) Déterminer les achats de Véhicules Visés à l'égard desquels le Membre du Groupe visé par le Règlement a droit d'obtenir une indemnité, conformément aux Ententes de Règlement, aux ordonnances des Tribunaux et au Protocole de Distribution.
20. L'Administrateur des Réclamations devra envoyer au Membre du Groupe visé par le Règlement, par courriel ou par la poste, une décision quant à l'approbation ou le rejet de la Réclamation, la classification des achats effectués, soit en tant qu'Importateur de Marque Nationale, de Concessionnaire ou d'Utilisateur Final, et la détermination des achats de Véhicules Visés (l' « Avis de Décision »). Lorsque l'Administrateur des Réclamations a rejeté la totalité ou une partie de la Réclamation ou a reclassifié les achats du Membre du Groupe visé par le Règlement, l'Administrateur des Réclamations devra inclure ses motifs dans l'Avis de Décision. Cet Avis de Décision doit être transmis ou être inclus à l'Avis de Décision transmis dans le cadre de la Distribution relative aux Gaines de fils électriques.
21. La décision de l'Administrateur des Réclamations liera le Membre du Groupe visé par le Règlement et il n'y aura aucun droit d'appel.
22. La Distribution relative aux Gaines de fils électriques prévoit un droit d'appel limité (voir les paragraphes 47 à 53 de l'Annexe A). Si le résultat de l'appel effectué en vertu de la Distribution relative aux Gaines de fils électriques affecte les droits du Membre du Groupe visé par le Règlement en vertu du présent Protocole de Distribution, les droits du Membre du Groupe visé par le Règlement en vertu du présent Protocole de Distribution seront modifiés en conséquence.

Paiement des Réclamations

23. Dès que possible, après que les Réclamations aient été évaluées et que les appels aient été complétés, l'Administrateur des Réclamations devra :
- (a) Faire rapport aux Avocats du Groupe sur les détails de la distribution proposée à chaque Membre admissible du Groupe visé par le Règlement; et
 - (b) Prendre les dispositions requises afin de payer les Réclamations approuvées.
24. Les indemnités seront ajoutées aux montants payables en vertu de la Distribution relative aux Gaines de fils électriques et versées en même temps que les paiements à être effectués en vertu de la Distribution relative aux Gaines de fils électriques.
25. Si un Membre du Groupe visé par le Règlement a choisi de faire don de son indemnité de règlement à des fondations caritatives canadiennes en vertu de la Distribution relative aux Gaines de fils électriques (voir le paragraphe 56 de l'Annexe A), les indemnités auxquelles il a droit en vertu du présent Protocole de Distribution seront octroyées à ces mêmes fondations caritatives.

DEVOIRS ET RESPONSABILITÉS DE L'ADMINISTRATEUR DES RÉCLAMATIONS

Pouvoirs de Surveillance du Tribunal de l'Ontario

26. L'Administrateur des Réclamations devra administrer les Ententes de Règlement et le Protocole de Distribution sous l'autorité et la surveillance continue du Tribunal de l'Ontario.

Placement du Fonds de Règlement

27. Le Fonds de Règlement doit être détenu dans un véhicule de placement garanti, un compte en argent liquide ou une garantie équivalente, ayant une cote équivalente ou supérieure à celle d'une banque canadienne listée à l'annexe I (une banque inscrite à l'annexe I de la *Loi sur les banques*, L.C. 1991, ch. 46), au sein d'une institution financière canadienne.

Communication, Langues et Traduction

28. L'Administrateur des Réclamations devra communiquer avec le Membre du Groupe visé par le Règlement conformément au processus décrit en vertu de la Distribution relative aux Gaines de fils électriques (voir les paragraphes 59 à 62 de l'Annexe A).

Courrier non distribuable et Réémission du paiement

29. Le courrier non distribuable et la réémission du paiement seront gérés conformément au processus prévu en vertu de la Distribution relative aux Gaines de fils électriques (voir les paragraphes 63 à 65 de l'Annexe A).

Impôts

30. L'Administrateur des Réclamations devra prendre toutes les mesures raisonnables afin de minimiser les impôts sur le Fonds Net de Règlement pendant qu'il est détenu en fidéicommiss et devra payer les impôts sur cette somme détenue en fidéicommiss à même le Fonds Net de Règlement. Les Membres du Groupe visé par le Règlement seront responsables du paiement des taxes pouvant résulter de la réception des Fonds de Règlement.

Rapports

31. L'Administrateur des Réclamations devra fournir régulièrement des rapports aux Avocats du Groupe concernant l'administration.
32. L'Administrateur des Réclamations devra fournir tout rapport demandé par les Tribunaux.

Assistance à l'Administrateur des Réclamations

33. L'Administrateur des Réclamations a la discrétion pour conclure des contrats et obtenir de l'aide financière, comptable et toute autre assistance spécialisée raisonnablement nécessaire pour la mise en œuvre des Ententes de Règlement et du Protocole de Distribution.

Confidentialité, Préservation et Disposition des Demandes de Réclamation

34. Les informations du Membre du Groupe visé par le Règlement seront préservées conformément au processus prévu en vertu de la Distribution relative aux Gaines de fils électriques (voir les paragraphes 69, 71 et 72 de l'Annexe A).

**DISTRIBUTION PROTOCOL OF THE
AUTO PARTS PRICE-FIXING CLASS ACTION SETTLEMENT FUNDS**

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GENERAL PRINCIPLES

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into in the following automotive price-fixing class actions:

- (a) Air Flow Meters;
- (b) Electronic Control Units;
- (c) Fan Motors;
- (d) Fuel Senders;
- (e) Power Window Motors; and
- (f) Windshield Washer Systems.

(the "Settlement Agreements").

2. The administration shall:

- (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Protocol;
- (b) employ secure, paperless, and electronic record-keeping wherever possible; and
- (c) rely on information provided in the context of the WH Distribution wherever possible.

3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of Affected Vehicles, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in

which case the Settlement Class Member shall be deemed ineligible for any further compensation.

DEFINITIONS

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

5. For the purpose of this Distribution Protocol, the following definitions apply, as well as those stated in paragraph 10:

(a) *Affected Vehicle* means:

- (i) In respect of Air Flow Meters, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2002 and December 31, 2009 under the following brand names: Honda/Acura, Nissan/Infiniti and Toyota/Lexus;
- (ii) In respect of Electronic Control Units, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2008 under the following brand names: Toyota/Lexus;
- (iii) In respect of Fan Motors, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2001 and December 31, 2008 under the following brand names: Honda/Acura, Nissan/Infiniti, and Subaru;

- (iv) In respect of Fuel Senders, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2004 and December 31, 2010 under the following brand names: Toyota/Lexus;
 - (v) In respect of Power Window Motors, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2005 under the following brand names: Honda/Acura, and Nissan/Infiniti; and
 - (vi) In respect of Windshield Washer Systems, new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 2000 and December 31, 2010 under the following brand names: Nissan/Infiniti, and Subaru.
- (b) *Affected Vehicle Purchases* means the total value assigned to a Settlement Class Member's purchases and/or leases of Affected Vehicles, as calculated pursuant to paragraphs 8 to 11.
- (c) *Decision Notice* shall have the meaning attributed to it in paragraph 20.
- (d) *Net Settlement Funds* means, for each class action identified in paragraph 1, the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus accrued interest, less:
- (i) Class Counsel Fees as approved by the Courts;
 - (ii) Administration Expenses;

- (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
 - (iv) any other deductions approved by the Courts.
- (e) *Settlement Agreements* has the meaning attributed to it in paragraph 1.
- (f) *Settlement Class Members* means all persons in Canada who purchased and/or leased an Affected Vehicle. The following persons are excluded:
- (i) the Defendants and their respective parents, subsidiaries, affiliates, officers and directors; and
 - (ii) persons who validly and timely opted out of the applicable proceeding.
- (g) *WH Distribution* means the distribution protocol approved by the Courts in respect of settlements reached in the automotive wire harness price-fixing class action and appended hereto as Schedule “A”.

DISTRIBUTION OF SETTLEMENT FUNDS

Calculation of Payments

6. For each class action identified in paragraph 1, the Net Settlement Funds will be distributed to qualifying Settlement Class Members *pro rata* (or proportionally) based on the value of the qualifying Settlement Class Member’s Affected Vehicle Purchases as against the value of all qualifying Settlement Class Members’ Affected Vehicle Purchases.
7. Settlement Class Members might be eligible for settlement benefits in more than one of the class actions identified in paragraph 1. In such an event, separate calculations will be made for each relevant class action. For example, if a Settlement Class Member is eligible to

participate in the distribution of settlement funds in the Air Flow Meters and Alternators class actions, separate calculations will be made for each class action.

8. For the purposes of the *pro rata* distribution, Affected Vehicle Purchases will be calculated based on:

- (a) the purchase price of the Affected Vehicle (see paragraphs 9 to 9); and
- (b) the categorization of the Settlement Class Member (see paragraphs 10 to 11).

(a) The Purchase Price of the Affected Vehicle

9. The purchase price of the Affected Vehicle will be calculated based on the purchase price determined in the WH Distribution (see paragraphs 14 to 17), adjusted to cover the relevant years only. For example, in the Windshield Washer Systems action, a Settlement Class Member's purchase price would be calculated based on their purchases between 2000 and 2010 (as determined in the WH Distribution).

(b) The Categorization of the Settlement Class Member

10. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:

- (a) ***National Brand Importers*** means Toyota Canada Inc., Honda Canada Inc., Nissan Canada Inc., and Subaru Canada, Inc.
- (b) ***Dealer*** means a Settlement Class Member who purchased Affected Vehicles from a National Brand Importer or a subsidiary thereof, for resale to End Users; and
- (c) ***End User*** means a Settlement Class Member who purchased or leased an Affected Vehicle for its own use and not for commercial resale.

11. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the capacity in which the Affected Vehicle was purchased:
 - (a) purchases or leases by a National Brand Importer will be valued at 7.5%;
 - (b) purchases or leases by a Dealer will be valued at 25%; and
 - (c) purchases or leases by an End User will be valued at 67.5%.

Sample Calculation

12. If an End User purchased Affected Vehicles with purchase prices totaling \$150,000, its Affected Vehicle Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

$$\text{\$150,000 (representing the purchase price) x 0.675 (representing the categorization of the Settlement Class Member as an End User) = \$101,250}$$

13. Assuming the value of all qualifying Settlement Class Members' Affected Vehicle Purchases totalled \$10 million, this Settlement Class Member would be entitled to 1% ($\text{\$101,250}/\text{\$10 million}$) of the Net Settlement Funds.

Distribution

14. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost effective distribution of the Net Settlement Funds.
15. The WH Distribution provides for a minimum payment of \$25 (see paragraph 23). Any payments pursuant to this Distribution Protocol will be added to the payment pursuant to the WH Distribution prior to any increase to the minimum payment. For example, if a Settlement Class Member is entitled to \$17 pursuant to the WH Distribution and an additional \$6 pursuant to this Distribution Protocol, the Settlement Class Member would

receive a \$2 increase, for a total payment of \$25. If a Settlement Class Member is entitled to \$20 pursuant to the WH Distribution and an additional \$7 pursuant to this Distribution Protocol, the Settlement Class Member would not receive an increase and would receive a total payment of \$27.

16. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest or otherwise, subject to further instructions of the Ontario Court, such monies shall be distributed in accordance with paragraph 24 of the WH Distribution.

THE CLAIMS PROCESS

Claims Process

17. Settlement Class Members who file a claim pursuant to the WH Distribution will automatically be considered for eligibility pursuant to this Distribution Protocol.
18. Settlement Class Members' eligibility will be evaluated based on the information provided pursuant to the WH Distribution and in accordance with the procedures provided for in the WH Distribution (see paragraphs 25 to 27 and 32 to 43).

Claims Administrator's Decision

19. In respect of each Settlement Class Member who has filed a Claim in accordance with the WH Distribution, the Claims Administrator shall:
 - (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol;

- (b) classify the Settlement Class Member's Affected Vehicle Purchases as being made by a National Brand Importer, Dealer or End User; and
 - (c) make a determination of the Affected Vehicle Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol.
20. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim, the classification of purchases as being made in the capacity of a National Brand Importer, Dealer or End User and the determination of the Affected Vehicle Purchases (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim or re-classified the Settlement Class Member's purchases, the Claims Administrator shall include in the Decision Notice its grounds for doing so. This Decision Notice shall be sent with or included within the Decision Notice issued in the context of the WH Distribution.
21. The Claims Administrator's decision will be binding upon the Settlement Class Member and there will be no right of appeal.
22. The WH Distribution provides for a limited right to appeal (see paragraphs 47 to 53). If the result of any appeal pursuant to the WH Distribution affects the Settlement Class Member's entitlements under this Distribution Protocol, the Settlement Class Member's entitlements under this Distribution Protocol shall be amended accordingly.

Payment of Claims

23. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:

- (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
 - (b) make arrangements to pay approved Claims.
24. Payments will be added to the amount payable pursuant to the WH Distribution and paid concurrently with the payments to be made pursuant to the WH Distribution.
25. If a Settlement Class Member has elected to assign its settlement benefits to Canadian charitable foundations or initiatives pursuant to the WH Distribution (see paragraph 56), its settlement benefits under this Distribution Protocol will be assigned to the same charitable foundation or initiative.

THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

Supervisory Powers of the Ontario Court

26. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

Investment of Settlement Funds

27. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46), held at a Canadian financial institution.

Communication, Languages and Translation

28. The Claims Administrator shall communicate with Settlement Class Members in accordance with the processes set forth in the WH Distribution (see paragraphs 59 to 62).

Undeliverable Mail & Reissuance of Payment

29. Undeliverable mail and reissuance of payment will be handled in accordance with the processes set forth in the WH Distribution (see paragraphs 63 to 65).

Taxes

30. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds while held in trust and shall pay any taxes imposed on such monies while held in trust out of the Net Settlement Funds. Settlement Class Members shall be responsible for any taxes payable by them as a result of the receipt of any settlement funds.

Reporting

31. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
32. The Claims Administrator shall provide any reports requested by the Courts.

Assistance to the Claims Administrator

33. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol.

Confidentiality, and Preservation and Disposition of Claim Submissions

34. Settlement Class Member information will be maintained in accordance with the processes set forth in the WH Distribution (see paragraphs 69, 71 and 72).

DISTRIBUTION PROTOCOL
IN THE MATTER OF THE CANADIAN AUTOMOTIVE WIRE HARNESS SYSTEMS
PRICE-FIXING CLASS ACTION SETTLEMENTS

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GENERAL PRINCIPLES

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into in the Canadian Automotive Wire Harness Systems price-fixing class actions (the “Settlement Agreements”).¹

2. The administration shall:
 - (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Protocol;
 - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
 - (c) rely on the National Brands Data wherever economically feasible.

3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their purchases of Affected Vehicles, unless by such proceedings or private out-of-class settlements the Settlement Class Member’s claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

DEFINITIONS

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

¹ The Settlement Agreements are available online at www.siskinds.com/autoparts.

5. For the purpose of this Distribution Protocol, the following definitions apply, as well as those stated in paragraph 10:

- (a) *Affected Vehicle* means new passenger cars, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) purchased and/or leased between January 1, 1999 and November 30, 2014 under the following brands: Honda/Acura, Nissan/Infiniti, Toyota/Lexus, Subaru, and new Pontiac Vibes purchased and/or leased between January 1, 1999 and November 30, 2014.
- (b) *Affected Vehicle Purchases* means the total value assigned to a Settlement Class Member's purchases and/or leases of Affected Vehicles, as calculated pursuant to paragraphs 12-20.
- (c) *Claim* means the electronic or paper form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
- (d) *Claims Filing Deadline* means the date by which Claims (and any required supporting documentation) must be electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
- (e) *Decision Notice* shall have the meaning attributed to it in paragraph 44.
- (f) *National Brands* means General Motors of Canada Company (in respect of the Pontiac Vibe), Honda Canada Inc., Nissan Canada Inc., Subaru Canada, Inc., and Toyota Canada Inc.

- (g) ***National Brands Data*** means the information provided by the National Brands in accordance with paragraph 32 below.

- (h) ***Net Settlement Funds*** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus accrued interest, less:
 - (i) Class Counsel Fees as approved by the Courts;
 - (ii) Administration Expenses;
 - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties);
 - (iv) the *cypres* payment provided for in paragraph 6;
 - (v) any compensation provided to the National Brands pursuant to paragraph 33; and
 - (vi) any other deductions approved by the Courts.

- (i) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.

- (j) ***Settlement Class Members*** means all persons in Canada who purchased and/or leased an Affected Vehicle. The following persons are excluded:
 - (i) the Defendants and their respective parents, subsidiaries, affiliates, officers and directors; and
 - (ii) persons who validly and timely opted out of the proceedings.

DISTRIBUTION OF SETTLEMENT FUNDS

Cy Pres Payment

6. Subject to paragraph 7, indirect compensation in the amount of \$250,000 will be provided for the benefit of those Settlement Class Members who are not eligible for direct payment through equal *cy pres* payments to the following organizations:
 - (a) Automobile Protection Association;
 - (b) London Community Foundation; and
 - (c) Pro Bono Canada.

7. The *cy pres* payments shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (2°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the Fonds d'aide aux actions collectives, 23.6%² of the *cy pres* payment will be notionally allocated to Quebec.

8. To be eligible to receive the monies under this distribution protocol, the *cy pres* recipient must:
 - (a) use the monies for the purposes outlined in the recipient's proposal submitted to Siskinds LLP and approved by the Courts; and

² 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

- (b) report to the Claims Administrator on an annual basis until all funds are exhausted on how the monies have been used.
9. Subject to the consent of Class Counsel, all funds shall be used up within two years of receipt.

Categorization of Settlement Class Members

10. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:
- (a) ***National Brand Importers*** means General Motors of Canada Company (in respect of the Pontiac Vibe), Nissan Canada Inc., and Subaru Canada, Inc.;
 - (b) ***Dealer*** means a Settlement Class Member who purchased Affected Vehicles from the National Brands or a subsidiary thereof, for resale to Individual End Users or Commercial End Users;
 - (c) ***Individual End User*** means a Settlement Class Member who purchased or leased an Affected Vehicle for their own individual use and not for commercial resale; and
 - (d) ***Commercial End User*** means a Settlement Class Member who purchased or leased an Affected Vehicle for its own commercial use and not for commercial resale.

Calculation of Payments

11. The Net Settlement Funds will be distributed to qualifying Settlement Class Members *pro rata* (or proportionally) based on the value of the qualifying Settlement Class Member's Affected Vehicle Purchases as against the value of all qualifying Settlement Class Members' Affected Vehicle Purchases.

12. For the purposes of the *pro rata* distribution, Affected Vehicle Purchases will be calculated based on:

- (a) the purchase price of the Affected Vehicle (see paragraphs 13-18);
- (b) the timing of the Affected Vehicle purchase or lease (see paragraph 19); and
- (c) the categorization of the Settlement Class Member (see paragraph 20).

(a) The Purchase Price of the Affected Vehicle

Individual End User

13. Where a Settlement Class Member is an Individual End User, the purchase price of the Affected Vehicle Purchases shall be calculated as follows:

- (a) purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle; and
- (b) leases not subsequently purchased, shall be calculated based on:
 - (i) 20% of the MSRP for year one of the lease; and
 - (ii) 10% of the MSRP for each subsequent year of the lease.

Commercial End User

14. Where a Settlement Class Member is a Commercial End User, the purchase price of the Affected Vehicle Purchases shall be calculated as follows:

- (a) for purchases and/or leases that are disclosed in the National Brands Data and/or additional purchases and/or leases of up to fifteen (15) Affected Vehicles;

- (i) purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle; and
- (ii) leases not subsequently purchased, shall be calculated based on:
 - (A) 20% of the MSRP for year one of the lease; and
 - (B) 10% of the MSRP for each subsequent year of the lease.
- (b) for purchases and/or leases of more than fifteen (15) Affected Vehicles not disclosed in the National Brands Data, the purchase price or aggregate lease payments of the Affected Vehicle Purchases shall be calculated based on the information provided by the Commercial End User as part of the Claims process (including in response to any audit).

Dealer

15. Where a Settlement Class Member is a Dealer:

- (a) for purchases and/or leases of Affected Vehicles that are disclosed in the National Brands Data, purchases (including through a buy-out of a lease), shall be calculated based on the MSRP of the Affected Vehicle less 10%; and
- (b) for purchases and/or leases of Affected Vehicles that are not disclosed in the National Brands Data, the purchase price or aggregate lease payments of the Affected Vehicle Purchases shall be calculated based on the information provided by the Dealer as part of the Claims process (including in response to any audit).

National Brand Importers

16. Where a Settlement Class Member is a National Brand Importer, the purchase price of the Affected Vehicle Purchases shall be calculated based on the information provided by the National Brand Importer as part of the Claims process (including in response to any audit).
 17. For the purposes of paragraph 13, 14(a) and 15(a), the MSRP of each Affected Vehicle will be calculated by averaging the MSRP of all trim levels of that Affected Vehicle during the model year.
 18. For the purposes of paragraph 14(b), 15(b) and 16, the purchase price or aggregate lease payments shall be calculated based on the purchase price, less any taxes, discounts, rebates, delivery or shipping charges, and for leases, less 5% to account for financing costs built into the lease payments and/or buy-out amount.
- (b) The Timing of the Affected Vehicle Purchase or Lease
19. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the timing of the purchase:
 - (a) purchases or leases entered into between January 1, 1999 and February 28, 2010 will be valued at 100%; and
 - (b) purchases or leases entered into between March 1, 2010 and November 30, 2014 will be discounted by 50%.³

³ Where a Settlement Class Member purchased Affected Vehicles in 2010 and the Claims Administrator is not easily able to determine based on the information provided by the National Brands and/or the Settlement Class Member when during 2010 a purchase was made, the purchases will be allocated prorata as between January and February, and the remainder of the year.

(c) The Categorization of the Settlement Class Member

20. For the purposes of calculating Affected Vehicle Purchases, the following values will be applied in order to account for the capacity in which the Affected Vehicle was purchased:
- (a) purchases or leases by a National Brand Importer will be valued at 7.5%;
 - (b) purchases or leases by a Dealer will be valued at 25%; and
 - (c) purchases or leases by an End User will be valued at 67.5%.

Sample Calculation

21. If an End User purchased Affected Vehicles with purchase prices totaling \$50,000 between January 1, 1999 and February 28, 2010, and \$75,000 between March 1, 2010 and November 30, 2014, its Affected Vehicle Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

\$50,000 (representing the purchase price) x 1 (representing the timing of the purchase or lease) x 0.675 (representing the categorization of the Settlement Class Member as an End User) = \$33,750

Plus

\$75,000 (representing the purchase price) x 0.5 (representing the timing of the purchase or lease) x 0.675 (representing the categorization of the Settlement Class Member as an End User) = \$25,312.50

22. Assuming the value of all qualifying Settlement Class Members' Affected Vehicle Purchases totalled \$10 million, this Settlement Class Member would be entitled to 0.59% (\$59,062.50/\$10 million) of the Net Settlement Funds.

Distribution

23. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost effective distribution of the Net Settlement Funds.

24. Notwithstanding any other provision in this Distribution Protocol and subject to further order of the Ontario Court following the adjudication of all claims, all valid Claims will be assigned a minimum value of \$25. The \$25 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution. If the distribution occurs in conjunction with distributions in other automotive parts price-fixing class actions, the \$25 valuation shall be applied only after summing all relevant distributions. For example, if a Settlement Class Member is entitled to \$17 pursuant to the within Distribution Protocol and an additional \$6 pursuant to other distributions, the Settlement Class Member would receive a \$2 increase, for a total payment of \$25. If a Settlement Class Member is entitled to \$20 pursuant to the within Distribution Protocol and an additional \$7 pursuant to other distributions, the Settlement Class Member would not receive an increase and would receive a total payment of \$27.
25. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest or otherwise, subject to further instructions of the Ontario Court, such monies shall be distributed equally to the organizations identified in paragraph 6, less any amounts payable to the Quebec Fonds d'aide aux actions collectives, as calculated pursuant to paragraph 7.

THE CLAIMS PROCESS

The Claim

26. Each Claim shall require the following:
- (a) The Settlement Class Member's contact information;

- (b) Where the Settlement Class Member did not receive a notice containing the National Brands Data or is claiming for purchases of Affected Vehicles in addition to those prepopulated in the online claim portal, the Settlement Class Member must provide purchase information in accordance with the following:
- (i) for Individual End Users and Commercial End Users who are claiming for up to fifteen (15) additional purchases or leases of Affected Vehicles, a declaration specifying the make, model and year of each Affected Vehicle purchased or leased between January 1, 1999 and November 30, 2014.
 - (ii) for Commercial End Users who are claiming for more than fifteen (15) additional purchases, Dealers or National Brand Importers, a declaration of:
 - (A) the dollar value of the aggregate Affected Vehicle purchases (less any taxes, shipping, delivery charges, rebates, discounts, etc.); and/or
 - (B) the aggregate lease payments plus any buy-out amount (less any taxes, shipping, delivery charges, rebates, discounts, etc.);
 - (c) information that will allow the Claims Administrator to determine whether the Settlement Class Member's purchases and/or leases of Affected Vehicles were in the capacity of a National Brand Importer, Dealer or an End User;
 - (d) disclosure regarding whether the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements in relation to its purchases and/or leases of Affected Vehicles, and/or whether the Settlement Class Member's claims in relation to its purchases and/or leases of

Affected Vehicles have been released, and details of the compensation received and the claims released;

- (e) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to audit the Claim;
- (f) a declaration that the information submitted in the Claim is true and correct;
- (g) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf;
- (h) an option for Settlement Class Members to consent to the Claims Administrator retaining the information provided in the Claim for the purpose of filing a future claim in other automotive parts class actions, including consent to receiving correspondence and/or notices relating to other automotive parts class actions by email or direct mail; and
- (i) an option for Settlement Class Members to assign their settlement benefits in accordance with paragraph 55.

27. Where a Settlement Class Member has purchase records for Affected Vehicle purchases or leases for at least two years during the period between January 1, 1999 and November 30, 2014, the Settlement Class Member can use such records (alone or together with any National Brands Data) to extrapolate its Affected Vehicle purchases or leases for the remainder of the period between January 1, 1999 and November 30, 2014. If the Settlement

Class Member's Claim is audited pursuant to paragraphs 37 to 38, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.

Assistance in Filing a Claim

28. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
29. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Member will be responsible for any and all expenses incurred in doing so.

The Online Claims Portal

30. The Claims Administrator shall create an online claims portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.
31. The online claims portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraph 26 above.

National Brands Data

32. Pursuant to orders of the Courts, to the extent reasonably available, the National Brands have provided or will be providing some or all of the following information to the Claims Administrator respecting their End Users' and Dealers' Affected Vehicle purchases: name,

address (including email address, if available), and a listing of the Affected Vehicles purchased and/or leased between January 1, 1999 and November 30, 2014.

33. The National Brands will be compensated for their reasonable time and expenses associated with collecting and providing National Brands Data, which compensation will be paid out of the Net Settlement Funds. Any disputes regarding the reasonableness of time or expenses shall be resolved by the Ontario Court.

Claims Filing Process

34. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the online claims portal. Subject to paragraphs 35 and 42, or further order of the Ontario Court, Claims must be submitted to the online claims portal on or before the Claims Filing Deadline.
35. If an Individual End User does not have internet access or is otherwise unable to submit a Claim using the online claims portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 42 or further order of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
36. For Settlement Class Members whose name, address and purchase information is available in the National Brands Data, the following process shall be implemented:
 - (a) Where an email address is available or where only a mailing address is available and the Settlement Class Member purchased ten (10) or more Affected Vehicles (or

such other threshold(s) that Class Counsel and the Claims Administrator agree is economically feasible), the Claims Administrator shall provide the Settlement Class Member with a user name and password for the online claims portal and the information disclosed in the National Brands Data shall be pre-populated on the online claims portal. The Settlement Class Member shall be given an opportunity to claim in respect of additional purchases of Affected Vehicles.

- (b) Where a Settlement Class Member did not receive a notice pursuant to (a) above or is claiming for additional purchases of Affected Vehicles, the Claims Administrator shall attempt to substantiate any claimed purchases of Affected Vehicles using the National Brands Data. Where the Claims Administrator is able to substantiate the purchases, no further information is required and those purchases shall be approved for payment (provided the Settlement Class Member otherwise satisfies the eligibility requirements). Where the Claims Administrator is unable to substantiate the purchases, the audit process contained in paragraphs 37 to 40 shall apply.

Audits

- 37. Where a Settlement Class Member's purchases and/or leases of Affected Vehicles are not substantiated by the National Brands Data, the Claims Administrator shall audit:
 - (a) a random selection of at least 10% of Claims; and
 - (b) Claims representing the top 20% of Claims (by value of Affected Vehicle Purchases).
- 38. At its sole discretion, the Claims Administrator can elect to audit any other Claim.

39. The Claims Administrator shall notify the Settlement Class Member that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof:

(a) For Settlement Class Members who purchased and/or leased up to fifteen (15) Affected Vehicles not substantiated by the National Brands Data, documentary proof might include invoices, receipts, original purchase or lease records, insurance documentation, government vehicle identification history documentation, historical accounting records or comparable verification that is acceptable to the Claims Administrator.

(b) For Settlement Class Members who purchased and/or leased more than fifteen (15) Affected Vehicles not substantiated by the National Brands Data, documentary proof might include invoices, receipts, original purchase or lease records, purchase summaries provided by a National Brand, historical accounting records or comparable verification that is acceptable to the Claims Administrator.

40. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to provide documentary proof. If documentary proof is not provided within the thirty (30) day period, the Claims Administrator shall reject the Claim.

Deficiencies

41. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other information is required, the Claims Administrator shall notify the Settlement Class Member of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If

the deficiencies are not corrected within the thirty (30) day period, depending on the nature of the deficiency, the Claims Administrator may reject the Claim.

Adjustments to Claims Process and Extension of the Claims Filing Deadline

42. By agreement between the Claims Administrator and Class Counsel:

- (a) the Claims Filing Deadline may be extended; and
- (b) the Claims Administrator may adjust the Claims process with respect to the use of the National Brands Data, deficiencies and/or audits.

Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the Claims process if, in their opinions, doing so will further the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class Members to do so.

Claims Administrator's Decision

43. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:

- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol;
- (b) classify the Settlement Class Member's Affected Vehicle Purchases as being made by a National Brand Importer, Dealer or End User; and

(c) make a determination of the Affected Vehicle Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol.

44. The Claims Administrator shall send to the Settlement Class Member a decision as to: (i) the approval or rejection of the Claim; (ii) the classification of purchases as being made in the capacity of a National Brand Importer, Dealer or End User; and (iii) the determination of the Affected Vehicle Purchases (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim or re-classified the Settlement Class Member's purchases, the Claims Administrator shall include in the Decision Notice its grounds for doing so.
45. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's limited right to appeal, as outlined in paragraphs 46 to 52.

Appeal of the Claims Administrator's Decision

46. The right to appeal is limited to circumstances where the dispute as to the value of the Affected Vehicle Purchases is equal to or greater than \$1,000,000.
47. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
48. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
49. Appeals will be on the basis of written submissions, supported by the documentation provided to the Claims Administrator by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation

as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.

50. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member in response to requests for additional information, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.
51. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Settlement Class Member and/or Claims Administrator.
52. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

Payment of Claims

53. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
 - (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
 - (b) make arrangements to pay approved Claims.
54. Individual claimants will be paid by e-transfer through email where an email address has been provided or cheque where no email address has been provided or the Settlement Class

Member has made arrangements with the Claims Administrator. Commercial claimants will be paid by cheque or, at the Claims Administrator's discretion, wire transfer.

55. Settlement Class Members can elect to assign their settlement benefits to Canadian charitable foundations or initiatives created or supported by the National Brands. Where a Settlement Class Member has assigned their settlement benefits, the Claims Administrator shall issue the payment to the relevant entity rather than the Settlement Class Member. At that time, the Claims Administrator shall request a charitable tax receipt on behalf of the Settlement Class Member and provide the information necessary to enable the relevant entity to issue a charitable tax receipt to the Settlement Class Member.

THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

Supervisory Powers of the Ontario Court

56. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

Investment of Settlement Funds

57. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46), held at a Canadian financial institution.

Communication, Languages and Translation

58. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
59. The Claims Administrator shall establish a toll-free number for calls from Canada.

60. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.
61. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

Undeliverable Mail

62. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
63. The Claims Administrator shall have the discretion, but is not required, to reissue payments to a Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.

Reissuance of Payment

64. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that an e-transfer be reissued, \$10 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$25 will not be reissued.

Taxes

65. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds while held in trust and shall pay any taxes imposed on such monies while held in trust out of the Net Settlement Funds. Settlement Class Members shall be responsible for any taxes payable by them as a result of the receipt of any settlement funds.

Reporting

66. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
67. The Claims Administrator shall provide any reports requested by the Courts.

Preservation and Disposition of Claim Submissions

68. Subject to paragraph 71, the Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Assistance to the Claims Administrator

69. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol.

Confidentiality

70. All information received from Defendants, the National Brands or Settlement Class Members collected, used, and retained by the Claims Administrator for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class

Member's eligibility status under the Settlement Agreements, is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5. The information provided by Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol. Prior to implementing the Distribution Protocol, the Claims Administrator shall execute an undertaking that confirms its commitment to abide by the obligations set out in this paragraph.

71. If a Settlement Class Member consents, information respecting a Claim filed by that Settlement Class Member may be preserved and used by the Claims Administrator in the future administration of settlement agreements relating to alleged price-fixing and/or bid-rigging of other automotive parts. The information shall continue to be treated as strictly private and confidential and subject to the protections of the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5.

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

(Chambre des actions collectives)
COUR SUPÉRIEURE

NO : 200-06-000146-129 / 200-06-000143-126
200-06-00201-163

SERGE ASSELIN
et
GAËTAN ROY
Demandeurs

c.

DENSO CORPORATION
et
DENSO INTERNATIONAL AMERICA, INC.
et
DENSO MANUFACTURING CANADA, INC.
et
DENSO KOREA AUTOMOTIVE CORPORATION
et
DENSO SALES CANADA, INC. ET ALS.
Défenderesses

et

FONDS D'AIDE AUX ACTIONS COLLECTIVES
Mise en cause

PIÈCE RP-2

(Actions collectives relatives à la fixation des prix
des pièces automobiles) (Audience du 23 mars 2020)

BB-6852

Casier 15

Me Karim Diallo

karim.diallo@siskinds.com

N/D : 67-112

Courriel : notification@siskinds.com

SISKINDS, DESMEULES | AVOCATS
S E N C R L

Les Promenades du Vieux-Québec
43 rue de Buade, bureau 320
Québec, (Québec) GIR 4A2

Tél.: (418) 694-2009 Tél.: (418) 694-0281

www.siskinds.com