CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000632-121

(Class Action)
SUPERIOR COURT

J. COHEN

Petitioner

-vs.-

LG CHEM LTD., legal person duly constituted, having its principal place of business at LG Twin Towers, 20, Yeouido-doing, Yeongdeungpo-gu, City of Seoul, South Korea (REP) 150-721

and

LG CHEM AMERICA, INC., legal person duly constituted, having its principal place of business at 1000 Sylvan Avenue, City of Englewood Cliffs, State of New Jersey, 07632, U.S.A.

and

PANASONIC CORPORATION, legal person duly constituted, having its principal place of business at 1006 Oaza Kadoma, City of Osaka, 571-8501, Japan

and

PANASONIC CORPORATION OF NORTH AMERICA, legal person duly constituted, having its principal place of business at 1 Panasonic Way, City of Secaucus, State of New Jersey, 07094, U.S.A.

and

PANASONIC CANADA INC., legal person duly constituted, having its

principal place of business at 5770 Ambler Drive, City of Mississauga, Province of Ontario, L4W 2T3

and

SANYO ELECTRIC CO., LTD., legal person duly constituted, having its principal place of business at 5-5 Keihan-Hondori, 2-chome, Moriguchi, City of Osaka, 570-8677, Japan

and

SANYO NORTH AMERICA CORPORATION, legal person duly constituted, having its principal place of business at 2055 Sanyo Avenue, City of San Diego, State of California, 92154, U.S.A.

and

SONY CORPORATION, legal person duly constituted, having its principal place of business at 1-7-1 Konan, Minato-ku, City of Tokyo, 108-0075, Japan

and

SONY OF CANADA LTD., legal person duly constituted, having its principal place of business at 115 Gordon Baker Road, City of Toronto, Province of Ontario, M2H 3R6

and

SONY ENERGY DEVICES CORPORATION, legal person duly constituted, having its principal place of business at 1-1 Shimosugishita, Takakura, Hiwada-machi, Koriyama-shi, City of Fukushima, 963-0531, Japan

and

SONY ELECTRONICS, INC., legal person duly constituted, having its principal place of business at Shibaura Renasite Tower 16530 Via Esprillo, City of San Diego, State of California, 92127, U.S.A.

and

SAMSUNG SDI CO., LTD., legal person duly constituted, having its principal place of business at 575 Shin-Dong, Youngtong-Gu, Suwon, Gyeonggi, South Korea

and

SAMSUNG SDI AMERICA, INC., legal person duly constituted, having its principal place of business at 85 W. Tasman Drive, City of San Jose, State of California, 95134-1703, U.S.A.

and

HITACHI, LTD., legal person duly constituted, having its principal place of business at 6-6, Marunouchi 1-chrome, Chiyoda-ku, City of Tokyo, 100-8280, Japan

and

HITACHI CANADA, LTD., legal person duly constituted, having its principal place of business at 2495 Meadowpine Boulevard, City of Mississauga, Province of Ontario, L5N 6C3

and

HITACHI MAXELL, LTD., legal person duly constituted, having its principal place of business at 2-18-2 Iidabashi,

Chiyoda-ku, City of Tokyo, 102-8521, Japan

and

MAXELL CORPORATION OF AMERICA, legal person duly constituted, having its principal place of business at 3 Garett Mountain Plaza, 3rd Floor, Suite 300, City of Woodland Park, State of New Jersey, 07424, U.S.A.

Respondents

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

    - All residents in Canada who purchased either a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent and/or a Lithium Ion Rechargeable Battery Product containing a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent, whether directly or indirectly, during the period January 1, 2002 to the present (the "Class Period"), or any other group to be determined by the Court;

      However, a legal person established for a private interest, a partnership or an association is not a member of a group unless, at all times since November 5th 2011, not more than 50 persons bound to it by contract of employment were under its direction or control and if it is dealing at arm's length with the representative of the group;

Alternately (or as a subclass)

- all residents in Quebec who purchased Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent and/or a Lithium Ion Rechargeable Battery Product containing a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent, whether directly or indirectly, during the period January 1, 2002 to the present (the "Class Period"), or any other group to be determined by the Court;

  However, a legal person established for a private interest, a partnership or an association is not a member of a group unless, at all times since November 5th 2011, not more than 50 persons bound to it by contract of employment were under its direction or control, and if it is dealing at arm's length with the representative of the group;

2. "Lithium Ion Rechargeable Batteries" or "Li-Ion Rechargeable Batteries" are batteries that are rechargeable due to their utilization of lithium ion technology where lithium ions move from a negative electrode to a positive electrode during discharge and back when charging. They are the standard batteries used in consumer electronic products and they are an important source of energy for portable computers, personal electronic devices and other products;

3. "Lithium Ion Rechargeable Battery Products" are products containing a Lithium-Ion Rechargeable Battery (or Batteries) when purchased. These products include consumer goods such as digital cameras, notebook computers, mobile telephones, camcorders, cell phones, personal digital assistants, tablet computers, handheld game consoles, power tools and other electronic devices and equipment;

4. For decades, the Respondents have been the world's largest manufacturers of Lithium Ion Rechargeable Batteries and they have been using this monopolistic power in the industry to unlawfully fix and artificially raise prices;

5. The Respondents and other co-conspirators –as yet unknown– agreed, combined and conspired to inflate, fix, raise, maintain, or artificially stabilize prices of Lithium Ion Rechargeable Batteries;

6. As further described below, competition authorities in at least the United States and the European Union have been investigating a conspiracy in the market for Lithium Ion Rechargeable Batteries since at least the first half of 2011. The Antitrust Division of the United States Department of Justice ("DOJ") is conducting a criminal investigation into anticompetitive conduct in the market for Lithium Ion Rechargeable Batteries;

7. The Respondents are very acquainted with the unlawful conduct alleged in this action. The Respondents, their parents, subsidiaries and/or affiliates have orchestrated some of the largest global price-fixing schemes witnessed in the past decade - fixing the prices of key components for consumer electronic goods, in particular computers, televisions and cellular phones. These entities and, many of their executives, have pleaded guilty to price-fixing dynamic random access memory ("DRAM") chips, liquid crystal display ("LCD") screens and optical disc drives ("ODDS");

8. By reason of this anti-competitive and unlawful conduct, the Petitioner and the members of the class have paid artificially inflated prices for Lithium Ion Rechargeable Batteries and/or Lithium Ion Rechargeable Battery Products than they would have paid in a competitive market, causing damages upon which they wish to claim;

B) <u>The Respondents</u>

LG

9. Respondent LG Chem, Ltd. ("LG Chem") is a Korean corporation with its head office in South Korea;

10. Respondent LG Chem America, Inc. ("LG Chem America") is a wholly-owned subsidiary of LG Chem and is an American corporation with its head office in New Jersey;

11. During the relevant time period, Respondents LG Chem and LG Chem America ("LG Chem"), either directly or through a wholly-owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, including in Quebec, during the Class Period;

12. Given the close ties between the LG Chem Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

PANASONIC

13. Respondent Panasonic Corporation ("Panasonic") is a Japanese corporation. Up until approximately October 1st 2008, Panasonic was known as Matsushita Electric Industrial Co., Ltd. Panasonic manufactures and sells Lithium Ion Rechargeable Batteries under the Panasonic name and also under the name of Respondent Sanyo Electric Co. Ltd. ("Sanyo") which is a wholly-owned subsidiary. Panasonic is one of the world's leading manufacturers of Lithium Ion Rechargeable Batteries. With respect to those batteries sold under the

Panasonic name, they are produced under Panasonic's internal division called "Energy Company";

14. Panasonic Corporation of North America ("Panasonic North America"), formerly known as Matsushita Electric Corporation of America, is a Delaware corporation with its head office in New Jersey. Panasonic North America is a wholly-owned and controlled subsidiary of Panasonic;

15. Respondent Panasonic Canada Inc. ("Panasonic Canada") is a wholly-owned subsidiary of Panasonic and who does business throughout Canada, including the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1**;

16. Respondent Sanyo is a Japanese corporation. Sanyo is one of the largest manufacturers and suppliers of Lithium Ion Rechargeable Batteries in the world. As of December 9, 2009, Sanyo became a wholly-owned subsidiary of Panasonic;

17. Respondent Sanyo North America Corporation ("Sanyo North America") is a Delaware corporation with its head office in California. It is a wholly-owned subsidiary of Sanyo;

18. During the relevant time period, Respondents Panasonic, Panasonic North America, Sanyo and Sanyo North America ("Panasonic"), either directly or through a wholly-owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, including in Quebec, during the Class Period;

19. Given the close ties between the Panasonic Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

SONY

20. Respondent Sony Corporation ("Sony") is a Japanese corporation. Sony invented the Lithium Ion Rechargeable Battery in 1991 and since then, has been one of the world's leading suppliers of Lithium Ion Rechargeable Batteries. It is the parent company of Sony Energy Devices Corporation ("Sony Energy") through which it manufactures its Lithium Ion Rechargeable Batteries;

21. Respondent Sony Energy is a Japanese corporation. It is a wholly-owned subsidiary of Sony and is the vehicle through which Sony manufactures its Lithium Ion Rechargeable Batteries. Sony Energy manufactures the Lithium

Ion Rechargeable Batteries at plants located in Japan, in Singapore and in China;

22. Respondent Sony of Canada, Ltd. ("Sony Canada") is a wholly-owned subsidiary of Sony and who does business throughout Canada, including the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-2**;

23. Respondent Sony Electronics, Inc. ("Sony Electronics") is a Delaware corporation with its head office in California. It is a wholly-owned subsidiary of Sony;

24. During the relevant time period, Respondents Sony, Sony Energy, Sony Canada and Sony Electronics ("Sony"), either directly or through a wholly-owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, including in Quebec, during the Class Period;

25. Given the close ties between the Sony Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

SAMSUNG

26. Respondent Samsung SDI Co., Ltd. ("Samsung SDI") is a Korean corporation. It is the world's largest manufacturer of Lithium Ion Rechargeable Batteries and is 20% owned by the Korean conglomerate Samsung Electronics, Inc.;

27. Respondent Samsung SDI America, Inc. ("Samsung SDI America") is an American corporation with its head office in California. It is a wholly-owned subsidiary of Samsung SDI;

28. During the relevant time period, Respondents Samsung SDI and Samsung SDI America ("Samsung SDI"), either directly or through a wholly-owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, including in Quebec, during the Class Period;

29. Given the close ties between the Samsung SDI Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

HITACHI

30. Respondent Hitachi, Ltd. (“Hitachi”) is a Japanese corporation. It manufactures and sells Lithium Ion Rechargeable Batteries through its Components and Devices Business Unit;

31. Respondent Hitachi Canada, Ltd. (“Hitachi Canada”) is a is a wholly-owned subsidiary of Sony and who does business throughout Canada, including the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-3**;

32. Hitachi Maxell, Ltd. (“Hitachi-Maxell”) is a Japanese corporation. It is a wholly-owned subsidiary of Hitachi. Hitachi-Maxell was founded in 1960 and manufactures and sells batteries through its batteries business unit;

33. Respondent Maxell Corporation of America (“Maxell America”) is an American corporation with its head office in New Jersey;

34. During the relevant time period, Respondents Hitachi, Hitachi Canada, Hitachi Maxell and Maxell America (“Hitachi”), either directly or through a wholly-owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, including in Quebec, during the Class Period;

35. Given the close ties between the Hitachi Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

36. All Respondents and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or artificially stabilize process of Lithium Ion Rechargeable Batteries;

AGENTS

37. Respondents’ conduct was authorized, ordered, or done by Respondents’ officers, agents, employees, or representatives while actively engaged in the management and operations of the respective Respondents’ business;

38. Each Respondent acted as the principal agent, joint venturer of, or for other Respondents with respect to the acts, violations and common course of conduct as alleged herein;

C) <u>The Situation</u>

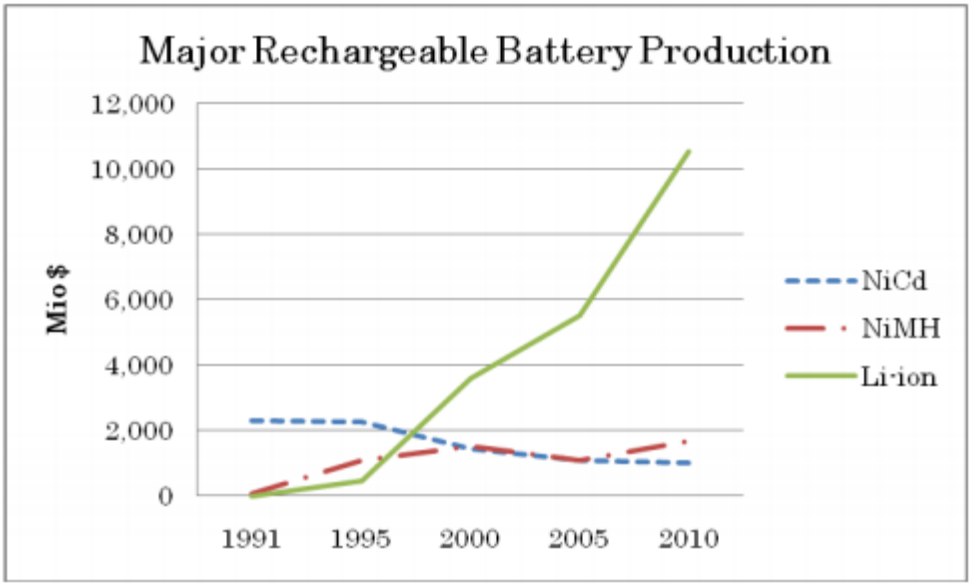
I. Batteries

39. Batteries are one of the primary sources of energy which power many different machines and devices used every day. There are three (3) different categories of batteries: 1) chemical; 2) physical; and 3) biological. Chemical batteries generate electricity through a chemical reaction that occurs inside the battery. The batteries at issue in this case – Lithium Ion Rechargeable Batteries – are within the chemical family of batteries;

40. Chemical batteries are generally classified as either "primary" or "secondary". Primary batteries are disposable batteries that are expended and then discarded. Secondary batteries are rechargeable. Rechargeable batteries account for roughly 80% of all chemical batteries produced worldwide;

41. There are four (4) types of secondary batteries that account for the vast majority of secondary batteries: (1) Lithium Ion Rechargeable Batteries; (2) lead-acid; (3) nickel cadmium; and (4) nickel-metal hydride. Lithium Ion Rechargeable Batteries are by far the most popular type of rechargeable battery;

42. Both Lithium Ion Rechargeable Batteries as well as nickel-metal hydride rechargeable batteries were introduced in or around 1991. Since that time, however, Lithium Ion Rechargeable Batteries have quickly become the most popular type of secondary battery. The following graph, (based on data from the Institute of Information Technology, Ltd.) shows the growth rates of Lithium Ion Rechargeable Batteries versus nickel-metal hydride and nickel cadmium batteries:



II. Lithium Ion Rechargeable Batteries

43. A Lithium Ion Rechargeable Battery generally contains three (3) primary components: (1) the negative electrode (cathode); (2) positive electrode (anode); and (3) the electrolyte. The negative electrode of a conventional Lithium Ion Rechargeable Battery is made from carbon, typically graphite. The positive electrode is a metal oxide, usually a layered oxide (such as lithium cobalt oxide), a polyanion (such as lithium iron phosphate), or a spinel (such as lithium manganese oxide). The electrolyte is typically a mixture of organic carbonates such as ethylene carbonate or diethyl carbonate containing complexes of lithium ions (usually lithium salts, such as lithium hexafluorophosphate, lithium hexafluoroarsenate monohydrate, lithium percolate, lithium tetrafluoroborate, and lithium triflate);

44. Internally, the battery has a separator between the cathode and anode and is filled with the organic electrolyte solution. The separator prevents short circuits that would occur if there were contact between the anode and cathode. At the same time, the separator protects the electrolyte solution and preserves the battery's conductivity. In the recharging process, lithium ions are released from the cathode into the electrolyte solution where they accumulate between the anode layers. During the discharge process, the ions return to the cathode. The movement of lithium ions between the cathode and the anode during the discharge process creates the electric current from the battery which powers the specific device it is used in;

45. There are generally two (2) primary steps in the manufacture of Lithium Ion Rechargeable Batteries. In the first step, the "cell" of the battery is manufactured – which includes the cathode, anode, and electrolyte. The cell, and in some cases, multiple cells, are then assembled inside an enclosure. In some cases, certain protection circuitry is also added inside the enclosure. The assembled product is referred to as the "battery" or "module'' and is the product that is placed inside a device to supply power to the device. All of the Respondents named herein manufacture both raw Lithium Ion Rechargeable Battery cells as well as modules. In addition to the manufacture and sale of raw Lithium Ion Rechargeable Battery cells and modules, the Respondents also sell raw cells to other entities commonly referred to in the industry as "assemblers." In these cases, the raw Lithium Ion Rechargeable Battery cells made by the Respondents are incorporated into a module by assemblers who assemble the cells (and if necessary, circuitry) and then sell the module under their own brand name. Whether manufactured by a Respondent or an assembler, the raw cells in a finished battery or module make up the overwhelming cost of a finished Lithium Ion Rechargeable Battery module;

46. Lithium Ion Rechargeable Batteries are generally divided into four (4) different types: (1) small cylindrical (solid body without terminals); (2) large cylindrical (solid body with large threaded terminals); (3) pouch (soft, flat body, such as those used in cell phones); and (4) prismatic (semi-hard plastic case with large threaded terminals). Each Respondent manufactures and markets each

of these types of Lithium Ion Rechargeable Batteries. Lithium ion cylindrical or prismatic batteries are used primarily in notebooks, camcorders, mobile phones, and other electronic devices;

47. In addition to the four (4) different types of Lithium Ion Rechargeable Batteries described above, there are also lithium ion polymer batteries. The exterior of the lithium ion polymer battery is generally made of a laminate film which allows it to be more flexible in terms of its shape;

48. One of the primary differences between lithium ion and lithium ion polymer batteries is that in the latter, the lithium salt electrolyte is not held in an organic solvent, but instead, in a solid polymer composite such as polyethylene oxide or polyacrylonitrile. The dry polymer design offers advantages over the traditional lithium ion battery in terms of fabrication and ruggedness since the electrolyte is a solid polymer as opposed to a gel or liquid electrolyte;

49. Lithium Ion Rechargeable Batteries include cylindrical, prismatic, pouch and polymer Lithium Ion Rechargeable Batteries;

50. Lithium Ion Rechargeable Batteries possess certain unique performance qualities which make them the most popular form of rechargeable battery. In addition, because of these characteristics, Lithium Ion Rechargeable Batteries are not interchangeable with other types of secondary or rechargeable batteries such as nickel-cadmium or nickel-metal hydride;

51. Unlike other forms of rechargeable batteries (such as nickel-cadmium or nickelmetal hydride), Lithium Ion Rechargeable Batteries are the only rechargeable battery which do not suffer from any “memory effect”. For example, if a nickel-cadmium battery is charged repeatedly to 70% capacity, the discharge voltage will begin to fall sharply from the 70% even after a full charge and eventually, the battery will be incapable of holding a charge. The battery essentially remembers 70% as the full capacity. On the other hand, Lithium Ion Rechargeable Batteries, do not suffer from the memory effect, and there is no risk to reducing the capacity of the battery when only partially charging the battery;

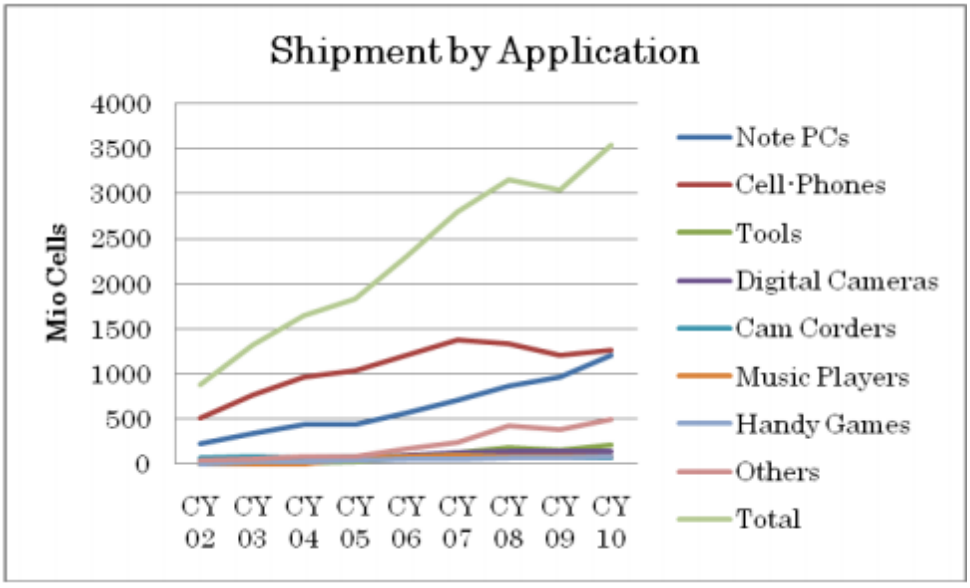
52. Another feature that makes Lithium Ion Rechargeable Batteries unique is that they are more powerful than all other types of rechargeable batteries. For example, the nominal voltage of a nickel-metal hydride rechargeable battery is 1.2 volts. The nominal voltage of a Lithium Ion Rechargeable Battery, on the other hand, is 3.7 volts, nearly three (3) times more powerful;

53. Lithium Ion Rechargeable Batteries also possess a higher “energy density” than other types of rechargeable batteries. “Capacity” refers to the volume of electricity that a battery can hold. The energy volume in a battery is the

product of the voltage times and the capacity; i.e. the result of multiplying the two. Lithium Ion Rechargeable Batteries possess high energy density, both per weight and per volume, as compared to other types of rechargeable batteries. Essentially, a lighter and smaller Lithium Ion Rechargeable Battery can generate the same amount of electricity as a heavier and larger battery of a different type. For example, Lithium Ion Rechargeable Batteries can be as much as 70% lighter and 60% smaller in volume than nickel-metal hydride batteries while delivering the same power;

54. Lithium Ion Rechargeable Batteries also retain their charge better than other types of rechargeable batteries. For example, Lithium Ion Rechargeable Batteries lose only about 5% of their charge per month when idle. Other types of rechargeable batteries lose nearly 20% of their charge per month when idle;

55. Because of their superior performance characteristics and their convenient small size, Lithium Ion Rechargeable Batteries have become the standard battery used in consumer electronic products. It is estimated that approximately 40-50% of all Lithium Ion Rechargeable Batteries used today are used in small consumer electronic products such as cell phones and notebook computers. The remainder of Lithium Ion Rechargeable Batteries are used in digital cameras, power tools and other devices. The following graph (which incorporates information from the Institute of Information Technology, Ltd.) depicts the various applications that Lithium Ion Rechargeable Batteries are used in:



56. The Respondents manufacture, market and sell Lithium Ion Rechargeable Batteries throughout Canada and throughout the world. The Respondents collectively controlled approximately two-thirds (2/3) or more of the worldwide market for Lithium Ion Rechargeable Batteries throughout the relevant period

and over 80 percent (80%) of the market in the early part of this period. The manufacture and sale of Lithium Ion Rechargeable Batteries is a multi-billion dollar industry. In 2011, the worldwide market for Lithium Ion Rechargeable Batteries was approximately $14 billion. This figure is expected to top $16 billion by the end of 2012;

57. Lithium Ion Rechargeable Batteries are highly standardized products, and interchangeable among the same type and across manufacturers. International standard-setting organizations, such as the International Electrotechnical Commission ("IEC") or the Institute of Electrical and Electronics Engineers ("IEEE") develop standards to be followed by the manufacturers of Lithium Ion Rechargeable Batteries so that products which utilize Lithium Ion Rechargeable Batteries can be developed to accommodate a specific Lithium Ion Rechargeable Battery. For example, a Lithium Ion Rechargeable Battery "18650," refers to a cylindrical shaped battery measuring 18.6 millimeters in diameter by 65.2 millimeters in height with a nominal voltage of 3.6 volts and a capacity of 2250mAh;

58. By virtue of their market shares, the Respondents are the dominant manufacturers and suppliers of Lithium Ion Rechargeable Batteries in Canada and in the world;

A) The Respondents' Conspiracy Stabilized and Raised the Price of Lithium Ion Rechargeable Batteries Above Competitive Levels

(1) A Price-Fixing Conspiracy may be Inferred from Pricing Behavior for Lithium Ion Rechargeable Batteries During the Class Period

59. The Respondents' illegal activities alleged herein artificially stabilized and raised the prices of Lithium Ion Rechargeable Batteries during the Class Period. Had there been no conspiracy, the prices of Lithium Ion Rechargeable Battery prices would not have been so inflated;

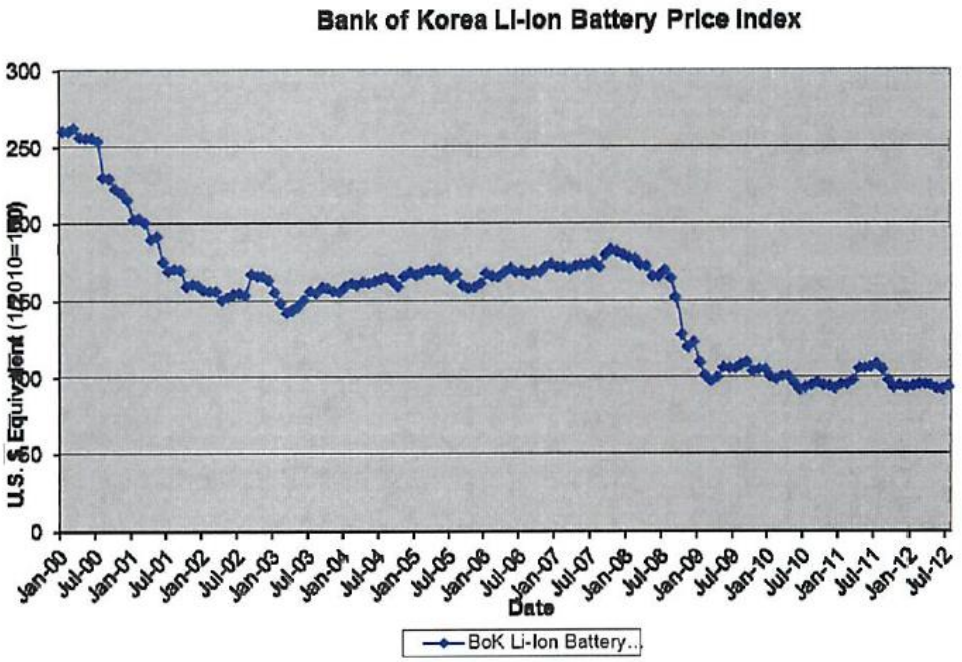
60. Lithium Ion Rechargeable Batteries were first invented and commercially produced by Respondent Sony in or around 1991. Between 1991 and late 1999, the market for Lithium Ion Rechargeable Batteries was dominated, if not exclusively controlled by, the Sony and Panasonic Respondents which are located in Japan. During that time, the pricing of Lithium Ion Rechargeable Batteries was characterized by remarkable stability;

61. In or around 1999, Respondents Sony and Panasonic faced their first competitive threat from outside Japan as lower-cost manufacturers from Korea entered the market. Beginning in or around 1997, the Korean government promoted research and development centering around battery manufacturers in an effort to foster the secondary battery industry into the next generation growth industry. As a result, around this same time, Korea

established the second automated mass battery production system in the world. The Korean Battery R&D Association took the lead in the "small-size secondary battery development project" together with 11 manufacturers, 10 universities and research centers, investing $54.87 billion over 5 years from 1997 to 2002;

62. As a result of these efforts, in 1999, Respondent LG Chem became the first Korean manufacturer of Lithium Ion Rechargeable Batteries followed closely by Respondent Samsung SDI. With the introduction of competition from the Korean Respondents – LG Chem and Samsung SDI – worldwide prices for Lithium Ion Rechargeable Batteries quickly fell. In fact, during the two-year period from 2000–2002, the prices for Lithium Ion Rechargeable Batteries fell by nearly 50% despite a strong increase in demand due to devices such as mobile telephones and notebook computers. The dramatic price decrease for Lithium Ion Rechargeable Batteries at this time is best explained by the entry of the Korean Respondents Samsung SDI and LG Chem into the worldwide market for these products and their aggressive competition in the marketplace. In fact, as evidence of just how competitive LG Chem and Samsung SDI were, in just three (3) years, Samsung SDI and LG Chem went from having 0% market share in 2000 to approximately 20% of the worldwide market by 2003;

63. Respondents Sony, Panasonic, and Hitachi sought to curtail the rapid decline in Lithium Ion Rechargeable Battery prices and their rapid loss of market share. In or around the end of 2001, or the beginning of 2002, the Respondents entered into an illegal conspiracy to stabilize and to raise prices for Lithium Ion Rechargeable Batteries. This is best observed from the simple fact that Lithium Ion Rechargeable Batteries prices immediately stabilized after nearly a two-year period of rapid price decline. In fact, during the period January 2002–July 2008, the marked decline of Lithium Ion Rechargeable Batteries prices that took place during 2000–2001 had completely ended, and the prices of Lithium Ion Rechargeable Batteries prices actually rose throughout most of 2002–2008. The following graph illustrates the prices of Lithium Ion Rechargeable Batteries during the Class Period:



64. As a result of the worldwide economic crisis that began in or around 2007 and the corresponding decline in demand for Lithium Ion Rechargeable Batteries and electronic devices, the prices for Lithium Ion Rechargeable Batteries again experienced a decline. Beginning in or around January 2008, the prices for Lithium Ion Rechargeable Batteries began a steady decline which ended in or around January 2009 and resulted in a price decline of approximately 40%;

65. Corresponding with the decline in prices during 2008, the Respondents dramatically cut production in an effort to maintain prices. Beginning around 2008, the Respondents cut worldwide production for Lithium Ion Rechargeable Batteries by almost 66%. This massive coordinated cut in production achieved its anticipated result – the prices for Lithium Ion Rechargeable Batteries stabilized by the end of 2009;

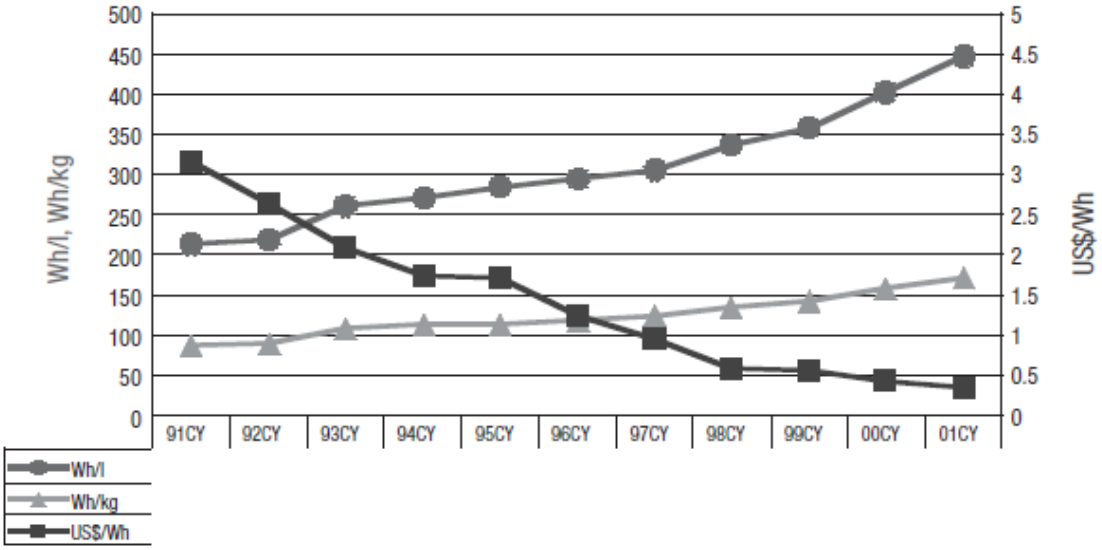
66. Lithium Ion Battery prices remained stable –yet again– until the Respondents received notice they were being investigated for price-fixing Lithium Ion Batteries by the United States Department of Justice ("DOJ") and the European Union ("EU") which began in mid-2011. Both Japanese and Korean producer price indexes for Lithium Ion Rechargeable Batteries fell after the Respondents Defendants disclosed they were being federally investigated. In fact, within three (3) months following disclosure of the investigation in 2011, prices began an approximate 10% decline in a mere 3 months. Such a price decline is quite predictable with the end of an illegal cartel which had artificially raised prices and clearly supports the allegations of collusion occurring before this time;

(2) Prices for Lithium Ion Rechargeable Batteries During the Class Period were Contrary to Industry Expectations

67. Many analysts predicted that given the economics of the marketplace, prices of Lithium Ion Rechargeable Batteries would go down during the Class Period. But prices not only failed to decline throughout most of the Class Period – they actually rose, defying industry expectations;

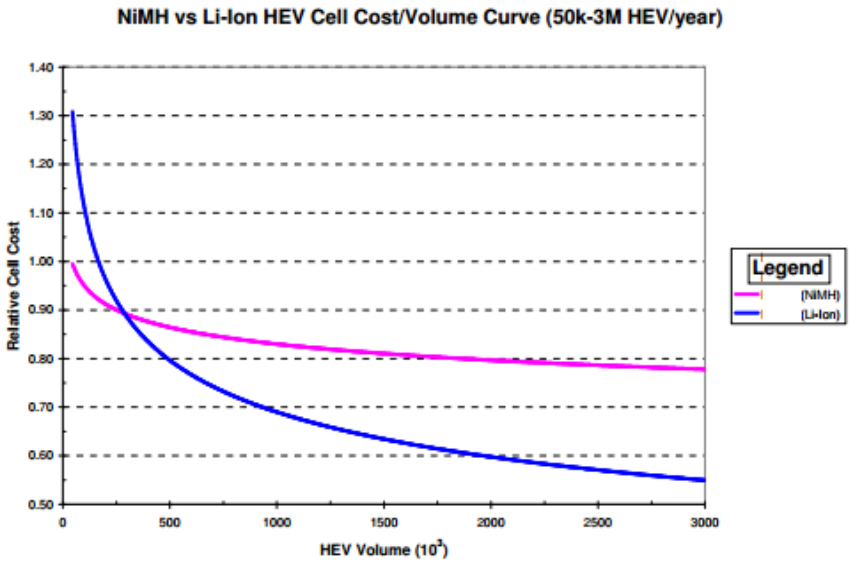
68. Lithium Ion Rechargeable Batteries underwent substantial technological change that rapidly improved the energy density of the batteries (watt-hours delivered per weight or volume) and reduced expenses. As is illustrated below, energy density, measured in watt-hours per kilogram or watt-hours per litre, more than doubled for Lithium Ion Rechargeable Batteries over the decade from 1991 to 2001. Such technological progress continued unabated over the past decade – today, energy density is as high as 250 wh/kg, or 620 wh/1, for Lithium Ion Rechargeable Batteries, the whole as appears more fully from a copy of the Green Car Congress article entitled "Panasonic Develops New Higher-Capacity 18650 Li-Ion Cells; Application of Silicon-based Alloy in Anode" dated December 25, 2009, produced herein as **Exhibit R-4**;

Performance Improvement and Price Decline in Li-Ion Batteries 1991-2002



69. As illustrated below, scientists, engineers, and industry analysts expected to see the declining prices for Lithium Ion Rechargeable Batteries, as depicted above, to continue their steady descent during the period following 2002. Numerous technical studies undertaken in the early to mid-2000s predicted that scale economies and learning curves would act to sharply lower cost as production volumes increased;

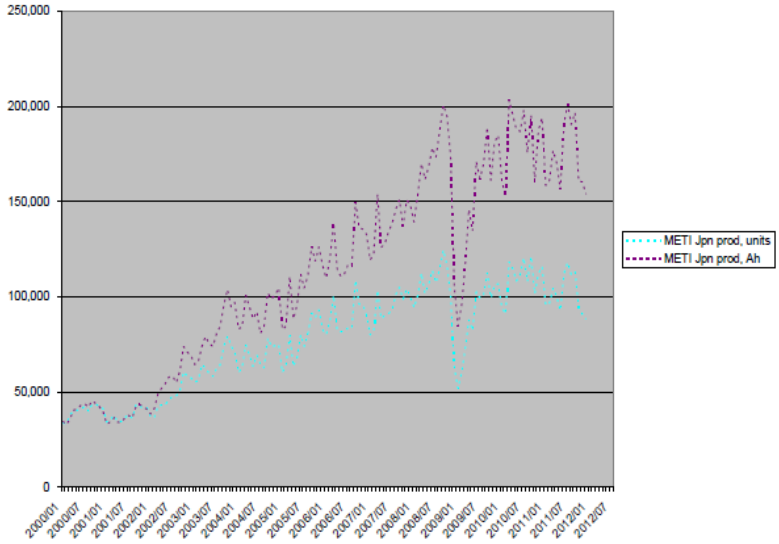
Reduction in Li-Ion Battery Manufacturing Cost with Scale of Production



70. A study conducted at the Sloan Automotive Laboratory observed that, "[i]n addition to this fundamental advantage with respect to specific energy and power, lithium-ion batteries also offer the potential for lower cost as the technology matures and production volumes increase. Although more expensive than NiMH batteries today, lithium-ion batteries scale more readily to high volume production hence have greater potential for cost reduction . . . Perhaps more importantly, while the most expensive constituent materials of NiMh battery are intrinsically tied to the commodity price of nickel (relatively expensive), lithium ion batteries may be made from a number of different fungible materials . . . Over the longer-term, there is strong potential to transition to even lower cost materials", the whole as appears more fully from a copy of the research article entitled "Electric Powertrains: Opportunities and Challenges in the U.S. Light-Duty Vehicle Fleet" dated May 2007, produced herein as **Exhibit R-5**;

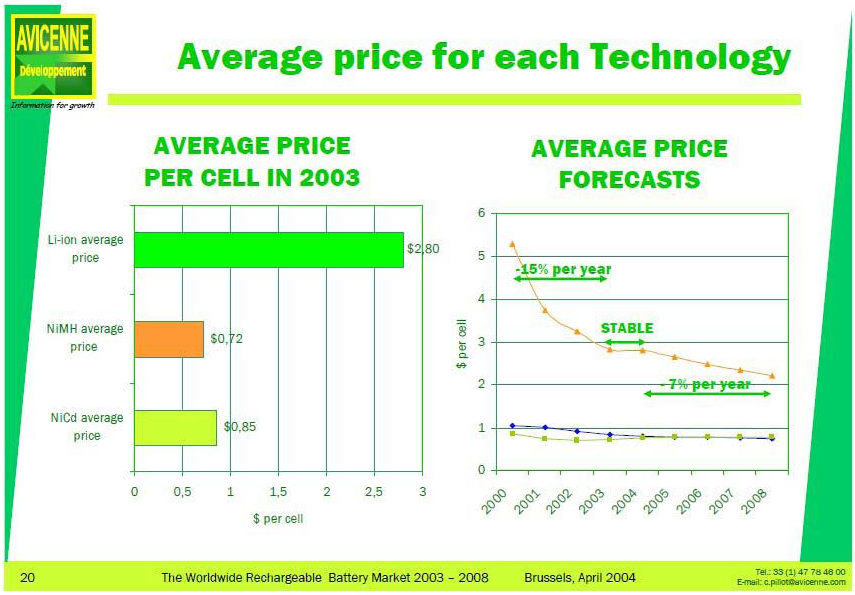
71. As illustrated in the graph below, which represents production figures for Lithium Ion Rechargeable Battery cells manufactured by Japanese manufacturers (responsible for the majority share of global production throughout this decade), the predicted expansion in the production volume of Lithium Ion Rechargeable Batteries did indeed materialize. Batteries produced in Japan more than tripled from just below 34 million units in January 2001, to almost 118 million units in July 2011. The power provided by these technologically improved batteries increased twice as fast, by a factor of almost six over the same period from just over 34 million amp-hours ("Ah"), to over 200 million Ah in July 2011;

Increase in Production Volumes for Li-Ion Batteries in Japan 1000's of Units and Ah



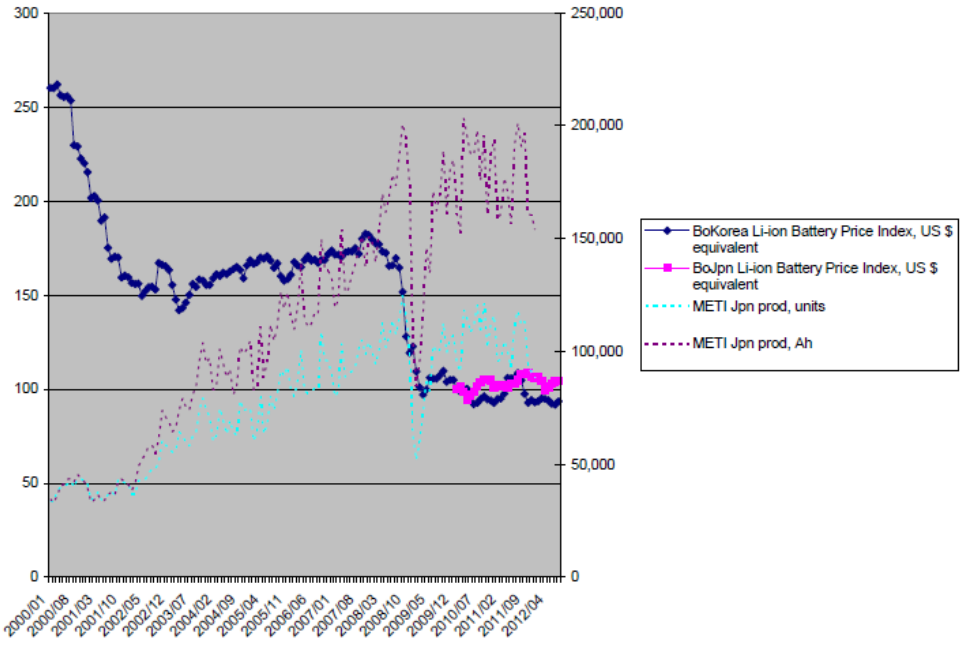
72. Thus, as is illustrated below, analysts were confident in predicting continuing price declines in Lithium Ion Rechargeable Batteries at the beginning of this decade. Basic economic theory supports the notion that these rapidly increasing volumes of production should have been associated with continuing price declines for Lithium Ion Rechargeable Batteries in a competitive market. After sharp price declines prior to 2002 and, flat prices in 2003, industry analysts continued to predict continued annual 7% declines in Lithium Ion Rechargeable Battery prices after 2003. However, these continuing price declines predicted by both technologists and market analysts did not materialize because of the formation of the price-fixing cartel alleged in this action. The interruption of this trend in 2003 was viewed merely as a temporary deviation from the expected trend, rather than the beginning of a collusive effort by producers to prevent further declines in prices;

Historical and Forecast Prices for Batteries, April 2004



73. As illustrated below, these trends in pricing are evident in the official government producer price index for Lithium Ion Rechargeable Batteries constructed by the Bank of Korea, the second most important location for Lithium Ion Rechargeable Batteries production (after Japan, which did not start producing a Lithium Ion Rechargeable Batteries price index until 2010). A price index, unlike an average unit value for batteries, controls for changes in mix or size and qualities of batteries being produced;

Lithium-Ion Battery Price Indexes, January 2010



74. The above graph depicts that after the sharp decline in prices beginning in early 2000 (triggered by entry of Korean producers into the market as described above in paragraphs 61-62), the cartel members managed to arrest any continuing decline in Lithium Ion Rechargeable Battery prices and, defying industry expectations, even increased prices, over a five-year period, from early 2002 through early 2008. This effort was highly successful in not only reducing the rate of decline, but actually elevating Lithium Ion Rechargeable Battery prices until the global recession struck in 2008. At that point, as markets for the mobile consumer electronics and information technology products reliant on the use of Lithium Ion Rechargeable Batteries crashed, prices started to tumble sharply once again, at an even steeper rate than had been triggered by the Korean entry back in early 2000;

(3) Respondents' Pricing and Production Levels in Response to the Global Economic Crisis in 2008 Further Supports the Existence of the Conspiracy

75. When the global recession reduced demand for the devices which use Lithium Ion Rechargeable Batteries, prices for these batteries also dropped accordingly. In fact, prices for Lithium Ion rechargeable Batteries fell roughly 34% from August 2008 through January 2009. Faced with rapidly decreasing prices during this time, the cartel members sharply cut back production of Lithium Ion Rechargeable Batteries in an effort to curtail the price decline. The Japanese cartel members radically cut production from 125 million units per month in September of 2008, to 52 million units per month in January of 2009, engineering a reduction in output of 58%, over a period of just four (4) months! Then, just five (5) months later, Japanese production shot back up to near pre-economic crisis levels to approximately 103 million units per month;

76. The Respondents' near 60% reduction in output successfully arrested further decline in prices, while the continuing restraint in not resuming production growth after 2008 successfully stabilized prices at a roughly constant level and stopped any further price declines;

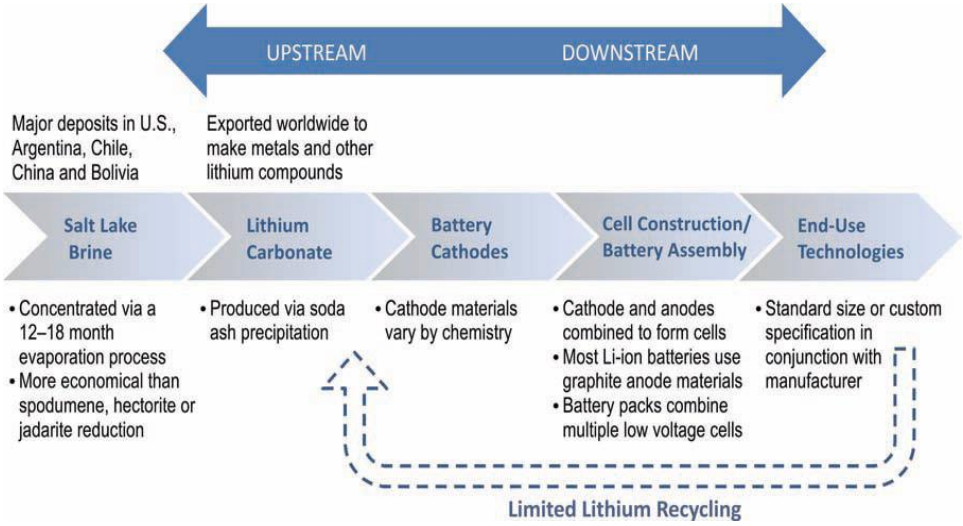
77. Economic principles teach that when producers are behaving competitively, they expand output to where price just covers the incremental or marginal cost of the last unit produced. The Respondents' decrease in production by 58% – only to increase output five (5) months later to nearly the same production levels (while holding prices the same) – is simply inconceivably the result of competitive forces;

78. This production and pricing behavior is better (more plausibly) explained by the existence of an anti-competitive agreement, because when the Respondents raised production a mere five (5) months later, *they maintained*

prices at the same level as before the reduction in output. In other words, the Respondents' production and pricing behavior would only be consistent with normal competition if incremental production costs had somehow been cut by a huge amount – 34% – over the intervening five (5) months. This could then possibly support an inference of competitive prices remaining at the same levels when production returned to nearly the same levels. But as illustrated below, input costs for Lithium Ion Rechargeable Batteries do not explain the Respondents' pricing and production behavior;

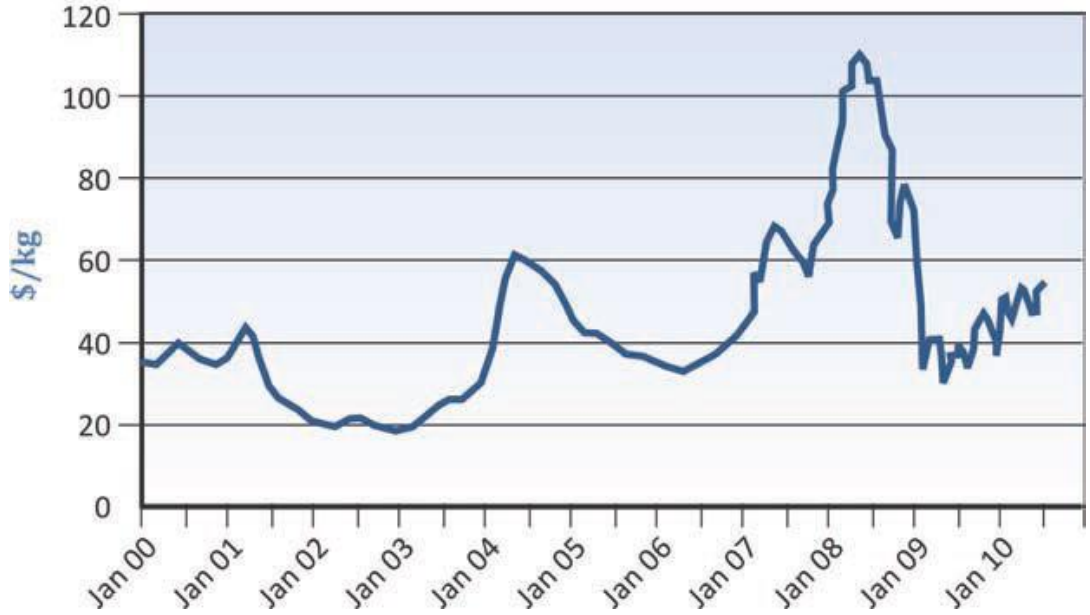
79. The two (2) most important raw materials used to manufacture Lithium Ion Rechargeable Batteries are lithium carbonate and cobalt. However, prices for these raw materials do not explain the Respondents' changes to Lithium Ion Rechargeable Battery prices and production levels;

Supply Chain for Lithium Ion Rechargeable Batteries



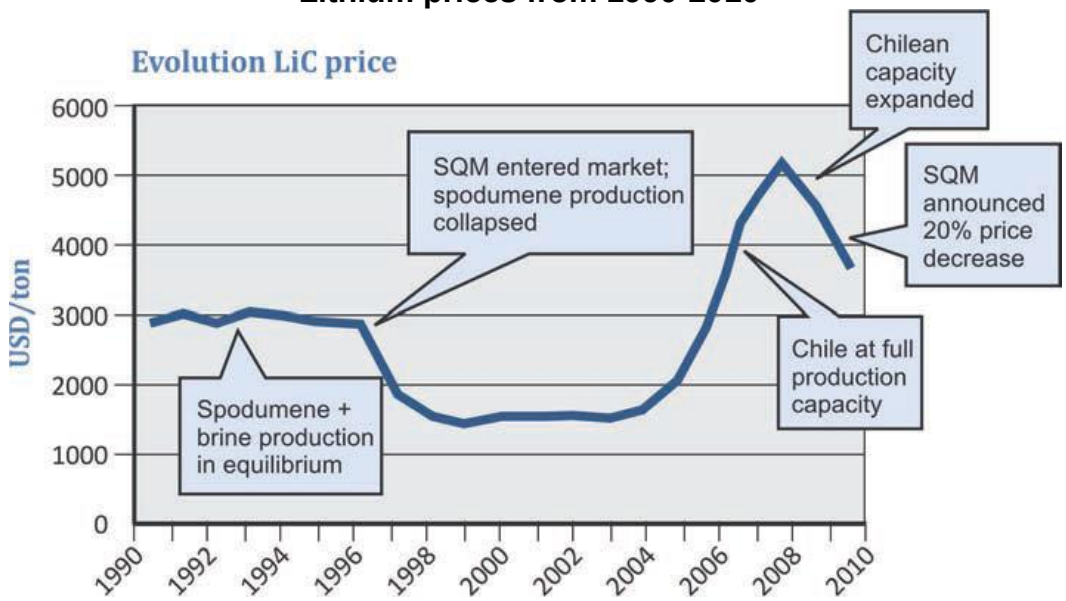
80. Significant increases in cobalt prices in 2004 and 2008 were not mirrored by the slight rate of increase associated with Lithium Ion Rechargeable Battery prices during the 2002 through early 2008 time period. And when the global recession hit in 2008, cobalt prices, like many other prices (including Lithium Ion Rechargeable Battery prices) fell. But when cobalt prices rose again from early 2009 through early 2010, Lithium Ion Rechargeable Batteries did not track these price increases and large declines in cobalt prices in 2004–2005 were not mirrored by the rate of increase of Lithium Ion Rechargeable Battery prices during that time frame;

Cobalt Prices from January 2000 to January 2010



81. Similarly, Lithium Ion Rechargeable Battery price changes are not readily explained by the price movements for another important raw material –lithium carbonate ("LiC"). The period from 2000-2004 basically saw flat LiC prices, while Lithium Ion Rechargeable Battery prices dropped precipitously through 2002, then grew at a very slow rate. Then, LiC prices more than doubled from 2005-2007 after this flat 2000-2004 period, whereas Lithium Ion Rechargeable Battery prices continued with a slight rate of growth very similar to the 2002-2004 period. LiC prices dropped sharply during 2009-2010, while Lithium Ion Rechargeable Battery prices were basically flat;

Lithium prices from 1990-2010



82. Further, the steep price swings of Lithium Ion Rechargeable Batteries are not likely explained by changes in costs for capital, labor and/or energy. There were no drastic six-month swings in these costs;

B) The structure and characteristics of the Lithium Ion Rechargeable Batteries market render the conspiracy even more plausible as they are conducive to anti-competitive price-fixing

83. In addition to Lithium Ion Rechargeable Battery pricing and production levels supporting the existence of a conspiracy, the structure and other characteristics of the Lithium Ion Rechargeable Battery market are conducive to a price-fixing agreement and have made collusion particularly attractive in this market. Specifically, the Lithium Ion Rechargeable Batteries market: (1) has high barriers to entry; (2) has inelasticity of demand; and (3) is highly concentrated;

(1) The Lithium Ion Rechargeable Batteries market has High Barriers to Entry for New Suppliers

84. A collusive agreement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supracompetitive pricing. Where, however, there are significant barriers to entry, new entrants are less likely. Thus barriers to entry help to facilitate the formation and maintenance of a cartel;

85. There are substantial barriers that preclude, reduce or make more difficult entry into the Lithium Ion Rechargeable Batteries market. A new entrant into the business would face costly and lengthy start-up costs, including multi-billion dollar costs associated with manufacturing plants and equipment, energy, transportation distribution infrastructure, skilled labour and long-standing customer relationships;

86. It has been estimated that the cost to build a plant to manufacture Lithium Ion Rechargeable Batteries that is capable of producing three million cells per month is approximately $3-$4 per cell. Thus, a plant making three million cells per month would cost approximately $108-$144 million to build. This estimate does not include the cost of research, development and engineering that produced the technology and equipment designs for the plant;

87. In addition to the sizeable costs of building a manufacturing plant, given the nature of the materials used in Lithium Ion Rechargeable Batteries, any new entrant will be required to comply with various environmental regulations in the jurisdiction in which such plant is built. Compliance with such regulations will require extensive testing and the receipt of government approvals, all of which will take many years;

(2) The Demand for Lithium Ion Rechargeable Batteries Is Inelastic Relative to Demand

88. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. Demand is said to be inelastic where customers have nowhere to turn to for an alternative, cheaper product of similar quality and must continue to purchase an item despite a price increase. Because of the lack of substitute products, the Lithium-Ion Rechargeable Batteries market should not see a large decrease in demand as prices rise. The market is inelastic in that an increase in prices does not result in a drop in revenue or demand;

89. Because the Lithium-Ion Rechargeable Batteries market is inelastic it is a market favorable for collusive activity. Such a market will allow the cartel to artificially raise prices without concern for a loss of demand by customers because of there are few viable substitutes for the product;

90. Demand for Lithium Ion Rechargeable Batteries is highly inelastic as there are no close substitutes and customers must purchase Lithium Ion Rechargeable Batteries as an essential part of their electronic devices, even if prices are kept at a supracompetitive level;

(3) The Market for Lithium Ion Rechargeable Batteries is Highly Concentrated

91. Simply put, market concentration facilitates collusion as the fewer firms that dominate the market, the more power they maintain. If an industry is divided into a large number of small firms, the current gain from cheating on a cartel (profits from sales captured from other cartel members through undercutting of the cartel-fixed price in the current time period, which risks causing the cartel to fall apart in the future) is large relative to the firm's possible gains from the cartel's continuing future success (the firm's future share of the total cartel profits if collusion were to continue successfully). Conversely, with a more concentrated industry, a greater share for a colluding firm in future cartel profits tips the balance in favor of continued collusion, and away from any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and gaining a transitory increase in market share;

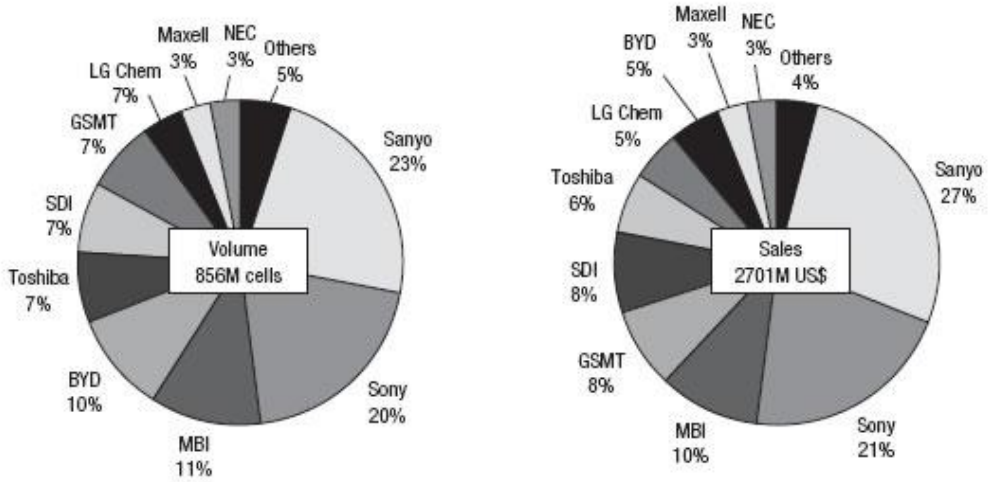
92. Empirical scholarship on cartels has primarily focused on an economics concentration measure called the CR4 – the four-firm concentration ratio, which is a measure of the total output produced in an industry by a given number of firms in the industry. The share of product sales accounted for by the four largest firms – as a diagnostic in analyzing what levels of concentration facilitate multi-firm collusion;

93. Concentration ratios range from 0 to 100 percent. The levels reach from no, low or medium to high to "total" concentration. No concentration, or a 0% concentration, signifies that there is no monopoly and the four (4) largest firms in the industry would not have any significant market share. Total concentration signifies an extremely concentrated oligopoly, i.e. a monopoly. A concentration ratio of 50% or more in the industry indicates that an oligopoly is likely;

94. A seminal published study of DOJ price-fixing investigations found that 76% of these cartels occurred in sectors with CR4 of 50% or greater, which was about double the average CR4 for manufacturing. Fully a quarter of these cartels therefore, were still organized in markets with a less than 50% share held by the four largest firms; (can't get book to reference this)

95. For the Lithium-Ion Rechargeable Batteries market, the four largest manufacturers accounted for more than 60% of the market for Lithium-Ion Rechargeable Batteries during the Class Period, and exceeded 80% in some years. The market share of the alleged cartel members never fell below 70% and reached almost 90% in some years. As is illustrated below, the market share for Lithium Ion Rechargeable Batteries is highly concentrated by Respondents Sony, Panasonic (including Sanyo and formerly known as MBI see paragraph 11), Toshiba, Samsung SDI, LG Chem, and Hitachi;

Figure A5.1. Li-ion Market Share for 2002



D) Government Investigations

96. A globally coordinated antitrust investigation is taking place in at least the United States and in Europe, aimed at suppliers of Lithium Ion Rechargeable Batteries;

97. In or around May 2011, Respondent Sony Corporation disclosed that its wholly-owned U.S. subsidiary, Sony Electronics, Inc., received a subpoena from the Antitrust Division of the DOJ concerning its ‘‘secondary batteries’’ business. Specifically, Sony disclosed that:

> In May 2011, Sony Corporation’s U.S. subsidiary. Sony Electronics, Inc., received a subpoena from the U.S. Department of Justice (“DOJ”) Antitrust Division seeking information about its secondary battery business. Sony understands that the DOJ and agencies outside the United States are investigating competition in the secondary batteries market. Based on the stage of the proceedings, it is not possible to estimate the amount of loss or range of possible loss, if any, that might result from adverse judgments, settlements or other resolution of this matter.

The whole as appears more fully from a copy of the Sony Corporation’s Quarterly Securities Report for the three months ended June 30, 2012, produced herein as **Exhibit R-6**;

98. On or about August 20, 2012, LG Chem confirmed that it also was the target of the investigation being conducted by the United States DOJ;

99. Other news articles have confirmed that in addition to Respondents Sony and LG Chem, Samsung SDI and Panasonic are also under investigation by the DOJ for price fixing with respect to the sale of rechargeable batteries;

100. It is significant that the Respondents’ anti-competitive behavior is the subject of a criminal grand jury investigation being conducted by the DOJ. In order for the DOJ to institute a grand jury investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed and prepare a detailed memorandum to that effect, the whole as appears more fully from a copy of Antitrust Grand Jury Practice Manual, produced herein as **Exhibit R-7**;

101. Following a review of that memorandum, the request for a grand jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the standard that a criminal violation may have occurred. In addition, the fact that the DOJ Antirust Division investigation is criminal, as opposed to civil, is significant as well. The Antitrust Division’s “Standards for Determining Whether to Proceed by Civil or Criminal Investigation” states: “[i]n general, current Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing, bid rigging, and customer and territorial allocations.” Accordingly, the existence of a criminal investigation into the market for Lithium Ion Rechargeable Batteries supports the existence of the conspiracy alleged in

this complaint, the whole as appears more fully from a copy of Antitrust Division Manual, produced herein as **Exhibit R-8**;

E) Respondents Have a History of Colluding to Fix Prices for Critical Components of Consumer Electronics

102. Many of the Respondents have a long history of criminal collusion and are either currently involved in worldwide investigations into other technology-related products or have been convicted of participating in price-fixing cartels involving technology-related products. Further, much of the illegal conduct which the Defendants or their affiliates have admitted to took place during the Class Period identified in this class action;

103. A notebook computer contains four (4) key pieces of hardware: a DRAM chip, an LCD screen, an ODD and a rechargeable lithium-ion battery. The Respondents here have pled guilty to fixing the prices of the first three (3) of these components and the DOJ is investigating whether to bring criminal price-fixing charges for the fourth component – Lithium Ion Rechargeable Batteries;

104. In or around October 2005, Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc. agreed to plead guilty and pay a $300 million fine for "participating in an international conspiracy to fix prices in the DRAM market ...." Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc. admitted that they participated in the conspiracy from approximately April 1, 1999 through June 15, 2002. In addition, seven (7) Samsung executives (Il Ung Kim, Sun Woo Lee, Yeongho Kang, Young Woo Lee, Thomas Quinn, Young Hwan Park, Young Bae Rha) agreed to plead guilty to participating in the conspiracy with respect to DRAM. Each agreed to pay a $250,000 criminal fine and serve a prison sentence in the United States ranging from seven to fourteen months, the whole as appears more fully from a copy of the Press Release entitled "Samsung Agrees to Plead Guilty and to Pay $300 Million Criminal Fine for Role in Price Fixing Conspiracy" dated October 13, 2005, from a copy of the Plea Agreement dated October 13, 2005, from a copy of the Plea Agreement dated May 1, 2007, from a copy of the Plea Agreement dated March 28, 2006, from a copy of the Plea Agreement dated October 5, 2006, from a copy of the Plea Agreement dated February 13, 2007, from a copy of the Press Release entitled "Three Samsung Executives Agree to Plead Guilty, Serve Jail Time for Participating in DRAM Price Fixing Conspiracy" dated March 22, 2006, from a copy of the Press Release entitled "Samsung Executive Agrees to Plead Guilty, Serve Jail Time for Participating in DRAM Price-Fixing Conspiracy" dated September 21, 2006, from a copy of the Press Release entitled "Sixth Samsung Executive Agrees to Plead Guilty to Participating in DRAM Price-Fixing Cartel" dated April 19, 2007 and from a copy of the Press Release

entitled “Samsung Korean Executive Agrees to Plead Guilty, Serve Jail Time for Participating in DRAM Price-Fixing Conspiracy” dated December 21, 2006, produced herein *en liasse* as **Exhibit R-9**;

105. Although it has not been publicly acknowledged, it is widely believed that Samsung is in the DOJ leniency program with respect to the DOJ’s investigation into the market for LCDs, meaning that it has admitted its participation in the cartel;

106. In November 2008, LG Display Co., Ltd., a wholly-owned Korean subsidiary of LG Electronics, agreed to plead guilty and pay a $400 million fine to the United States, in connection with its participation in a worldwide conspiracy to fix the prices of LCDs during the period from September 2001 through June 2006. At the time, the fine paid by LG was the second highest fine ever imposed by the Antitrust Division of the DOJ. In addition, in April 2009, an executive of LG Display, Bock Kwon, agreed to plead guilty to participating in the global LCD conspiracy from September 2001 through June 2006. Kwon, a Korean national, agreed to serve 12 months in a United States prison and pay a $30,000 criminal fine. Further, in February, 2009, another LG Display executive, Duk Mo Koo, agreed to plead guilty to participating in the global conspiracy with respect to LCDs from September 2001 through December 2006, the whole as appears more fully from a copy of the Press Release entitled “LG, Sharp, Chunghwa Agree to Plead Guilty, Pay Total of $585 Million in Fines for Participating in LCD Price-Fixing Conspiracies” dated November 12, 2008, from a copy of the Plea Agreement dated November 12, 2008 and from a copy of the Plea Agreement dated March 2, 2009, produced herein *en liasse* as **Exhibit R-10**;

107. In March 2009, Hitachi Displays, Ltd., a wholly owned Japanese subsidiary of Hitachi, Ltd., agreed to plead guilty and pay a $31 million fine for participating in a worldwide conspiracy to fix the prices of LCDs during the period April 1, 2001 through March 31, 2004, the whole as appears more fully from a copy of the Press Release entitled “Hitachi Displays Agrees to Plead Guilty and Pay $31 Million Fine for Participating in LCD Price-Fixing Conspiracy” dated March 2009 and from a copy of the Plea Agreement dated March 5, 2009, produced herein *en liasse* as **Exhibit R-11**;

108. In September 2011, an entity which is a joint venture between Hitachi, Ltd. and LG Electronics, Inc. – Hitachi-LG Data Storage, Inc. – agreed to plead guilty and pay a $21.1 million fine for participating in various conspiracies to rig bids and fix prices for ODDs during the period from June 2004 through September 2009. In addition, three (3) Hitachi-LG Data Storage executives also agreed to plead guilty for participating in the same conspiracy. In December 2011, Yong Kuen Park, Sang Hun Kim, and Sik Hur agreed to plead guilty for participating in the conspiracy with respect to ODDs during the period November 2005 through September 2009. All three agreed to serve

prison time in the United States and pay criminal fines, the whole as appears more fully from a copy of the Press Release entitled “Hitachi-LG Data Storage Inc. Agrees to Plead Guilty to Participating in Bid-Rigging and Price-Fixing Conspiracies Involving Optical Disk Drives” dated September 30, 2011, from a copy of the Plea Agreement dated October 27, 2011, from a copy of the Press Release entitled “Three Hitachi-LG Data Storage Executives Agree to Plead Guilty for Participating in Bid-Rigging and Price-Fixing Conspiracies Involving Optical Disk Drives” dated December 13, 2011, from a copy of the Plea Agreement dated April 17, 2012, from a copy of the Plea Agreement dated April 10, 2012, produced herein *en liasse* as **Exhibit R-12**;

109. The Respondents have also entered guilty pleas for fixing prices for other high-tech products;

110. In or around March 2011, Respondent Samsung SDI agreed to plead guilty and pay a $32 million fine for participating in a “global conspiracy to fix prices, reduce output, and allocate market share of color display tubes, a type of cathode ray tube used in computer monitors and other specialized applications ....” Samsung SDI admitted it participated in the conspiracy from approximately January 1997 through at least March 2006, the whole as appears more fully from a copy of the Press Release entitled “Samsung SDI Agrees to Plead Guilty in Color Display Tube Price-Fixing Conspiracy” dated March 18, 2011 and from a copy of the Amended Plea Agreement dated March 9, 2011, produced herein *en liasse* as **Exhibit R-13**;

111. In September 2010, Respondent Panasonic Corporation agreed to plead guilty and pay a $49.1 million fine for participating in a conspiracy to “suppress and eliminate competition by fixing prices to customers of household compressors ....” during the period October 14, 2004 through December 31, 2007, the whole as appears more fully from a copy of the Plea Agreement dated September 30, 2010 and from a copy of the Press Release entitled “Former Executives from Panasonic Corp., Whirlpool Corp. Subsidiary and Tecumseh Products Co. Subsidiary Indicted in Compressor Price-Fixing Conspiracy” dated September 27, 2011, produced herein *en liasse* as **Exhibit R-14**;

112. Clearly, the Respondents have a long and troubling history of engaging in criminal violations of antitrust laws;

F) <u>The Fault</u>

113. To formalize their agreement, combination, collusion, and/or conspiracy, Respondents:

(a) Participated in meetings, conversations and communications in the United States, in Japan, in Korea and elsewhere to discuss prices of Lithium Ion Rechargeable Batteries to be submitted in Canada and elsewhere;

(b) Agreed, during those meetings, conversations and communications, prices for Lithium Ion Rechargeable Batteries sold in Canada and elsewhere;

(c) Agreed, during those meetings, conversations and communications, to depress the supply of Lithium Ion Rechargeable Batteries;

(d) Agreed, during those meetings, conversations and communications, to coordinate prices for Lithium Ion Rechargeable Batteries sold in Canada and elsewhere;

(e) Sold Lithium Ion Rechargeable Batteries in Canada and elsewhere at collusive and non-competitive prices;

(f) Accepted payment for Lithium Ion Rechargeable Batteries at collusive and non-competitive prices;

(g) Engaged in meetings, conversations and communications in Canada and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing scheme; and

(h) Employed measures to keep their conduct secret;

114. The predominate purpose of the Respondents' conduct was:

(i) To harm the Petitioner and members of the class by requiring them to pay artificially high prices for Lithium Ion Rechargeable Batteries; and

(ii) To unlawfully increase their profits on the sale of Lithium Ion Rechargeable Batteries;

115. As a result of the Respondents ' price-fixing conspiracy:

(a) Price competition has been restrained or eliminated with respect to Lithium Ion Rechargeable Batteries;

(b) The prices of Lithium Ion Rechargeable Batteries have been fixed, raised, maintained, or stabilized at artificially inflated and non-competitive levels; and

(c) Direct and Indirect purchasers of Lithium Ion Rechargeable Batteries have been deprived of free and open competition;

(d) Competition between and among the Respondents and their co-conspirators in the sale of Lithium Ion Rechargeable Batteries has been unreasonably restrained;

116. Just like these other criminal conspiracies, the Respondents' conspiracy here successfully targeted yet again another key component of consumer electronic goods by raising prices for Lithium Ion Rechargeable Batteries, and in turn, the prices of Lithium Ion Rechargeable Battery Products;

117. By reason of the alleged violations, the Petitioners and the members of the Classes have sustained injury to their businesses or property, having paid higher prices for Lithium Ion Rechargeable Batteries and/or Lithium Ion Rechargeable Battery Products than they would have paid in the absence of the Respondents' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined;

118. The Respondents, when committing the acts as alleged herein, knew or ought to have known that Lithium Ion Rechargeable Batteries would be sold in Canada, including within the province of Quebec;

119. The Respondents conduct as alleged herein was intended to, and did in fact, cause the members of the class to suffer a prejudice in Canada, including in the province of Quebec, by means of having to pay artificially inflated prices for Lithium Ion Rechargeable Batteries;

120. Petitioner contends that the Respondents failed in their duties, both legal and statutory, notably with respect to sections 45, 46 (1), 47, 61 of the Federal Competition Act, thereby rendering them liable to pay damages under section 36 of the Federal Competition Act;

121. In addition, Petitioner alleges that the Respondents failed in their obligations as provided for in the Civil Code of Quebec, more specifically with respect to the duty to act in good faith and to not cause damage to others;

G) <u>The Foreign Procedures</u>

122. Numerous class action have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of said Complaints, produced herein *en liasse* as **Exhibit R-16**;

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

123. Petitioner purchased in Quebec over the last few years numerous Lithium Ion Rechargeable Battery Products, including, but not limited to: an Apple iPhone 4s, a Samsung notebook computer SF401 and a Blackberry Curve 8520;

124. Due to the Respondents' conduct, Petitioner was deprived of the benefit of free market competition, and because of this, he was charged a higher price for the products that he purchased;

125. Petitioner has suffered damages in the amount of the difference between the artificially inflated price that he paid for said products and the price that he should have paid in a free market system;

126. The conduct of the Respondents was kept a secret and was not known to the Respondent at the time that he purchased said products nor could it have been discovered, even through the exercise of reasonable diligence;

127. Petitioner has since discovered that this situation is being investigated by the United States Department of Justice and that several class actions have been instituted in the United States due to this issue;

128. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

129. In consequence of the foregoing, Petitioner is justified in claiming damages;

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

130. Every member of the class has purchased a Lithium Ion Rechargeable Battery and/or a Lithium Ion Rechargeable Battery Product;

131. Each member of the class has paid an artificially inflated price for their Lithium Ion Rechargeable Batteries or Lithium Ion Rechargeable Battery Products due to the collusion in the industry and its impact on competition;

132. Every member of the class has suffered damages equivalent to the difference between the artificially inflated price that they paid for a Lithium Ion Rechargeable Battery and/or a Lithium Ion Rechargeable Battery Product and the price that they should have paid in a free market system;

133. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;

134. In consequence of the foregoing, members of the class are justified in claiming damages;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

135. Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products are widespread in Quebec and Canada;

136. Petitioner is unaware of the specific number of persons who purchased Lithium Ion Rechargeable Batteries and/or Lithium Ion Rechargeable Battery Products, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). The Respondents, on the other hand, should have this information readily available to them;

137. Class members are numerous and are scattered across the entire province and country;

138. 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 Respondent. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;

139. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;

140. 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 in one action;

141. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioner wishes to have adjudicated upon by this class action

142. Individual questions, if any, pale by comparison to the numerous common questions that predominate;

143. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

144. The recourses of the members raise identical, similar or related questions of fact or law, namely:

a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Lithium Ion Rechargeable Batteries?

b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?

c) Did the Respondents' conduct cause the prices of Lithium Ion Rechargeable Batteries to be sold at artificially inflated and non-competitive levels?

d) Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

e) Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

145. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

146. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages and an injunctive remedy;

147. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms 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 interest of the members of the class;

A) <u>The Petitioner requests that he be attributed the status of representative of the Class</u>

148. Petitioner is a member of the class;

149. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier 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 of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

150. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

151. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

152. Petitioner, with the assistance of his 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;

153. Petitioner is in good faith and has instituted this action for the sole goal of having his 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 Respondent's conduct;

154. Petitioner understands the nature of the action;

155. Petitioner's interests are not antagonistic to those of other members of the class;

B) <u>The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal</u>

156. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

157. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

158. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- All residents in Canada who purchased either a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent and/or a Lithium Ion Rechargeable Battery Product containing a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent, whether directly or indirectly, during the period January 1, 2002 to the present (the "Class Period"), or any other group to be determined by the Court;

  However, a legal person established for a private interest, a partnership or an association is not a member of a group unless, at all times since November 5th 2011, not more than 50 persons bound to it by contract of employment were under its direction or control and if it is dealing at arm's length with the representative of the group;

Alternately (or as a subclass)

- all residents in Quebec who purchased Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent and/or a Lithium Ion Rechargeable Battery Product containing a Lithium Ion Rechargeable Battery containing a cell manufactured by a Respondent, whether directly or indirectly, during the period January 1, 2002 to the present (the "Class Period"), or any other group to be determined by the Court;

  However, a legal person established for a private interest, a partnership or an association is not a member of a group unless, at all times since November 5th 2011, not more than 50 persons bound to it by contract of employment were under its direction or control, and if it is dealing at arm's length with the representative of the group;

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

a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Lithium Ion Rechargeable Batteries?

b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?

c) Did the Respondents' conduct cause the prices of Lithium Ion Rechargeable Batteries to be sold at artificially inflated and non-competitive levels?

d) Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

e) Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

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

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms 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 interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, 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 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 article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondent's website with a link stating "Notice to purchasers of Lithium Ion Rechargeable Batteries and the Products that Contain them including, but not limited to digital cameras, notebook computers, mobile telephones, camcorders, cell phones, personal digital assistants, tablet computers, handheld game consoles, power tools";

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 publications fees.

Montreal, November 5, 2012

(s) Jeff Orenstein

_____

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner