



Court File No. VLC-S-S-1710805

No.  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

RYAN KETT, ERIK OUN AND JIM WONG

PLAINTIFFS

and

KOBE STEEL, LTD., SHINKO METAL PRODUCTS CO., LTD.,  
SHINKO ALUMINUM WIRE CO., LTD., SHINKO WIRE STAINLESS COMPANY, LTD.,  
KOBELCO & MATERIALS COPPER TUBE CO. AND  
NIPPON KOSHUHA STEEL CO., LTD.

DEFENDANTS

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

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs 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 plaintiffs.

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

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

- (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 PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. Beginning as early as 1977 and continuing until about October 2017, the Defendants fraudulently misrepresented to major automobile manufacturers that their metal products met technical and materials standards. The automobile manufacturers relied on the Defendants to ensure that the vehicles and parts they produced from those metals were safe for consumers and sufficiently durable. The metal products and the parts and vehicles manufactured from them were priced on the basis that they met the requisite standards. As a result of the Defendants' wrongful acts, the parts were not fit for purpose. Through this suit, Canadian indirect purchasers seek to hold the Defendants accountable for this unlawful conduct, and to recover damages and the overcharge.

#### ***The Defendants***

2. The Defendant Kobe Steel, Ltd. is a company incorporated under the laws of Japan. Kobe Steel manufactures, sells and distributes products directly and through a group of subsidiary and affiliated companies.

3. The Defendants Shinko Metal Products Co., Ltd., Shinko Aluminum Wire Co., Ltd., Shinko Wire Stainless Company, Ltd., Kobelco & Materials Copper Tube Co. and Nippon Koshuha Steel Co., Ltd. are subsidiaries or affiliates of Kobe Steel, Ltd. (along with other Kobe Steel group subsidiaries and together with Kobe Steel, Ltd. – "**Kobe Steel**").

4. Kobe Steel operates as a joint enterprise. Each Defendant has a distinct role in the manufacturing, distribution and sale of Kobe Steel's products. Each of the Defendants was an

agent of the other for the purposes of manufacturing, distributing and selling Kobe Steel's products.

5. Kobe Steel carries on business in Japan and worldwide, including in British Columbia and Canada, through direct sales and distribution agreements with affiliated and third-party suppliers. Kobe Steel manufactures products that enter the normal channels of trade, and has actual or constructive knowledge that its products will be and are used in British Columbia and elsewhere in Canada.

*Automotive Metal*

6. Kobe Steel is a major manufacturer of metal products. Among other products, Kobe Steel manufactures aluminum and copper products, as well as steel wires, tubes, and powder, for automotive use ("**Automotive Metal**"). Automotive Metal includes various kinds of aluminum, copper and steel alloys, each with different properties and intended for diverse applications.

7. Kobe Steel supplies or has supplied Automotive Metal to automobile manufacturers including Toyota Motor Corporation, Honda Motor Co., Nissan Motor Corporation, Subaru Corporation, Mazda Motor Corporation, Suzuki Motor Corporation, Hyundai Motor Corporation, Kia Motor Corporation, General Motors Company and Ford Motor Company. Kobe Steel also supplies or has supplied Automotive Metal to automobile parts manufacturers, including Sumitomo Wiring Systems and Denso Corp. (Collectively, "**Automobile Manufacturers**")

8. Automotive Metal produced by Kobe Steel is used by Automobile Manufacturers in the production of vehicles. In particular, Automotive Metal produced by Kobe Steel is used by Automobile Manufacturers to produce parts and replacement parts for vehicles, including doors, hatches, hoods, tubes, safety wires, and other components. Kobe Steel has approximately 50 percent of the market share in Japan for aluminum automotive panel materials.

9. The Automobile Manufacturers require and have required that Automotive Metal used in their products meet certain standards of quality ("**Standards**"), including minimum tensile strength and durability ratings. Ultimately, the Standards are intended to ensure the safety of

consumers who use products containing Automotive Metal, as well as the durability of products containing Automotive Metal.

10. The Standards are set out in contracts and other written documentation between the Automobile Manufacturers and Kobe Steel.

11. At all material times, the Automobile Manufacturers required that Kobe Steel certify that its Automotive Metal had met the applicable Standards upon delivery, through quality control certification. At material times, this requirement was met by providing an assurance or by providing inspection certificates (“**Certificates**”).

12. At all material times, Kobe Steel knew that its Automotive Metal would be used by Automobile Manufacturers to manufacture products for use by consumers. Kobe Steel knew that Automobile Manufacturers were relying on its representations contained in the Certificates and in other quality control documentation exchanged between Kobe Steel and the Automobile Manufacturers.

13. Vehicles, parts and replacement parts produced by the Automobile Manufacturers and incorporating Automotive Metals manufactured by Kobe Steel have been sold to consumers, including in British Columbia and across Canada.

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

15. In addition, the ultimate purchaser of a vehicle must purchase components made from Automotive Metal as an essential part of the vehicle. Because of the intensely competitive nature of the automobile industry, the costs of inputs, including Automotive Metal, are passed on by the Automobile Manufacturers to the ultimate purchasers of vehicles, in whole or in part. Approximately 7 percent of the cost of a new vehicle is related to aluminum.

16. At all material times, Kobe Steel's Automotive Metal was priced based on its conformance to the Standards required by the Automobile Manufacturers. In particular, different grades and qualities of Automotive Metal are priced differently because alloys have distinct properties and applications. High-grade material, with special characteristics, is more expensive than other types of Automotive Metal. Custom requirements from purchasers, including for tensile strength and durability, raise the price still further.

17. The costs for the Automotive Metal supplied by Kobe Steel and used by the Automobile Manufacturers were passed on to the indirect purchasers of their vehicles, including the Plaintiffs and Class Members.

***The Plaintiffs***

18. The Plaintiff Ryan Kett is a resident of Vancouver, British Columbia. He purchased a Honda Civic EX-L Coupe in Vancouver, British Columbia (the "**Kett Vehicle**"). He purchased the Kett Vehicle primarily for personal, family or household purposes. The Kett Vehicle was manufactured by Honda Motor Co. The Kett Vehicle contains Automotive Metal which were manufactured, distributed, supplied, and/or sold by Kobe Steel.

19. The Plaintiff Erik Oun is a resident of Pitt Meadows, British Columbia. He purchased a Toyota Yaris in Pitt Meadows, British Columbia (the "**Oun Vehicle**"). He purchased the Oun Vehicle primarily for personal, family or household purposes. The Oun Vehicle was manufactured by Toyota Motor Corporation. The Oun Vehicle contains Automotive Metal which were manufactured, distributed, supplied, and/or sold by Kobe Steel.

20. The Plaintiff Jim Wong is a resident of British Columbia. He purchased a Honda CR-V EX-L in Vancouver, British Columbia (the "**Wong Vehicle**"). He purchased the Wong Vehicle primarily for personal, family or household purposes. The Wong Vehicle was manufactured by Honda Motor Co. The Wong Vehicle contains Automotive Metal which were manufactured, distributed, supplied, and/or sold by Kobe Steel.

21. The Plaintiffs are indirect purchasers – and ultimate consumers – of the Automotive Metal in issue in this claim.

22. The Plaintiffs bring this claim on behalf of themselves and on behalf of indirect purchasers (“**Class Members**”), to be defined in the Plaintiffs’ application for class certification) who during the Class Period:

- a. purchased or leased new or used vehicles containing Automotive Metal manufactured by Kobe Steel; or
- b. purchased parts or replacement parts containing Automotive Metal manufactured by Kobe Steel.

***The Alteration of Quality Control Certification by Kobe Steel***

23. On October 8, 2017, Kobe Steel disclosed that it had altered quality control certification, including Certificates, for Automotive Metal delivered to the Automobile Manufacturers and other businesses. The changes to the quality control certification, including to Certificates, made it look as if the products had met the Standards required by the Automobile Manufacturers even though the Automotive Metal delivered by Kobe Steel did not in fact meet the Standards (“**Unauthorised Alterations**”).

24. The Automotive Metal delivered by Kobe Steel to the Automobile Manufacturers was not fit for purpose, because it did not meet the Standards. As a consequence, the Automotive Metal does not have the necessary characteristics to ensure the safety of passengers, or the durability of parts, in vehicles containing elements made from it.

25. Kobe Steel began making Unauthorised Alterations in 2007 and possibly as early as 1977.

26. Kobe Steel concealed the Unauthorised Alterations from the Automobile Manufacturers and others.

27. The Plaintiffs’ and Class Members’ vehicles contain or contained parts or replacement parts manufactured using Automotive Metal from Kobe Steel on which Unauthorised Alterations had been done.

28. As a result of the Unauthorised Alterations, the Automobile Manufacturers have or would have suffered loss and damage in the form of overpayment for the Automotive Metal, breach of contract, reputational harm, and exposure to negligence and liability claims by consumers, for the failure of their products to meet the Standards.

29. As a result of the Unauthorised Alterations, the Plaintiffs and Class Members have suffered loss and damage including:

- a. ongoing risk of harm in the event of a collision;
- b. a shorter useable lifespan for their vehicles;
- c. costs of repair or replacement, including loss of use;

all of which has affected the resale value of the affected vehicles.

30. In addition, the stigma associated with vehicles and parts made with subpar materials from Kobe Steel has resulted and will result in accelerated depreciation of affected vehicles.

31. The Plaintiffs have also been deprived of the bargains they made for vehicles with the Automobile Manufacturers' specifications.

32. In addition, the Plaintiffs and Class Members have suffered loss of enjoyment of their vehicles.

33. In addition, or in the alternative, the Plaintiffs and Class Members were overcharged for their vehicles. In particular, the Plaintiffs and Class Members have overpaid for their vehicles or parts because the components manufactured from Automotive Metal supplied by Kobe Steel did not contain the quality level of materials specified and from which the price of the vehicles and parts was derived. This inflated cost was passed on to the Plaintiffs and Class Members by the Automobile Manufacturers. The Plaintiffs and Class Members have thus suffered economic loss.

34. Through its actions, Kobe Steel intended to cause economic harm to the Plaintiffs and Class Members as a necessary means of enriching itself. In particular, by representing to the Automobile Manufacturers that its Automotive Metal met the Standards, and by charging

premium prices for its Automotive Metal on that basis, knowing that the cost would be passed on to consumers and that the Certificates had been altered, Kobe Steel intended to harm the Plaintiffs and Class Members as a necessary means of enriching Kobe Steel.

## **Part 2: RELIEF SOUGHT**

35. An order certifying this action as a class proceeding;
36. Damages under the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2, s. 171 (“*BPCPA*”);
37. General damages for the tort of unlawful means;
38. An accounting and restitution of the benefits received by Kobe Steel on account of the Unauthorised Alterations;
39. In the alternative, disgorgement of all profits received by Kobe Steel attributable to the Unauthorised Alterations;
40. Punitive damages;
41. Interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
42. Such further and other relief as this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

### **Breaches of the *Business Practices and Consumer Protection Act***

43. Kobe Steel has breached the *BPCPA*.
44. The Plaintiffs and Class Members who purchased their vehicles and parts for purposes that are primarily personal, family or household are “consumers” within the meaning of s. 1 of the *BPCPA*.
45. Automotive Metal and vehicles or parts containing Automotive Metal are “goods” within the meaning of s. 1 of the *BPCPA*.



46. Kobe Steel is a “supplier”, within the meaning of s. 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.

47. The purchase and sale of vehicles or parts containing Automotive Metal is a “consumer transaction”, within the meaning of s. 1 of the *BPCPA*.

48. In addition, the issuance of Certificates and other quality control certification by Kobe Steel are “representations” within the meaning of s. 4(1) of the *BPCPA*.

49. By its conduct set out at paras. 23-26 and 34 above, Kobe Steel breached ss. 4, 5, 8 and 9 of the *BPCPA*. Kobe Steel’s actions constitute unfair and unconscionable business practices.

50. The Plaintiffs and Class Members have suffered loss and damage within the meaning of s. 171 of the *BPCPA* as a result of Kobe Steel’s contraventions of the *BPCPA*, as set out at paras. 29-33.

51. Kobe Steel engaged in or acquiesced to the contraventions that caused the loss and damage to the Plaintiffs and Class Members, within the meaning of s. 171 of the *BPCPA*.

### ***Unlawful Means Tort***

52. Kobe Steel has committed the tort of unlawful means.

53. By its conduct set out at paras. 23-26 and 34, Kobe Steel intended to economically injure the Plaintiffs and Class Members as a means to enrich itself.

54. Kobe Steel acted unlawfully against third parties in order to inflict economic injury on the Plaintiffs and Class Members. In particular, as set out at paras. 23-26 and 28, Kobe Steel’s Unauthorised Alterations were unlawful conduct against the Automobile Manufacturers.

55. As set out at paras. 23-26 and 28, the Automobile Manufacturers have or would have suffered loss as a result of the unlawful acts by Kobe Steel.

56. The Automobile Manufacturers would have a cause of action against Kobe Steel for fraud, as well as for breach of warranty and breach of contract.

57. As set out at paras. 29-33, the Plaintiffs and Class Members have suffered loss and damage from the unlawful acts by Kobe Steel.

58. The Plaintiffs and Class Members are entitled to damages against Kobe Steel.

59. In the alternative, the Plaintiffs waive the tort and elect to pursue restitutionary remedies against Kobe Steel. Kobe Steel must disgorge to the Plaintiffs and Class Members an amount attributable to the Unauthorised Alterations.

### ***Unjust Enrichment***

60. As set out at paras. 17, 21, 27 and 33-34, Kobe Steel has been enriched by the receipt of payments by Automobile Manufacturers on account of the Unauthorized Alterations.

61. The Plaintiffs and Class Members have been deprived through the payment of the purchase prices for vehicles and parts containing Automotive Metal for which Kobe Steel made Unauthorized Alterations, which was paid in whole or in part by Automobile Manufacturers to Kobe Steel.

62. There is no juristic reason why Kobe Steel should have received or should retain this benefit. The fraud by Kobe Steel on the Automobile Manufacturers, at common law and in breach of the *Criminal Code of Canada*, RSC 1985, c 46, s 380, negates any juristic reason why Kobe Steel should have received or should retain the benefit.

63. As a result, Kobe Steel has been unjustly enriched by the benefits it received from the Plaintiffs and the Class Members.

64. The Plaintiffs and Class Members are entitled to restitution of the benefits received by Kobe Steel from them.

65. In the alternative, justice and good conscience require that Kobe Steel disgorge to the Plaintiffs and Class Members an amount attributable to the Unauthorised Alterations.

### ***Punitive Damages***

66. As set out at paras. 23-26, Kobe Steel's misconduct was malicious, oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. Kobe Steel's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

### ***Joint Enterprise***

67. The Defendants functioned as a joint enterprise for the development, manufacturing, licensing, distribution and sale of their products. The Defendants divided among themselves certain responsibilities for the development, manufacturing, sale and distribution of Automotive Metal. Within this joint enterprise, the Defendants individually and jointly developed, manufactured, sold and distributed Kobe Steel's Automotive Metal.

### ***Discoverability***

68. The Plaintiffs and Class Members could not reasonably have known that

- a. they sustained injury, loss or damage as a consequence of Kobe Steel's actions; or
- b. having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages until, at the earliest, October 8, 2017, when Kobe Steel disclosed some of its wrongdoing in a press release.

69. The Plaintiffs and Class Members plead and rely on postponement under the *Limitation Act*, SBC 2012, c 13.

### ***Service on Kobe Steel***

70. The Plaintiffs have the right to serve this Notice of Civil Claim on Kobe Steel pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s. 10, because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

71. The Plaintiffs rely on the following grounds, in that this action concerns:
- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
  - b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
  - c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

**Klein Lawyers LLP**  
1385 W 8th Ave #400  
Vancouver, BC V6H 3V9

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: November 21, 2017



Signature of lawyer for plaintiffs

**Mathew P. Good**

Co-Counsel for the  
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**To the Defendants:**

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<b>SHINKO METAL PRODUCTS CO LTD</b>	2-2-1 Komorie, Moji-ku, Kitakyushi-shi, Fukuoka 8000007 Japan
<b>SHINKO WIRE STAINLESS CO LTD</b>	4-10-20 Tsuruhara, Izumisano-shi, Osaka 5980071 Japan

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

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim for damages and disgorgement at common law for unjust enrichment and the unlawful means tort arising out of the Defendants' fraud in the manufacturer and distribution of automotive metal products.

### **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:**

*Business Practices and Consumer Protection Act*, SBC 2004, c 2

*Criminal Code of Canada*, RSC 1985, c C-46

*Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28

*Court Order Interest Act*, RSBC 1996, c 79