

Originally filed on December 17, 2015.
Amended pursuant to the order of Madam Justice
Forth pronounced November 8, 2018.

No. S-1510495
Vancouver Registry

In the Supreme Court of British Columbia

Between

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

Stephanie Ann Catherine Asquith

NOV 08 2018

Plaintiff

and



**MinebeaMitsumi Inc. (formerly Minebea Co. Ltd.), NMB Korea Co.,
Ltd., NMB (USA) Inc., New Hampshire Ball Bearings, Inc., NMB
Technologies Corporation, NSK Ltd. and NSK Canada Inc.**

Defendants

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

AMENDED NOTICE OF CIVIL CLAIM

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

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

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

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

- (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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

1. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of small sized bearings with an outside diameter of 26 millimetres or less ("Bearings"), used in electronic devices sold in Canada including British Columbia, and elsewhere. During the period commencing as early as January 1, 2008 and continuing until at least October 31, 2011 (the "Class Period"), the defendants and their senior executives participated in illegal and secret meetings and made agreements to fix the prices for Bearings sold in Canada, including British Columbia, and elsewhere.

2. Bearings are used in numerous electronic products to reduce friction and help parts roll smoothly past one another.
3. During the Class Period, the plaintiff, Stephanie Ann Catherine Asquith, bought a laptop computer which contained Bearings.

The Defendants

4. The defendants and other co-conspirators manufacture, market, distribute, and sell Bearings in Canada, including in British Columbia and elsewhere.
5. The defendants and other co-conspirators agreed, combined, and conspired to inflate, fix, raise, maintain, or artificially stabilize prices of Bearings.
6. The defendants and other co-conspirators are jointly and severally liable for the actions of, and the damages allocable to, their co-conspirators, including unnamed co-conspirators.
7. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.
8. Various persons and entities not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

Minebea Co. Ltd.

9. The defendant Minebea Mitsumi Inc. (formerly Minebea Co. Ltd.) ("Minebea") is a Japanese corporation with its principal place of business in Nagano, Japan. During the Class Period, Minebea, directly or through its subsidiaries,

manufactured, marketed and/or distributed Bearings for sale, directly and indirectly, in Canada including British Columbia and elsewhere.

10. The defendant NMB Korea Co., Ltd. ("NMB Korea") is a Korean corporation with its principal place of business in Gyeonggi-Do, Korea. During the Class Period, NMB Korea, directly or through its subsidiaries, manufactured, marketed and/or distributed Bearings for sale, directly and indirectly, in Canada including British Columbia and elsewhere.
11. The defendant NMB (USA) Inc. ("NMB USA") is an American corporation with its principal place of business in Chatsworth, California. During the Class Period, NMB USA, directly or through its subsidiaries, manufactured, marketed and/or distributed Bearings for sale, directly and indirectly, in Canada including British Columbia and elsewhere.
12. The defendant NMB Technologies Corporation ("NMB Technologies") is an American corporation with its principal place of business in Chatsworth, California. During the Class Period, NMB Technologies, directly or through its subsidiaries, manufactured, marketed and/or distributed Bearings for sale, directly and indirectly, in Canada including British Columbia and elsewhere.
13. The defendant New Hampshire Ball Bearings, Inc. ("NHBB") is an American corporation with its principal place of business in Peterborough, New Hampshire. It is affiliated with and controlled by Minebea. During the Class Period, NHBB manufactured, marketed and/or sold Bearings in Canada including in British Columbia and elsewhere.
14. The businesses of each of the defendants Minebea, NMB Korea, NMB USA, NMB Technologies and NHBB are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Bearings.

The NSK Defendants

15. The defendant NSK Ltd. ("NSK") is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, NSK, directly or through its subsidiaries, manufactured, marketed and/or distributed Bearings for sale, directly and indirectly, in Canada including British Columbia and elsewhere.
16. The defendant NSK Canada Inc. ("NSK Canada") is a Canadian corporation with its principal place of business in Mississauga, Ontario. It is affiliated with and controlled by NSK. During the Class Period, NSK Canada manufactured, marketed and/or sold Bearings in Canada including in British Columbia.
17. The businesses of each of the defendants NSK and NSK Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Bearings.

The Class and Class Period

18. This action is brought on behalf of members of the class (the "Class Members") consisting of the plaintiff and all British Columbia resident persons who, during the Class Period commencing as early as mid-2008 and continuing until at least October 2011, purchased Bearings or an electronic product containing Bearings.

The Bearings Industry

19. The defendants sold Bearings, directly and indirectly, to original equipment manufacturers of electronic products ("OEMs") who install Bearings directly into their products, electronic manufacturing service providers ("EMS Providers") who manufacture products that contain Bearings and are integrated into end-use electronic products manufactured by others, third-party distributors that sell Bearings to consumers, and the Class Members, among others.
20. The structure of the Bearings manufacturing industry is conducive to the conspiracy alleged in this Notice of Civil Claim. There are substantial barriers that preclude, reduce, or make more difficult entry into the Bearings market.

21. There are no close substitutes for Bearings.
22. Bearings are a commodity product that is interchangeable among the defendants. Bearings of like specification are mutually interchangeable.
23. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Bearings in Canada, including in British Columbia, and elsewhere.

The Conspiracy to Fix Prices of Bearings

24. The acts alleged under this heading are, collectively, the "Conspiratorial Acts".
25. During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, and control the price for the supply of Bearings and/or to enhance unreasonably the prices of Bearings and/or to lessen unduly competition in the sale of Bearings in Canada including British Columbia and elsewhere.
26. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the communications and meetings the defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:
 - (a) unreasonably enhance the prices of Bearings in Canada, including in British Columbia, and elsewhere;
 - (b) fix, maintain, increase, or control the prices of Bearings in Canada, including in British Columbia, and elsewhere;
 - (c) monitor and enforce adherence to an agreed-upon pricing scheme for Bearings; and

- (d) lessen unduly competition in the sale of Bearings in Canada, including in British Columbia, and elsewhere.
27. In furtherance of the conspiracy, during the Class Period, the defendants and/or their servants and agents:
- (a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Bearings in Canada, including in British Columbia, and elsewhere;
 - (b) communicated secretly, in person and by telephone, to discuss and fix prices of Bearings;
 - (c) made agreements with respect to the prices of Bearings;
 - (d) exchanged information regarding the prices of Bearings for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
 - (e) allocated sales, territories, customers or markets for supply of Bearings;
 - (f) fixed, maintained, controlled, prevented or lessened the supply of Bearings; and
 - (g) disciplined any conspirator which failed to comply with the conspiracy.
28. During the Class Period and continuing to the present, the defendants and/or their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Class Members.
29. The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and other Class Members by requiring them to pay unlawfully high prices for Bearings.
30. The Conspiratorial Acts alleged in this claim to have been done by each defendant were authorized, ordered, and done by each defendant's officers,

directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

Damages

31. As a result of the Conspiratorial Acts:
 - (a) the prices of Bearings have been, directly or indirectly, enhanced unreasonably and/or fixed at artificially high and non-competitive levels;
 - (b) competition in the sale of Bearings has been lessened; and
 - (c) the prices of electronic products containing Bearings have been increased.

32. During the Class Period, the Class Members purchased Bearings both directly and indirectly. By reason of the alleged violations of the *Competition Act*, RSC 1985, c 19 (2nd Suppl.) (the "*Competition Act*") and the common law, the plaintiff and the other Class Members have been overcharged for Bearings by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other Class Members have suffered damages (the "Overcharge").

33. The Overcharge is capable of being quantified on an aggregate basis as the difference between the actual prices for Bearings and the prices which would have been paid in the absence of the unlawful conspiracy. The defendants are jointly and severally liable for the Overcharge.

PART 2: RELIEF SOUGHT

34. The plaintiff, on her own behalf, and on behalf of the Class Members, claims against the defendants:
 - (a) a declaration that the defendants, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Bearings during

the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;

- (b) a declaration that the defendants, and each of them, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the manufacture or production of Bearings or to enhance unreasonably the price of Bearings;
- (c) an order certifying this action as a class proceeding against the defendants and appointing the plaintiff as representative plaintiff in respect of the Class Members;
- (d) general damages for conspiracy and unlawful interference with economic interests;
- (e) a declaration that the defendants account for and make restitution to the plaintiff and the other Class Members in an amount equal to the Overcharge;
- (f) a declaration that the defendants have each been unjustly enriched by the receipt of the Overcharge an order that the defendants disgorge and make restitution of the Overcharge;
- (g) judgment in the amount of the Overcharge;
- (h) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (i) punitive damages;
- (j) an injunction enjoining the defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Bearings;

- (k) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128; and
- (m) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

35. The plaintiff pleads and relies upon the *Class Proceedings Act*, RSBC, 1996 c 50, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "CJPTA").

Causes of Action

Breach of the Competition Act

36. The Conspiratorial Acts are in breach of section 45 of Part VI of the *Competition Act*, as amended from time to time, caused injury to the plaintiff and the other Class Members and render the defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign defendants are jointly and severally 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*.

Civil Conspiracy

37. Further, or alternatively, the Conspiratorial Acts 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 other Class Members and, as such, the defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiratorial Acts was to injure the plaintiff and other Class Members, and the defendants are jointly and severally liable for the tort of conspiracy to injure.

38. The plaintiff and other Class Members suffered damages as a result of the defendants' conspiracy.

Unlawful Means Tort

39. Further, or alternatively, the Conspiratorial Acts were unlawful acts intended to cause the plaintiff and the other Class Members economic loss as an end in itself or as a necessary means of enriching the defendants.
40. The Conspiratorial Acts were unlawful under the laws of the jurisdictions where the Conspiratorial Acts took place and are actionable by third parties, including OEMs, EMS Providers and third-party electronics distributors located outside of British Columbia who directly purchased Bearings, or would be actionable by those third parties if those third parties had suffered a loss. As such, the defendants are jointly and severally liable for the unlawful means tort.
41. The plaintiff and the other Class Members suffered damages as a result of the defendants' unlawful means tort and each of the defendants is jointly and severally liable to pay the resulting damages.

Unjust Enrichment and Waiver of Tort

42. Further, and in the alternative, the plaintiff and the other Class Members are entitled to claim and recover based on equitable and restitutionary principles.
43. The defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other Class Members have suffered a corresponding deprivation in the amount of such Overcharge.
44. Since the Overcharge that was received by the defendants from the plaintiff and the Class Members resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it. In particular, any contracts with the defendants for the supply of Bearings are void for unlawfulness and in restraint of trade.

45. Equity and good conscience require the defendants to make restitution to the plaintiff and the other Class Members of all of the Overcharge and/or disgorge that amount to the plaintiff and the other Class Members.
46. Further, or alternatively, the plaintiff waives the tort and elects to pursue restitutionary remedies against the defendants as set out above.

Punitive Damages

47. The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the plaintiff's rights and the rights of the Class Members, and as such renders the defendants liable to pay aggravated and punitive damages.

Jurisdiction

48. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The plaintiff and other Class Members plead and rely upon the *CJPTA* in respect of the defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

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

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN

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

Tel: (604) 689-7555

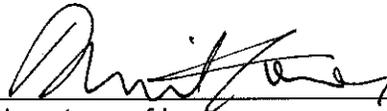
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 12/16/2015



Signature of lawyer
for Plaintiff

David G.A. Jones

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

The plaintiff, Stephanie Ann Catherine Asquith, claims the right to serve this pleading on the defendants, outside British Columbia on the ground that 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 *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) of the *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

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of Bearings sold in Canada and worldwide. During the Class Period, the defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices for Bearings. The plaintiff and the Class Members suffered damages as a result.

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

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, RSBC, 1996 c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28.