

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.:

SUPERIOR COURT
(Class Action Chambers)

DANIELLE DALLAIRE, residing and
domiciled at 2529 av. Royale, Québec,
Québec, G1C 1S2

Applicant

v.

KOBE STEEL, LTD., legal person
having its head office 2-4 Wakinohama-
Kaigandori 2-chome, Chuo-ku, Kobe,
Hyogo 6518585 Japan

and

SHINKO ALUMINUM WIRE CO. LTD.,
legal person having its head office at 2-
2153-1 Herhiki, Nishi-ku, Sakai-shi,
Osaka 5938315 Japan

and

**SHINKO WIRE STAINLESS
COMPANY, LTD.**, legal person having
an address for service at 4-10-20
Tsuruhara, Izumisano-shi, Osaka
5980071 Japan

and

NIPPON KOSHUHA STEEL CO. LTD.,
legal person having its head office at 8Fl
TMM Bldg 1-10-5 Iwamoto-cho,
Chiyoda-ku, Tokyo 1010032 Japan

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(ART 574 C.C.P. AND FOLLOWING)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
THE CLASS ACTION CHAMBERS IN THE DISTRICT OF MONTREAL, YOUR
APPLICANT STATES AS FOLLOWS:**

I. GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the Class hereinafter described of which the Applicant herself is a member, namely:

“All Québec residents who (1) purchased or leased a new or used vehicle manufactured by Toyota (including Lexus), Honda (including Acura), Subaru, Mazda, Mitsubishi, Nissan (including Infiniti), Kia, Hyundai, Tesla or GM, or (2) purchased parts or replacement parts containing automotive metal manufactured by the Defendants, between 2002 and 2018.”

A. Overview

2. Beginning as early as 1977 and continuing until about 2018, the Defendants falsely represented 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, fit for their intended purpose and sufficiently durable. The metal products and the parts and vehicles manufactured from said products 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 their intended purpose, not safe and not durable. Through this suit, Québec indirect purchasers seek to hold the Defendants accountable for this unlawful conduct and to recover damages and the overcharge.

B. The Defendants

3. The Defendant Kobe Steel, Ltd. is a company incorporated under the laws of Japan, as appears from the corporate search results for Kobe Steel, Ltd, disclosed as **Exhibit P-1**. Kobe Steel manufactures, sells and distributes products directly and through a group of subsidiary and affiliated companies.
4. The Defendants Shinko Aluminum Wire Co., Ltd., Shinko Wire Stainless Company, Ltd., and Nippon Koshuha Steel Co., Ltd. are subsidiaries or affiliates of Kobe Steel, Ltd., the whole as appears from the corporate search results for these companies, disclosed *en liasse* as **Exhibit P-2** (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 and each is solidarily liable for the acts and omissions of the other.

C. Automotive Metal

6. Kobe Steel is a major manufacturer of metal products, as appears from an excerpt of the Kobelco website disclosed as **Exhibit P-3**. 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., Subaru Corporation, Mazda Motor Corporation, Suzuki Motor Corporation, Hyundai Motor Corporation and Kia Motor Corporation, Nissan Motor Corporation, General Motors Company and Ford Motor Company, as appears from news releases by most of the aforementioned automobile manufacturers and a publication, disclosed, *en l'asse*, as **Exhibit P-4**. Kobe Steel also supplies or has supplied Automotive Metal to automobile parts manufacturers, including Sumitomo Wiring Systems and Denso Corp, as appears from an October 2017 article in The New York Times, disclosed as **Exhibit P-5** (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, as appears from an excerpt of the Kobelco website as well as an excerpt of Kobe Steel Group's Annual Report for 2012 disclosed, *en l'asse*, as **Exhibit P-6**.
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 Québec 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 conformity 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 Applicant and Class members.

D. The Applicant

18. The Applicant, Danielle Dallaire, is a resident of Québec city, Québec. At all material times, she purchased a Honda Insight (the "Vehicle"). The Vehicle contains Automotive Metal manufactured, distributed, supplied, and/or sold by Kobe Steel.
19. The Applicant is an indirect purchaser – and ultimate consumer – of the Automotive Metal in issue in the present application.

E. The Alteration of Quality Control Certification by Kobe Steel

20. 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 ("Unauthorized Alterations"), as appears from the October 8, 2017 press release on the Kobelco website disclosed as **Exhibit P-7**.
21. Kobe Steel supplied the Automotive Metal to many of its customers, as is shown in a Kobe Steel, Ltd. publication dated February 1, 2018 and disclosed as **Exhibit P-8**. The Automotive Metal delivered by Kobe Steel to the Automobile Manufacturers was not fit for its intended 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.
22. As set out in an independent report by Kobe Steel into its own wrongdoings, Kobe Steel began making Unauthorized Alterations in 2007 and possibly as early as 1977, said reports disclosed, *en liasse*, as **Exhibit P-9**.
23. Kobe Steel concealed the Unauthorized Alterations from the Automobile Manufacturers and others.
24. The Applicant's and Class members' vehicles contain or contained parts or replacement parts manufactured using Automotive Metal from Kobe Steel on which Unauthorized Alterations had been done.
25. As a result of the Unauthorized Alterations, the Automobile Manufacturers have or would have suffered loss and damage in the form of overpayment for the Automotive Metal, breach of contract and reputational harm as well as exposure to negligence and liability claims by consumers for the failure of their products to meet the Standards.
26. As a result of the Unauthorized Alterations, the Applicant and Class members have suffered loss and damage including, but not limited to:
 - a. ongoing risk of harm, namely 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.

27. 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 the affected vehicles.
28. The Applicant and Class members have also been deprived of the bargains they made for vehicles with the Automobile Manufacturers' specifications.
29. In addition, the Applicant and Class members have suffered loss of enjoyment of their vehicles.
30. In addition, or in the alternative, the Applicant and Class members were overcharged for their vehicles. In particular, the Applicant 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. The inflated cost was passed on to the Applicant and Class members by the Automobile Manufacturers. The Applicant and Class members have thus suffered economic loss.
31. Through its actions, Kobe Steel intended to cause economic harm to the Applicant 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 Applicant and Class members as a necessary means of enriching itself.
32. The senior officers and directors of Kobe Steel were at all times fully aware of the Unauthorized Alterations and took active steps to participate in the wrongdoing. In the alternative, the senior officers and directors of Kobe Steel were reckless or willfully blind to the Unauthorized Alterations, did nothing to stop the Unauthorized Alterations and/or took active steps to participate in the wrongdoing.
33. Kobe Steel has been indicted by the Tokyo District Prosecutors Office for allegedly violating the Unfair Competition Prevention Act over its misconduct, as appears from a July 19, 2018 publication by Kobe Steel, Ltd. disclosed as **Exhibit P-10**. Kobe Steel has been sued by consumers in British Columbia, Ontario and in Federal Court in the United States for its wrongdoing, as appears from a December 8, 2017 publication by Kobe Steel, Ltd. as well as from copies of said proceedings disclosed, *en liasse*, as **Exhibit P-11**.

F. The Defendants' Liability

Breach of the Consumer Protection Act and the Civil Code of Québec

34. The *Consumer Protection Act* applies to the relationship and transactions between the Applicant and Class members and the Defendants.

35. Through their actions as set out above, the Defendants breached the *Consumer Protection Act*.
36. The Defendants breached articles 37, 38, 219, 221 and 228 of the *Consumer Protection Act* by making false or misleading representations with regard to the standards, quality and durability of the Automotive Metal and failing to mention an important fact in their representations.
37. The Defendants' actions constitute unfair and unconscionable business practices.
38. In addition to the remedies provided for under the *Consumer Protection Act*, said conduct warrants the award of punitive damages under article 272 of the *Consumer Protection Act*.
39. In addition to the breaches described above, the Defendants breached their obligations under the *Civil Code of Québec* such as, and without limiting the generality of the foregoing, their good faith obligation and obligation not to cause injury to another.

Punitive Damages

40. The Applicant is justified in requesting punitive damages in light of the Defendants' malicious, calculated and intentional conduct which departed to a marked degree from ordinary standards of decent behaviour.
41. The Defendants' actions are part of a pattern of willful disregard for customers' rights. The Defendants' actions also constitute an intentional violation of their obligations. As such, an award of punitive damages should be made against the Defendants.

Unjust Enrichment

42. As set out above, Kobe Steel has been enriched by the receipt of payments by Automobile Manufacturers on account of the Unauthorized Alterations.
43. The Applicant and Class members have been deprived through the payment of the 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 the Automobile Manufacturers to Kobe Steel. As such, there is a correlation between Kobe Steel's enrichment and the Applicant and Class members' impoverishment.
44. There is no justification as to why Kobe Steel should have received or should retain this benefit. The fraud by Kobe Steel, in breach of its violations of its legal obligations as set out above, as well as of the *Criminal Code*, s. 380, negates any justification as to why Kobe Steel should have received or should retain this benefit.
45. As a result of its actions, Kobe Steel has been unjustly enriched by the benefits it received from the Applicant and Class members. This warrants an order that the

Defendants disgorge all profits that it gained in benefitting from the breaches set out above.

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

46. The facts on which the Applicant's personal claim against the Defendants is based, are as follows:

- a. The Applicant, Danielle Dallaire, purchased a 2010 Honda Insight ("Vehicle"), as appears from a copy of the April 22, 2009 contract of purchase, disclosed, as **Exhibit P-12**;
- b. The Applicant was unaware of the Defendants' Unauthorized Alterations and that the Automotive Metal in the Vehicle thus did not meet technical and material standards, contrary to the Defendants' representations;
- c. As a result, the Applicant was unaware that she paid an Overcharge for the purchase of the Vehicle and was unaware that said Vehicle, contrary to the Defendants' representations, contained Automotive Metal that was not safe for consumers, fit for its intended purpose and sufficiently durable and that it did not meet the requisite standards;
- d. Had the Applicant known of the Unauthorized Alterations and the Overcharge, she would not have purchased the Vehicle or would not have paid such a high price to do so;
- e. Not only did the Applicant lose money at the time of purchase of her Vehicle, but she is suffering monetary loss, inconvenience and anxiety related to the ongoing risk of harm, the shorter useable lifespan of her Vehicle and the affected resale value and accelerated depreciation of the Vehicle;

47. The Applicant's damages are a direct result of the Defendants' conduct;

48. In consequence of the foregoing, the Applicant is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS

49. The facts giving rise to individual claims by each of the members of the Class against the Defendants are as follows:

- a. Every member of the Class has purchased or leased new or used vehicles containing Automotive Metal manufactured by Kobe Steel, or purchased parts or replacement parts containing Automotive Metal manufactured by Kobe Steel;

- b. The Class members were deprived of their money by the Defendants' unlawful, unfair, anti-competitive and/or misleading acts and practices;
 - c. As a result, Class members each suffered damages, including monetary losses and inconvenience and anxiety;
 - d. Class members would not have purchased or leased the new or used vehicles, or purchased parts or replacement parts, containing Automotive Metal, or would not have paid the overcharge to do so, had they been aware of the Defendants' misrepresentations and the issues raised herein;
 - e. In consequence of the foregoing, each member of the Class is justified in claiming compensatory, moral and/or punitive damages.
50. All of these damages to the Class members are a direct result of the Defendants' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

51. The Applicant is not privy to the specific number of persons in Québec who purchased vehicles containing Automotive Metal manufactured by Kobe Steel. However, given that Kobe Steel manufactures, *inter alia*, 50 percent of the Japanese market for aluminum sheet and coils for automotive closure panels, over 50 percent of the Japanese market for aluminum automotive body panels, 50 percent of the world market for steel wire rod, and the top market share in Japan for aluminum forgings for automotive suspensions, it is safe to estimate that the number is at least in the tens of thousands;
52. Class members are numerous and are scattered across the entire province;
53. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system;
54. By their very nature, wrongdoing in the manufacture of automotive parts affects many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard;

55. While certain Class members may have suffered a substantial loss, it is expected that the majority have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding;
56. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restores the parties to parity;
57. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;
58. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together into one action;
59. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective legal rights and have access to justice;

B. The claims of the members of the Class raise identical, similar or related issues of law or fact

60. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;
61. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;
62. The claims of the members raise identical, similar or related issues of fact or law, namely:
 - a. Did the Defendants make Unauthorized Alterations to the Automotive Metal they manufactured and sold and in the affirmative, for how long?
 - b. Did the Defendants conceal the Unauthorized Alterations from the Automotive Manufacturers and in turn from the Applicant and Class members?
 - c. In misrepresenting, omitting and/or neglecting to disclose material facts did the Defendants mislead and/or deceive the Applicant and Class members?
 - d. Does the Automotive Metal manufactured and sold by the Defendants comply with the standard of fitness for purpose?
 - e. Does the Automotive Metal manufactured and sold by the Defendants comply with the standard of durability?

- f. As a result of the Defendants' actions, did the Applicant and Class members pay an Overcharge for the purchase or lease of the vehicles or parts purchased?
- g. Did the Defendants engage in unfair, false and misleading conduct?
- h. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?
- i. Did the Defendants breach their obligations towards the Applicant and Class members under the *Consumer Protection Act* and/or the *Civil Code of Québec*?
- j. As a result, did the Applicant and Class members suffer damages and what is the nature of such damages?
- k. Are the Defendants liable to pay damages to the Applicant and Class members, including monetary losses incurred, inconvenience and other moral damages as well as the reimbursement of the purchase price of the vehicles or parts containing the Automotive Metal?
- l. What is the amount of damages owing to the Applicant and the Class members?
- m. Are the Defendants liable to pay punitive damages to the Class members and if so, in what amount?

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 63. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
- 64. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:
 - a. **GRANT** the class action of the Applicant and each of the members of the Class;
 - b. **CONDEMN** the Defendants, jointly and solidarily, to pay each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
 - c. **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class punitive damages, in an amount to be determined by the Court, and **ORDER** collective recovery of those sums;
 - d. **CONDEMN** the Defendants, jointly and solidarily, to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;

- e. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;
- f. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and, alternately, by individual liquidation;
- g. **CONDEMN** the Defendants to bear the costs of the present action including expert and notice fees;
- h. **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

A. The Applicant requests that she be attributed the status of representative of the Class

- 65. The Applicant is a member of the Class;
- 66. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present action until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the Fonds d'aide aux actions collectives, as the case may be, and to collaborate with her attorneys;
- 67. Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
- 68. Applicant has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
- 69. Applicant, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
- 70. Applicant has given instructions to her attorneys to put information about this class action on their website and to collect the coordinates of those Class members who wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
- 71. Applicant is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;
- 72. Applicant understands the nature of the action;
- 73. Applicant's interests do not conflict with the interests of other Class members and further Applicant has no interest that is antagonistic to those of other members of the Class;

74. Applicant is prepared to be examined out-of-court on her allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

75. Applicant has researched this issue and prepared this file with her attorneys. In so doing, she is convinced that the problem is widespread;

B. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montréal

76. A great number of the members of the Class reside in the judicial district of Montréal;

77. Many of the purchases or leases of vehicles and/or parts or replacement parts containing Automotive Metal were concluded in the judicial district of Montréal;

78. The Applicant's attorneys practice their profession in the judicial district of Montréal;

79. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

DESIGNATE the Applicant, Danielle Dallaire, as representative of the persons included in the Class herein described as:

"All Québec residents who (1) purchased or leased a new or used vehicle manufactured by Toyota (including Lexus), Honda (including Acura), Subaru, Mazda, Mitsubishi, Nissan (including Infiniti), Kia, Hyundai, Tesla or GM, or (2) purchased parts or replacement parts containing automotive metal manufactured by the Defendants, between 2002 and 2018."

IDENTIFY the principle issues of fact and law to be treated collectively as the following:

- a. Did the Defendants make Unauthorized Alterations to the Automotive Metal they manufactured and sold and in the affirmative, for how long?
- b. Did the Defendants conceal the Unauthorized Alterations from the Automotive Manufacturers and in turn from the Applicant and Class members?
- c. In misrepresenting, omitting and/or neglecting to disclose material facts did the Defendants mislead and/or deceive the Applicant and Class members?
- d. Does the Automotive Metal manufactured and sold by the Defendants comply with the standard of fitness for the purpose?

- e. Does the Automotive Metal manufactured and sold by the Defendants comply with the standard of durability?
- f. As a result of the Defendants' actions, did the Applicant and Class members pay an Overcharge for the purchase or lease of the vehicles or parts purchased?
- g. Did the Defendants engage in unfair, false and misleading conduct?
- h. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?
- i. Did the Defendants breach their obligations towards the Applicant and Class members under the *Consumer Protection Act* and/or the *Civil Code of Québec*?
- j. As a result, did the Applicant and Class members suffer damages and what is the nature of such damages?
- k. Are the Defendants liable to pay damages to the Applicant and Class members, including monetary losses incurred, inconvenience and other moral damages as well as the reimbursement of the purchase price of the vehicles or parts containing the Automotive Metal?
- l. What is the amount of damages owing to the Applicant and the Class members?
- m. Are the Defendants liable to pay punitive damages to the Class members and if so, in what amount?

The interests of justice favour that this application be granted in accordance with its conclusions;

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

- **GRANT** the class action of the Applicant and each of the members of the Class;
- **CONDEMN** the Defendants, jointly and solidarily, to pay each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class punitive damages, in an amount to be determined by the Court, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and solidarily, to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;

- **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;
- **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and, alternately, by individual liquidation;
- **CONDEMN** the Defendants to bear the costs of the present action including expert and notice fees;
- **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

DECLARE that all members of the Class that have not requested their exclusion, within the delay provided for, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with articles 576 and 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in *La Presse*, the *Montreal Gazette* and *Le Soleil*;

ORDER that said notice be sent directly to all Class members through the use of the Defendants' customer database, as well as posting the said notice on the Defendants' website at www.kobelco.co.jp/english;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE with costs, including all publication fees.

Montréal, November 12, 2019

KLEIN AVOCATS PLAIDEURS INC.

Klein Avocats Plaideurs Inc.
500, Place d'Armes, Suite 1800
Montréal, Québec
H2Y 2W2
Attorneys for the Applicant

SUMMONS

(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the Montreal courthouse situated at 1, Notre-Dame Est, Montréal, Québec, H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the applicant's lawyer or, if the applicant is not represented, to the applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as an applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the applicant's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the Applicant intends to use the following exhibits:

EXHIBIT P-1:	Corporate search results for Kobe Steel, Ltd.
EXHIBIT P-2:	Corporate search results for Shinko Aluminum Wire Co., Ltd., Shinko Wire Stainless Company, Ltd., and Nippon Koshuha Steel Co., Ltd., <i>en liasse</i>
EXHIBIT P-3:	Excerpt of the Kobelco website
EXHIBIT P-4:	News releases by certain automobile manufacturers and publication <i>en liasse</i>
EXHIBIT P-5:	October 2017 article in The New York Times
EXHIBIT P-6:	Excerpt of the Kobelco website and excerpt of Kobe Steel Group's Annual Report for 2012
EXHIBIT P-7:	October 8, 2017 press release on the Kobelco website

EXHIBIT P-8:	Kobe Steel, Ltd. publication dated February 1, 2018
EXHIBIT P-9:	Independent reports by Kobe Steel, <i>en liasse</i>
EXHIBIT P-10:	July 19, 2018 publication by Kobe Steel, Ltd.
EXHIBIT P-11:	December 8, 2017 publication by Kobe Steel, Ltd. and copies of Ontario, British Columbia and US Federal Court proceedings <i>en liasse</i>
EXHIBIT P-12:	Copy of the Applicant's contract of purchase relating to the purchase of her vehicle

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No

SUPERIOR COURT
(Class Action Chambers)

DANIELLE DALLAIRE

Applicant

v.

KOBE STEEL, LTD.

and

SHINKO ALUMINUM WIRE CO. LTD.

and

SHINKO WIRE STAINLESS COMPANY,
LTD.

and

NIPPON KOSHUHA STEEL CO. LTD.

Defendants

NOTICE OF PRESENTATION

(ART 146 and 574 al. 2 C.C.P.)

TO: KOBE STEEL, LTD., SHINKO ALUMINUM WIRE CO., LTD., SHINKO WIRE STAINLESS COMPANY, LTD. AND NIPPON KOSHUHA STEEL CO. LTD.
legal persons each having an address for service at
Blake, Cassels & Graydon LLP
1 Place Ville Marie, Suite 3000
Montréal QC H3B 4N8
Defendants

TAKE NOTICE that the *Application for authorization to institute a class action and to obtain the status of representative* will be presented before one of the honourable judges of the Superior Court at the Montreal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by the Class Action Chambers coordinator.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 12, 2019

KLEIN AVOCATS PLAIDEURS INC.

Klein Avocats Plaideurs Inc.

Attorneys for the Applicant

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.:

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DANIELLE DALLAIRE

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KOBE STEEL, LTD.

and

SHINKO ALUMINUM WIRE CO. LTD.

and

SHINKO WIRE STAINLESS
COMPANY, LTD.

and

NIPPON KOSHUHA STEEL CO. LTD.

Defendants

ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER
(ART 55 of the *Regulation of the Superior Court of Québec in civil matters*)

The Applicant, through her attorneys, attests that the *Application for authorization to institute a class action and to obtain the status of representative* will be entered into the national class action register.

Montréal, November 12, 2019

KLEIN AVOCATS PLAIDEURS S.N.C.

Klein Avocats Plaideurs Inc.

Attorneys for the Applicant

N° 500-06-001027-198
SUPERIOR COURT (Class Action Chambers)
PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL
DANIELLE DALLAIRE Applicant
v. KOBE STEEL, LTD. ET AL. Defendants
APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (ART 574 AND FOLLOWING C.C.P.)
ORIGINAL
KLEIN AVOCATS PLAIDEURS INC. 500, Place d'Armes, suite 1800 Montréal, Québec H2Y 2W2 Telephone : (514) 764-8361 Fax : (438) 259-3301 Me Careen Hannouche channouche@kleinavocats.com Code : BK0541