

Amended pursuant to the Order of Madam Justice Gropper, entered August 28, 2015. Amended pursuant to the Order of Madam Justice Maisonneville entered November 27, 2012, and pursuant to Supreme Court Rule 6-2(7).
Original filed on October 15, 2010 and Amended April 14, 2011.

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY :**

No. S106877
Vancouver Registry

In the Supreme Court of British Columbia

SEP 09 2015
Between:



DAMON GREEN

Plaintiff

and:

TECUMSEH PRODUCTS OF CANADA LIMITED; TECUMSEH PRODUCTS CO.; TECUMSEH COMPRESSOR COMPANY; DANFOSS A/S; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.; DANFOSS COMPRESSOR, LLC; DANFOSS FLENSBURG GMBH; ACC USA LLC; APPLIANCES COMPONENTS COMPANIES S.p.A; PANASONIC CORPORATION, PANASONIC CANADA INC.; WHIRLPOOL CANADA LP; EMBRACO NORTH AMERICA; and WHIRLPOOL CORPORATION

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50

SECOND FURTHER AMENDED NOTICE OF CIVIL CLAIM

THIS ACTION HAS BEEN STARTED BY THE PLAINTIFF(S) 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

- (c) 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

- (d) 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(s),

- (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(S)

PART 1: STATEMENT OF FACTS

THE REPRESENTATIVE PLAINTIFF

1. The plaintiff, Damon Green, is a businessman resident in Vancouver, British Columbia and a retail purchaser of a refrigerator during the proposed Class Period (as defined below).

THE CLASS AND THE CLASS PERIOD

2. This action is brought on behalf of members of a class (the "Class Members") consisting of the plaintiff and all persons resident in British Columbia who, during the period commencing from at least January 1, 2004, through December 31, 2008 (the "Class Period"), purchased hermetically sealed cooling compressors of less than one horsepower and products containing hermetically sealed cooling compressors of less than one horsepower ("Cooling Compressors") manufactured by the defendants or such other class definition or class period as the Court may ultimately decide on the motion for certification. Cooling Compressors do not include compressors used in air conditioners.

FACTUAL BACKGROUND

3. A cooling compressor is a device which forms the central component of a cooling, refrigeration or air conditioning apparatus. The device operates by compression and expansion of gas contained in it. Through this operation the device is able to absorb and transfer heat, thus producing a cooling effect.

4. Cooling Compressors are designed for a variety of household and commercial applications including refrigerators, ice makers, water coolers, room air conditioners, freezers, chillers, dehumidifiers and vending machines.

5. Most cooling compressors have hermetic motor assemblies. The hermetic seal makes access to the motor assembly difficult. As a result, the common response to damage to a hermetic cooling compressor is replacement rather than repair of the unit.

6. In 2008, the North American market for Cooling Compressors consisted of approximately 39,720,000 units sold with a total value of approximately \$6,570,000,000 (U.S.D.).

THE DEFENDANTS

7. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of Cooling Compressors to customers throughout Canada, not named as defendants, participated as co-conspirators in the alleged violations and may have performed acts and made agreements in furtherance of them. The named defendants are jointly and severally liable for the actions of, and damages allocable to, the unnamed co-conspirators.

The "Tecumseh" Defendants

8. The defendant, Tecumseh Products of Canada Limited, is a Canadian corporation with its principal place of business in the City of London, in the Province of Ontario. Tecumseh Products of Canada Limited is a subsidiary of the defendant, Tecumseh Products Co. During the Class Period, Tecumseh Products of Canada Limited manufactured, sold and distributed Cooling Compressors throughout Canada.

9. The defendant, Tecumseh Products Co., is a Michigan corporation with its principal place of business in the City of Ann Arbor, in the State of Michigan. During the Class Period, Tecumseh Products Co. manufactured, sold and distributed Cooling Compressors throughout Canada.

10. The defendant, Tecumseh Compressor Company, is a Delaware corporation with its principal place of business in Ann Arbor, Michigan. Tecumseh Compressor Company is a wholly-owned subsidiary of Tecumseh Products Co. During the Class Period, Tecumseh Compressor Company manufactured, sold and distributed Cooling Compressors throughout Canada.

11. The business and operations of the defendants, Tecumseh Products of Canada Limited, Tecumseh Products Co. and Tecumseh Compressor Company (together "Tecumseh"), and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The "Danfoss" Defendants

12. The defendant, Danfoss A/S is a privately-held Danish company with its principal place of business in Nordborg, Denmark. During the Class Period, Danfoss A/S manufactured, sold and distributed Cooling Compressors throughout Canada.

~~12.~~13. The Defendant, Danfoss Flensburg GmbH is a German company with its principal place of business in Flensburg, Germany. Danfoss Flensburg GmbH is a subsidiary of Danfoss A/S. During the Relevant Period, Danfoss Flensburg GmbH manufactured, marketed, sold and/or distributed Cooling Compressors and/or Cooling Compressor Products throughout Canada, through affiliates.

~~13.~~14. The defendant, Danfoss, Inc., is a Delaware corporation with its principal place of business in the City of Baltimore, in the State of Maryland. Danfoss Inc. is an indirectly-owned subsidiary of Danfoss A/S. Danfoss, Inc. operates a place of business in Canada in the City of Mississauga in the Province of Ontario. During the Class Period, Danfoss, Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.

~~14.15.~~ The defendant, Danfoss Commercial Compressors Ltd., is a Delaware corporation with its principal place of business in the City of Lawrenceville, in the State of Georgia. Danfoss Commercial Compressors Ltd. is a wholly-owned subsidiary of Danfoss, Inc. During the Class Period, Danfoss Commercial Compressors Ltd. manufactured, sold and distributed Cooling Compressors throughout Canada.

~~15.16.~~ The defendant, Danfoss Scroll Technologies, LLC, is a Delaware limited liability company with its principal place of business in the City of Arkadelphia, in the State of Arkansas. Danfoss Scroll Technologies, LLC is a subsidiary of Danfoss, Inc. During the Class Period, Danfoss Scroll Technologies, LLC manufactured, sold and distributed Cooling Compressors throughout Canada.

~~16.17.~~ The defendant, Danfoss Turbocor Compressors, Inc., is a Delaware corporation with its principal place of business in the City of Tallahassee, in the State of Florida. Danfoss Turbocor Compressors, Inc. is a subsidiary of Danfoss, Inc. During the Class Period, Danfoss Turbocor Compressors, Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.

~~17.18.~~ The defendant, Danfoss Compressor, LLC, is a limited liability company with its principal place of business in the City of Arkadelphia, in the State of Arkansas. Danfoss Compressor, LLC is a subsidiary of Danfoss, Inc. During the Class Period, Danfoss Compressor, LLC manufactured, sold and distributed Cooling Compressors throughout Canada.

~~18.19.~~ The business and operations of the defendants, Danfoss A/S, Danfoss, Inc., Danfoss Flensburg GmbH, Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC, Danfoss Turbocor Compressors, Inc. and Danfoss Compressor, LLC (together "Danfoss"), and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

ACC

~~19.20.~~ The defendant, ACC USA LLC, is a Delaware limited liability company with its principal place of business in Alabama. ACC USA LLC is a wholly-owned subsidiary of the

defendant Appliances Components Companies S.p.A. During the Class Period, ACC USA LLC manufactured, sold and distributed cooling compressors throughout Canada.

20.21. The defendant Appliances Components Companies S.p.A. ("ACC") is an Italian corporation headquartered in Pordeone, Italy. During the Class Period, ACC, manufactured, sold and distributed cooling compressors throughout Canada.

21.22. The business and operations of the defendants ACC and ACC USA LLC and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The "Panasonic" Defendants

22.23. The defendant Panasonic Corporation is a Japanese entity with its principal place of business at 1006 Oaza Kadoma, Kadoma, Osaka 571-8501, Japan. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed Cooling Compressors to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

23.24. The defendant Panasonic Canada Inc., is a Canadian corporation with its principal place of business in the City of Mississauga in the Province of Ontario. Panasonic Canada Inc. is an indirect subsidiary of Panasonic Corporation. During the Class Period, Panasonic Canada Inc. manufactured, sold and distributed Cooling Compressors throughout Canada.

24.25. The business and operations of the defendants, Panasonic Corporation and Panasonic Canada Inc. (together "Panasonic"), and their respective parent corporations, subsidiaries, and affiliates in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The "Whirlpool" Defendants

25.26. The defendant, Whirlpool Canada LP, is a Canadian limited partnership with its principal place of business in the City of Mississauga in the Province of Ontario. Whirlpool Canada LP is

a subsidiary of the Defendant, Whirlpool Corporation. During the Class Period, Whirlpool Canada LP manufactured, sold and distributed Cooling Compressors throughout Canada.

26.27. The defendant, Embraco North America, Inc., (Embraco NA), is a Delaware corporation with its principal place of business in the City of Suwanee, in the State of Georgia. Embraco NA is a subsidiary of the defendant, Whirlpool Corporation. During the Class Period, Embraco NA manufactured, sold and distributed Cooling Compressors throughout Canada.

27.28. The defendant, Whirlpool Corporation, is a Delaware corporation with its principal place of business in the City of Benton Harbour, in the State of Michigan. During the Class Period, Whirlpool Corporation manufactured, sold and distributed Cooling Compressors throughout Canada.

28.29. The business and operations of the defendants, Whirlpool Canada LP, Embraco NA and Whirlpool Corporation (together "Whirlpool"), and their respective parent corporations, subsidiaries, and affiliates, specifically including but not limited to Whirlpool S.A., in respect of the manufacture, distribution and sale of Cooling Compressors in Canada are inextricably interwoven such that each is the agent of the other.

The Defendants' Co-Conspirators

29.30. The identity of each of the defendants' co-conspirators is not known to the plaintiff at this time. During the Class Period, each of the defendants' co-conspirators was engaged in the business of manufacturing, distributing and selling Cooling Compressors in Canada and elsewhere.

30.31. Whirlpool S.A. is alleged to be a co-conspirator acting in concert with the defendants, specifically Whirlpool Corporation, its parent corporation, and Whirlpool Canada LP, its affiliated corporation.

REGULATORY INVESTIGATIONS

31.32. On February 18, 2009 the European Commission announced that it had carried out unannounced inspections at the premises of producers of Cooling Compressors with respect to allegations of a price-fixing cartel.

32.33. On February 19, 2009, Whirlpool and Tecumseh each acknowledged that they had received grand jury subpoenas from the United States Department of Justice in connection with allegations of a price-fixing cartel.

33.34. On February 23, 2008 Tecumseh disclosed that it was cooperating with authorities in the United States investigation and that it had received conditional amnesty from the United States Department of Justice.

34.35. At or about the same time, Danfoss announced that it was under investigation in Germany, Denmark and the United States with respect to allegations that it was a member of a price-fixing cartel.

35.36. On September 30, 2010, the United States Department of Justice ("DOJ") announced that Panasonic Corporation and Embraco NA had agreed to plead guilty in the USA and to pay \$49.1 million U.S. and \$91.8 million U.S. respectively in criminal fines for their role in an international conspiracy to fix the prices of refrigerant compressors.

36.37. On October 25, 2010 and November 2, 2010 respectively, Embraco NA and Panasonic Corporation entered into guilty pleas in Canada in respect of the sale and supply of hermetic refrigeration compressors of less than one horsepower. In particular Embraco NA and Panasonic Corporation pleaded guilty to conduct that was contrary to section 45(1)(c) of the *Competititon Act*.

38. On October 3, 2011, Danfoss Flensburg GmbH entered into a guilty plea in the United States regarding price-fixing in the market for "light commercial compressors".

37.39. In its 2009 Annual Report, Tecumseh Products Co. disclosed it received conditional amnesty from the DOJ and is cooperating with the DOJ in its investigation.

38.40. In its 2009 Annual Report, the Danfoss Group indicated that it was being investigated by the DOJ and European Comission.

41. On December 7, 2011, the European Commission fined Appliances Components Companies S.p.A., Elettromeccanica S.p.A., Danfoss A/S, Danfoss Flensburg GmbH, Embraco

Europe S.r.l., Whirlpool S.A., and Panasonic Corporation €161 million relating to price-fixing in the market for household and commercial refrigeration compressors.

~~39.42. The defendant Appliances Components Companies SpA is being investigated by the European Commission and DOJ in respect of pricing in the compressor market.~~

THE CONSPIRACY

40.43. During the Class Period, senior executives and employees of the defendants and unnamed co-conspirators, acting in their capacities as agents for the defendants and unnamed co-conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiff, and as a result of the communications and meetings the defendants and unnamed co-conspirators unlawfully conspired or agreed:

- (a) to enhance unreasonably the prices of Cooling Compressors globally including Canada;
- (b) to fix, maintain, increase or control the prices of Cooling Compressors globally including Canada;
- (c) to exchange information in order to monitor and enforce adherence to the agreed upon prices for Cooling Compressors;
- (d) to allocate the market share, customers, or to set specific sales volumes of Cooling Compressors that each defendant and unnamed co-conspirator would supply in Canada and elsewhere; and
- (e) to lessen unduly competition in the production, manufacture, sale or supply of Cooling Compressors globally including Canada.

41.44. In furtherance of the conspiracy, during the Class Period, the following acts were done by the defendants, the unnamed co-conspirators and their servants and agents:

- (a) they increased or maintained the prices of Cooling Compressors globally including Canada;

- (b) they allocated the volumes of sales of cooling compressors and products containing cooling compressors, and of customers and markets for Cooling Compressors among themselves;
- (c) they reduced the supply of Cooling Compressors;
- (d) they communicated secretly, in person and by telephone, to discuss and fix prices and volumes of sales of Cooling Compressors;
- (e) they exchanged information regarding the prices and volumes of sales of Cooling Compressors for the purposes of monitoring and enforcing adherence to the agreed upon prices, volumes of sales and markets;
- (f) they refrained from submitting truly competitive bids for Cooling Compressors in Canada and elsewhere;
- (g) they submitted collusive, non-competitive and rigged bids for Cooling Compressors in Canada and elsewhere;
- (h) they took active steps to, and did, conceal the unlawful conspiracy from their customers; and
- (i) they disciplined any corporation which failed to comply with the conspiracy.

42.45. The defendants and unnamed co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the plaintiff and other Class Members by requiring them to pay an artificially induced overcharge (the “Overcharge”) on prices for Cooling Compressors; and
- (b) to illegally increase their profits on the sale of Cooling Compressors.

43.46. The Canadian defendants who are subsidiaries of the foreign defendants and unnamed co-conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their

respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

~~44.47.~~ The acts alleged in this claim to have been done by each corporate defendant were authorized, ordered and done by each corporate defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

CAUSES OF ACTION

Civil Conspiracy

~~45.48.~~ The acts particularized in paragraphs 43-~~47~~~~40-44~~ were unlawful acts directed towards the plaintiff and other Class Members, which unlawful acts the defendants knew in the circumstances would likely cause injury to the Plaintiff and other Class Members and, as such, the defendants are liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the acts particularized in paragraphs 40-44 was to injure the plaintiff and the other Class Members and the defendants are liable for the tort of civil conspiracy.

Breach of the Competition Act

~~46.49.~~ Further, or alternatively, the acts particularized in paragraphs 43-~~47~~~~40-44~~ are in breach of s. 45 of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Suppl.) ("*Competition Act*") and render the defendants liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.

Unlawful Interference with Economic Interests

~~47.50.~~ Further, or alternatively, the acts particularized in paragraphs 43-~~47~~~~40-44~~ were unlawful acts undertaken by the defendants with the intent to injure the plaintiff and the other Class Members, and the defendants are liable for the tort of unlawful interference with economic interests.

~~48.51.~~ The plaintiff and the other Class Members suffered damages as a result of the defendants' unlawful interference with their economic interests.

Unjust Enrichment and, Waiver of Tort, ~~and Constructive Trust~~

~~49.52.~~ Further, the plaintiff waives the tort and pleads that he and the other Class Members are entitled to recover under restitutionary principles.

~~50.53.~~ The defendants have each been enriched by the receipt of the ill-gotten Overcharge on the sale of cooling compressors and products containing cooling compressors. The Plaintiff and other Class Members have suffered a corresponding deprivation. There is no juristic reason for the enrichment as the defendants' receipt of the Overcharge is the result of wrongful or unlawful acts. As such, there is and can be no juridical reason justifying the defendants' retention of the Overcharge and, in particular, any contracts upon which the defendants purport to rely to receive the Overcharge are void and illegal.

~~51. — The defendants are constituted as constructive trustees in favour of the plaintiff and other Class Members for the Overcharge from the sale of Cooling Compressors because, among other reasons:~~

- ~~(a) — the defendants were unjustly enriched by receipt of the Overcharge;~~
- ~~(b) — the plaintiff and other persons similarly situated suffered a deprivation because of the Overcharge;~~
- ~~(c) — the defendants engaged in wrongful conduct and committed unlawful acts in conspiring to fix the price of Cooling Compressors and allocate market share and volume of Cooling Compressors;~~
- ~~(d) — the Overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;~~
- ~~(e) — justice and good conscience require the imposition of a constructive trust;~~
- ~~(f) — the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and~~

~~(g) — there are no factors that would render the imposition of a constructive trust unjust.~~

~~52.54.~~ The plaintiff pleads that equity and good conscience requires the defendants to make restitution to to hold in trust for the plaintiff and the other Class Members of the artificially induced Overcharge from the sale of Cooling Compressors ~~and to disgorge the Overcharge to the plaintiff and other Class Members.~~

DAMAGES

~~53.55.~~ The plaintiff and the other Class Members suffered the following damages:

- (a) the price of Cooling Compressors has been enhanced unreasonably by imposition of the non-competitive Overcharge; and
- (b) competition in the sale of Cooling Compressors has been unduly restrained.

~~54.56.~~ During the period covered by this claim, the plaintiff and the other Class Members purchased Cooling Compressors. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other Class Members paid more for Cooling Compressors by way of the Overcharge than they would have paid in the absence of the illegal conspiracy and, as a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

PUNITIVE DAMAGES

~~55.57.~~ The plaintiff pleads that the defendants' conduct as particularized in paragraphs 43-47~~40-44~~ was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of each Class Member, indifferent to the consequences and, as such, renders the defendants liable to pay punitive damages.

JURISDICTION

~~56.58.~~ There is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* RSBC 2003 Ch. 28 (the "*CJPTA*") in respect of these

defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) – (i) *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

PART 2: RELIEF SOUGHT

57.59. The plaintiff, on its own behalf, and on behalf of the Class Members, claims against the defendants:

- (a) a declaration that the defendants conspired with each other to raise, maintain, fix and/or stabilize the price of Cooling Compressors and products containing cooling compressors during the Class Period;
- (b) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
- (c) general damages for conspiracy and unlawful interference with economic interests,
- (d) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (e) an injunction enjoining the defendants from conspiring with each other or with any unnamed co-conspirators to raise, maintain, fix and/or stabilize the price of Cooling Compressors and products containing Cooling Compressors;
- (f) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other Class Members by their receipt of the ill-gotten Overcharge;

- (g) a declaration that the defendants must make restitution to hold the ill-gotten Overcharge in a constructive trust for the benefit of the plaintiff and the other Class Members of all of the Overcharge;
- ~~(h)~~ an order directing the defendants to disgorge their ill-gotten Overcharge;
- ~~(i)~~ (h) punitive damages;
- ~~(j)~~ (i) costs of investigation and prosecution of this proceeding pursuant to s.36 of the *Competition Act*;
- ~~(k)~~ (j) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and
- ~~(l)~~ (k) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

~~58.60.~~ The plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C., 1996 c. 50, the *Competition Act* and the *CJPTA*.

~~59.61.~~ Further, the plaintiff claims that the acts particularized in paragraphs PART 1:43-PART 1:47~~40-44~~ were unlawful acts directed towards the plaintiff and the other Class Members which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and the other Class Members, and the defendants are liable for the tort of civil conspiracy.

~~60.62.~~ Further, the predominant purpose of the acts particularized in paragraphs PART 1:43-PART 1:47~~40-44~~ was to injure the plaintiff and the other Class Members and the defendants are liable for the tort of civil conspiracy.

~~61.63.~~ Further, the acts particularized in paragraphs PART 1:43-PART 1:47~~40-44~~ were unlawful acts intended to cause the plaintiff and the other Class Members economic loss and constituted unlawful interference with the economic interests of the Class Members and render the defendants liable to pay the resulting damages.

~~62.64.~~ In the alternative, the plaintiff waives the tort and pleads that the plaintiff and the other Class Members are entitled to recover damages under restitutionary principles.

~~63.65.~~ The defendants have each been unjustly enriched by the receipt of the Overcharge on the sale of Cooling Compressors. The plaintiff and other Class Members have suffered a deprivation in the amount of the Overcharge attributable to the sale of Cooling Compressors in British Columbia.

~~64.66.~~ Since the Overcharge received by the defendants from the plaintiff and each Class Member resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of the Overcharge.

~~65. — The defendants are constituted as constructive trustees in favour of the Class Members for all of the Overcharge from the sale of Cooling Compressors, among other reasons:~~

- ~~(a) — the defendants were unjustly enriched by receipt of the Overcharge;~~
- ~~(b) — the Class Members suffered a deprivation because of the Overcharge;~~
- ~~(c) — the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Cooling Compressors and allocate market share and volume of Cooling Compressors;~~
- ~~(d) — the Overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;~~
- ~~(e) — justice and good conscience require the imposition of a constructive trust;~~
- ~~(f) — the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and~~
- ~~(g) — there are no factors that would, in respect of the Overcharge, render the imposition of a constructive trust unjust.~~

~~66.67.~~ The plaintiff pleads that equity and good conscience requires the defendants to make restitution to ~~hold in trust for~~ the plaintiff and the other Class Members for all of the Overcharge

from the sale of Cooling Compressors ~~and to disgorge this Overcharge to the plaintiff and the other Class Members.~~

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
E-mail:service@cfmlawyers.ca

Defendants' address for service:

TO:

Tecumseh Products of Canada Limited
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AND TO:

Tecumseh Products Co.
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Ann Arbor, Michigan
United States 48108

AND TO:

Tecumseh Compressor Company
1136 Oak Valley Drive Ann Arbor, Michigan
United States 48108-9624

AND TO:

Danfoss A/S
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6430 Nordborg
Denmark

AND TO:

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24939 Flensburg
Germany

AND TO:

Danfoss, Inc.
7941 Corporate Drive
Baltimore, Maryland
United States 21236

AND TO:

Danfoss Commercial Compressors Ltd.
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Lawrenceville, Georgia
United States 30043

AND TO:

Danfoss Turbocor Compressors, Inc.
1769 E. Paul Dirac Drive
Tallahassee, Florida
United States 32310

AND TO:

Danfoss Scroll Technologies, LLC
1 Scroll Drive
Arkadelphia, Arkansas
United States 71923

AND TO:

Danfoss Compressor, LLC
1 Scroll Drive
Arkadelphia, Arkansas
United States 71923

AND TO:

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United States 35758

AND TO:

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AND TO:

Panasonic Corporation
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AND TO:

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AND TO:

Whirlpool Canada LP
1901 Minnesota Court
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L5N 3A7

AND TO:

Embraco North America
2800 Vista Ridge Drive NE
Suwanee, Georgia
United States 30024-3510

AND TO:

Whirlpool Corporation
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2000 North M-63
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United States 49022-2692

Place of trial: Vancouver Law Courts

The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1

Date: October 15, 2010



Signature of lawyer for plaintiff
for J.J. Camp, Q.C.

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

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* RSBC 2003 Ch. 28 (the “*CJPTA*”) in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) – (i) *CJPTA* because this proceeding:

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia; and

(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

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.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This proposed class action claim involves allegations of a price fixing conspiracy by manufacturers of optical disc drives and products containing optical disc drives causing harm to purchasers of such products in British Columbia.

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:

1. *Class Proceedings Act*, R.S.B.C., 1996 c. 50
2. *Competition Act*, R.S. 1985, c. 19, (2nd Supp.)