

Court File No.

CV-17-586942-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NANCY CURRAN

Plaintiff

-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

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

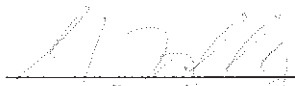
Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY

LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date of Issue: November 20, 2017

Issued by: 
Local Registrar

Address of court office:
393 University Avenue
Toronto, Ontario
M5G 1E6

TO:	KOBE STEEL LTD	2-2-4 Wakinohamacho, Chuo-ku, Kobe-shi, Hyogo 6510072 Japan
AND TO:	KOBELCO & MATERIALS COPPER TUBE LTD	4Fl Odakyu Dai-ichi Seimei Bldg 2-7-1 Nishi-shinjuku, Shinjuku-ku, Tokyo 1600023 Japan
AND TO:	NIPPON KOSHUHA STEEL CO LTD	8Fl TMM Bldg 1-10-5 Iwamoto-cho, Chiyoda-ku, Tokyo 1010032 Japan
AND TO:	SHINKO ALUMINUM WIRE CO LTD	2-2153-1 Hishiki, Nishi-ku, Sakai-shi, Osaka 5938315 Japan
AND TO:	SHINKO METAL PRODUCTS CO LTD	2-2-1 Komorie, Moji-ku, Kitakyushi-shi, Fukuoka 8000007 Japan
AND TO:	SHINKO WIRE STAINLESS CO LTD	4-10-20 Tsuruhara, Izumisano-shi, Osaka 5980071 Japan

CLAIM

1. The Plaintiff claims:
 - (a) an order certifying this action as a class proceeding;
 - (b) general damages for the tort of unlawful means;
 - (c) restitutionary damages for unjust enrichment and waiver of tort;
 - (d) punitive damages;
 - (e) pre-judgment and post-judgment interest;
 - (f) costs; and
 - (g) such further and other relief this Honourable Court deems just.

FACTS

Overview

2. 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

3. 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.

4. 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”).

5. 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.

6. Kobe Steel carries on business in Japan and worldwide, including in Ontario 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 Ontario and elsewhere in Canada.

Automotive Metal

7. 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.

8. 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")

9. 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.

10. 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.

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

12. 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").

13. 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.

14. 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 Ontario and across Canada.

15. 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.

16. 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.

17. 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.

18. 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 Plaintiff and Class Members.

The Plaintiff

19. The Plaintiff, Nancy Curran, is a resident of Pelham, Ontario. She purchased three vehicles manufactured by Honda Motor Co. These are an Acura RDX in 2017, a Honda CRV in 2013, and a Honda Accord in 2008 (Collectively, the "Vehicles".) The Vehicles were purchased in Ontario. Each was new when purchased, and each was purchased primarily for personal, family or household purposes. The Vehicles contains Automotive Metal manufactured, distributed, supplied, and/or sold by Kobe Steel.

20. The Plaintiff is an indirect purchaser – and ultimate consumer – of the Automotive Metal in issue in this claim.

21. The Plaintiff brings this claim on behalf of herself and on behalf of indirect purchasers ("Class Members"), to be defined in the Plaintiff's 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

22. 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”).

23. 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.

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

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

26. The Plaintiff's 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.

27. 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.

28. As a result of the Unauthorised Alterations, the Plaintiff 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.

29. 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.

30. The Plaintiff and Class Members have also been deprived of the bargains they made for vehicles with the Automobile Manufacturers' specifications.

31. In addition, the Plaintiff and Class Members have suffered loss of enjoyment of their vehicles.

32. In addition, or in the alternative, the Plaintiff and Class Members were overcharged for

their vehicles. In particular, the Plaintiff 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 Plaintiff and Class Members by the Automobile Manufacturers. The Plaintiff and Class Members have thus suffered economic loss.

33. Through its actions, Kobe Steel intended to cause economic harm to the Plaintiff 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 Plaintiff and Class Members as a necessary means of enriching Kobe Steel.

CAUSES OF ACTION

Unlawful Means Tort

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

35. By its conduct set out at paras. 21-24 and 32, Kobe Steel intended to economically injure the Plaintiff and Class Members as a means to enrich itself.

36. Kobe Steel acted unlawfully against third parties in order to inflict economic injury on the Plaintiff and Class Members. In particular, as set out at paras. 21-24 and 26, Kobe Steel's Unauthorised Alterations were unlawful conduct against the Automobile Manufacturers.

37. As set out at paras. 21-24 and 26, the Automobile Manufacturers have or would have suffered loss as a result of the unlawful acts by Kobe Steel.

38. 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.

39. As set out at paras. 27-31, the Plaintiff and Class Members have suffered loss and damage from the unlawful acts by Kobe Steel.

40. The Plaintiff and Class Members are entitled to damages against Kobe Steel.

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

Unjust Enrichment

42. As set out at paras. 17, 19, 25 and 31-33, Kobe Steel has been enriched by the receipt of payments by Automobile Manufacturers on account of the Unauthorised Alterations.

43. The Plaintiff 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.

44. 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.

45. As a result, Kobe Steel has been unjustly enriched by the benefits it received from the

Plaintiff and the Class Members.

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

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

PUNITIVE DAMAGES

48. As set out at paras. 21-24, 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

49. 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

50. The Plaintiff and Class Members could not reasonably have known that they sustained injury, loss or damage as a consequence of Kobe Steel's actions or 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.

51. The Plaintiff and Class Members plead and rely on postponement under the *Limitation Acts, 2002*, SO 2002, c 24, Sch B.

SERVICE OUTSIDE OF ONTARIO

52. The originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of a tort committed in Ontario (Rule 17.02(g)); and
- (b) against a person carrying on business in Ontario (Rule 17.02(p)).

November 22, 2017

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- and -

Kobe Steel, Ltd. et al

Defendants

Court File No.

C17-17-58699D
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

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