

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, Plaintiff, v. NIPPON SEIKI CO. LTD., N.S. INTERNATIONAL LTD., NEW SABINA INDUSTRIES, INC., Defendants.	COMPLAINT FOR DAMAGES, CIVIL PENALTIES, INJUNCTIVE RELIEF DEMAND FOR JURY TRIAL
---	---

Plaintiff, the State of Florida, through the Attorney General and the Department of Legal Affairs, files this Complaint against Defendants Nippon Seiki Co. Ltd., N.S. International Ltd., and New Sabina Industries, Inc., (hereafter “Defendants” or “Nippon Seiki”), and alleges:

I. NATURE OF THE ACTION

1. The State of Florida brings this action against the Defendants under the Sherman Act, the Clayton Act, the Florida Antitrust Act, and the Florida Deceptive and Unfair Trade Practices Act on behalf of itself and its governmental entities and on behalf of businesses and consumers within Florida. Plaintiff demands a trial by jury of all triable issues as stated herein.

2. Defendants and their co-conspirators conspired to suppress and eliminate competition by fixing the prices of instrument panel clusters. These price-fixed parts were installed in automobiles purchased by Plaintiff, as well as businesses and consumers within Florida (hereafter “IPC automobiles”).

3. Due to Defendants unlawful conduct, Florida government entities and Florida businesses and consumers have paid higher-than-competitive prices for instrument panel clusters

and IPC automobiles.

4. Defendants' conspiracy affected millions of dollars of commerce.

5. The relevant time period for the unlawful conduct complained of herein is December 1, 2002, to the present ("Relevant Period").

6. The Attorney General of Florida has reviewed this matter and determined that an enforcement action serves the public interest.

II. JURISDICTION AND VENUE

7. This is an antitrust action for damages, permanent injunctive relief, civil penalties, and attorneys' fees pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, as well as sections 542 and 501, Florida Statutes.

8. This Court has original jurisdiction over the federal antitrust claim pursuant to 28 U.S.C. § 1331 and § 1337. This Court has subject matter jurisdiction over the state claims pursuant to 28 U.S.C. § 1367 because these claims are so related to the federal claim that they form part of the same case or controversy that would ordinarily be tried in one judicial proceeding. The exercise of supplemental jurisdiction avoids unnecessary duplication and multiplicity of actions and is in the interest of judicial economy, convenience, and fairness.

9. Venue is proper in the United States District Court, Eastern District of Michigan, under 15 U.S.C. § 22 and 28 U.S.C. § 1391. Each Defendant transacts business, committed an illegal or tortious act, or is found in this district, and a substantial part of the events giving rise to the claims arose in this district.

III. PARTIES

A. Plaintiff

10. The State of Florida is authorized to file Count I under 15 U.S.C. §§ 15 and 26 to enjoin Defendants from the violations alleged herein.

11. The Attorney General of Florida is the chief legal officer of Florida and the enforcement authority of Chapter 542, Florida Statutes, and is authorized to file Count II seeking the full range of relief afforded by Chapter 542, Florida Statutes.

12. The Department of Legal Affairs of Florida is the enforcing authority for violations of Chapter 501, Florida Statutes, and has the authority to file Count III to enjoin any person who has violated the Florida Deceptive and Unfair Trade Practices Act and to seek actual damages on behalf of one or more individual consumers, businesses, and governmental entities in Florida, including direct and indirect purchases.

B. Defendants

13. Nippon Seiki Co. Ltd. is a corporation organized and existing under the laws of Japan, with its principal place of business in Nagaoka, Japan.

14. N.S. International Ltd. is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in Troy, Michigan.

15. New Sabina Industries, Inc. is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Sabina, Ohio.

IV. CO-CONSPIRATORS AND AGENTS

16. Various other persons, including persons unknown to the State of Florida at the present time, conspired with the Defendants in the violations of law alleged in this Complaint. These co-conspirators engaged in conduct and made statements in furtherance of the conspiracy.

The State of Florida reserves the right to name some or all of these persons as Defendants at a later date.

17. Any reference in this Complaint to any act, deed, or transaction by a corporation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

18. Defendants are also liable for acts done in furtherance of the alleged conspiracy by companies they acquired through mergers or acquisitions.

19. Each of the Defendants named herein acted as the agent or joint venture of or for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

V. BACKGROUND

A. Instrument Panel Clusters

20. Instrument panel clusters, also called meters, are the mounted array of instruments and gauges housed in front of the driver of an automobile.

21. Defendants manufactured and supplied instrument panel clusters to automobile manufacturers for installation in automobiles that were either manufactured in the United States for sale in the United States or in automobiles that were manufactured in Japan for export and sale in the United States.

22. Automobile manufacturers purchase instrument panel clusters by issuing Requests for Quotation ("RFQs") to suppliers, including Defendants. These RFQs invite the suppliers to bid on providing the instrument panel clusters to the automobile manufacturer. RFQs are issued and supplied on an individual model-by-model basis. These suppliers then submit quotations to

the automobile manufacturers who will award the business to provide the instrument panel clusters for the lifespan of the automobile, which is usually four to six years.

23. Upon information and belief, Defendants have sold instrument panel clusters to multiple automobile manufacturers, including, for example, Honda, Subaru, General Motors and BMW. These and other manufacturers installed them in automobiles that were sold in the State of Florida.

B. Government Investigations

24. The United States Department of Justice, as well as authorities in Europe and Japan, began a global, industry-wide investigation into possible violations of the antitrust laws in 2010 in the auto parts industry. The complete scope of the investigation is still unknown.

25. Based on published reports, these governments have conducted raids at suspected companies as well as issued subpoenas for the production of documents and records involving dozens of companies around the world.

26. The investigation is still on-going but has been described by the Department of Justice as the largest antitrust investigation the Department has ever undertaken.

27. To date, the Department of Justice has obtained fines from 9 companies resulting from its auto parts investigation in excess of \$800,000,000. Fines have also been issued by the Japanese Fair Trade Commission and other fines are anticipated by the European authorities. In the United States, twelve individuals have pled guilty to committing criminal antitrust violations. These individuals are collectively serving almost 16 years in prison.

28. Several instrument panel cluster manufacturers, including Defendants, have pled guilty to committing antitrust violations. On November 8, 2012, Nippon Seiki Co., Ltd. entered into a plea agreement whereby it agreed to plead guilty to one count for violating the Sherman

Act and agreed to pay a fine of \$1,000,000.

29. In the plea agreement, Nippon Seiki admitted to participation in a conspiracy and agreement with other persons and companies who were engaged in the manufacture and sale of instrument panel clusters. Defendants admitted that the primary purpose of the conspiracy and agreement was to rig bids and to fix, stabilize, and maintain the prices of, instrument panel clusters.

30. Nippon Seiki also admitted to engaging in discussions and attending meetings with its co-conspirators involved in the manufacture and sale of instrument panel clusters. During these meetings, Defendants and its co-conspirators agreed to the following: (1) allocate the supply of instrument panel clusters sold to automobile manufacturers; (2) rig bids quoted to an automobile manufacturer for instrument panel clusters; and (3) fix, stabilize, and maintain the prices of instrument panel clusters.

VI. TRADE AND COMMERCE

31. Throughout the period of time covered by this Complaint, Defendants and their co-conspirators engaged in the business of designing, manufacturing, selling and/or distributing instrument panel clusters in a continuous and uninterrupted flow of interstate and foreign trade and commerce to businesses and consumers located in Florida and the United States.

32. Defendants' and their co-conspirators' unlawful activities took place within the flow of and substantially affected interstate trade and commerce, as well as trade and commerce within the State of Florida. Defendants' and their co-conspirators' conduct had a direct, substantial, and reasonably foreseeable effect on domestic interstate commerce within the United States, including Florida. Defendants knew and expected that their products would be installed in automobiles that would be sold in the United States and in the State of Florida. These effects

proximately caused the domestic injuries alleged in this Complaint because governmental purchasers, businesses, consumers, and other end-payors paid more for automobiles than they would have absent the conspiracy.

33. Defendants' and their co-conspirators' conspiracy specifically targeted the United States market and had a direct, substantial, and reasonably foreseeable effect on United States commerce. There is a domestic injury here that is concrete, quantifiable, and directly traceable back to the Defendants' and their co-conspirators' anticompetitive conduct.

VII. THE PASS-THROUGH OF OVERCHARGES TO CONSUMERS

34. Defendants' and their co-conspirators' conspiracy to raise, fix, maintain, and/or stabilize the price of instrument panel clusters at artificial levels resulted in harm to the State of Florida and its consumers, businesses and governmental entities because the conspiracy resulted in higher prices for automobiles than they would have paid in the absence of Defendants' and their co-conspirators' conspiracy. The entire overcharge at issue was passed on to the State of Florida and its consumers, businesses and governmental entities.

VIII. FRAUDULENT CONCEALMENT/EQUITABLE ESTOPPEL

35. Fraudulent concealment, a species of equitable estoppel in Florida, precludes Defendants from asserting a statute of limitations defense in this matter.

36. To the extent that Defendants claim that the State of Florida's filing is late, Defendants bear responsibility for the late filing.

37. Defendants and their co-conspirators affirmatively and fraudulently concealed the existence of the conspiracy alleged in this Complaint.

38. The State of Florida exercised due diligence to learn of its legal rights and, despite such diligence, failed to uncover the possible existence of the violations alleged in this

Complaint.

39. The Department of Justice began an investigation into price-fixing in the auto parts industry in August of 2008 but the existence of the investigation remained a secret until February of 2010 when the Department of Justice conducted raids against some non-defendant auto-part manufacturers.

40. Although the existence of the investigation was disclosed at that time, the complete scope of products and companies involved was not disclosed and remains a secret to date.

41. Defendants' role in the auto price fixing investigation was kept secret and not publicly known until news of its plea deal was announced on or about August 28, 2012.

42. Defendants and their co-conspirators fraudulently concealed the existence of the violations alleged in this Complaint.

43. Defendants were able to keep the conspiracy a secret by agreeing to meet at locations where the conspiracy was less likely to be detected.

44. Defendants engaged in a successful, illegal price-fixing conspiracy that by its nature was inherently self-concealing.

45. Defendants, as charged in the criminal Information, also used code names to keep their conduct secret.

46. The affirmative acts of Defendants and their co-conspirators alleged in this Complaint were wrongfully concealed and were carried out in a manner that precluded detection. Furthermore, Defendants and their co-conspirators knew their activities were illegal.

47. In the context of the circumstances surrounding Defendants' and their co-conspirators' pricing practices, Defendants' and their co-conspirators' acts of concealment were

more than sufficient to preclude suspicion by a reasonable person that Defendants' and their co-conspirators' pricing was not the result of competition.

48. The State of Florida could not have discovered the alleged contract, conspiracy or combination at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to fraudulently conceal and to avoid detection of their contract, combination or conspiracy.

49. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, the State of Florida had no knowledge of the alleged conspiracy or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed until reports of the investigations were first publicly disseminated.

50. Upon having reasonable suspicion of the existence of Defendants' and their co-conspirators' conspiracy, the State of Florida exercised due diligence by promptly investigating, to the extent permitted by law, the facts giving rise to the claims asserted herein.

51. None of the facts or information available to the State of Florida prior to August 28, 2012, if investigated with reasonable diligence, could or would have led to the discovery of Defendants' conspiracy alleged herein prior to August 28, 2012.

52. As a result of Defendants' and their co-conspirators' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims the State of Florida has as a result of the anticompetitive conduct alleged in this Complaint.

IX. VIOLATIONS ALLEGED

COUNT I

(Violation of Section One of the Sherman Act)

53. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

54. Defendants' acts violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and the State of Florida is entitled to relief resulting from the Defendants' conduct as stated above.

55. Defendants knowingly – that is, voluntarily and intentionally – entered into a continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the prices charged for instrument panel clusters and IPC automobiles during the relevant period, continuing through the filing of this Complaint.

56. Florida government entities and Florida businesses and consumers have been injured and will continue to be injured in their business by paying more for instrument panel clusters and IPC automobiles purchased indirectly from the Defendants and their co-conspirators than they would have paid in the absence of the conspiracy.

57. As a direct result and proximate result of the Defendants' conduct, Florida government entities and Florida businesses and consumers have been damaged and will continue to be damaged by paying supra-competitive prices that they would not had to pay in the in the absence of the Defendants' conduct as alleged herein.

58. Unless permanently restrained and enjoined, Defendants will continue to engage in conduct that restricts competition for instrument panel clusters and IPC automobiles.

COUNT II

(Violation of the Florida Antitrust Act)

59. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

60. This is an action that alleges a violation of the Florida Antitrust Act, Section 542.18, Florida Statutes, and the State of Florida is entitled to relief resulting from the Defendants' conduct as stated above.

61. The State of Florida also seeks the maximum civil penalties under Section 542.21, Florida Statutes, for each contract, combination, or conspiracy in restraint of trade or commerce.

62. Defendants knowingly – that is, voluntarily and intentionally – entered into a continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the prices charged for instrument panel clusters during the relevant period, continuing through the filing of this Complaint.

63. Florida government entities and Florida businesses and consumers have been injured and will continue to be injured in their business by paying more for instrument panel clusters and IPC automobiles purchased indirectly from the Defendants and their co-conspirators than they would have paid in the absence of the conspiracy.

64. As a direct result and proximate result of the Defendants' conduct, Florida government entities and Florida businesses and consumers have been damaged and will continue to be damaged by paying supra-competitive prices that they would not had to pay in the in the absence of the Defendants' conduct as alleged herein.

65. The sale of instrument panel clusters involves trade or commerce within the meaning of the Florida Antitrust Act.

COUNT III

(Violation of the Florida Deceptive and Unfair Trade Practices Act)

66. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

67. This is an action that alleges a violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501.204, Florida Statutes. The State of Florida seeks damages, pursuant to Section 501.207(1)(c), Florida Statutes, for all purchases of instrument panel clusters and IPC automobiles by governmental entities, end-user businesses, and individual consumers in the state of Florida. The State of Florida also seeks the maximum civil penalties under Sections 501.2075 and 501.2077, Florida Statutes, for each violation of the Florida Deceptive and Unfair Trade Practices Act.

68. The sale of instrument panel clusters involves trade or commerce within the meaning of the Florida Deceptive and Unfair Trade Practices Act.

69. Defendants' actions offend established public policy and are immoral, unethical, oppressive, unscrupulous, or substantially injurious to Florida governmental entities, to businesses in the state of Florida, and to individual consumers in the state of Florida. Thus, Defendants' unfair methods of competition and unconscionable acts and practices in the conduct of trade and commerce violate Section 501.204, Florida Statutes.

X. PRAYER FOR RELIEF

70. Accordingly, the State of Florida requests that this Court:

- a. Adjudge and decree that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. §1;
- b. Adjudge and decree that Defendants violated Section 542.18, Florida

Statutes;

- c. Adjudge and decree that Defendants violated Section 501.204, Florida

Statutes;

- d. Enjoin and restrain, pursuant to federal and state law, Defendants, their affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from continuing to engage in any anticompetitive conduct and from adopting in the future any practice, plan, program, or device having a similar purpose or effect to the anticompetitive actions set forth above;

- e. Award to the State of Florida any other equitable relief as the Court finds appropriate to redress Defendants' violations of federal or state law to restore competition;

- f. Award to the State of Florida damages to the maximum amount permitted under the law;

- g. Award to the State of Florida any other statutory damages, restitution or equitable disgorgement for the benefit of the state and its consumers, as appropriate;

- h. Award to the State of Florida the maximum civil penalties under Section 542.21, Florida Statutes, for each contract, combination, or conspiracy in restraint of trade or commerce;

- i. Award to the State of Florida the maximum civil penalties under Sections 501.2075 and 501.2077, Florida Statutes, for each violation of the Florida Deceptive and Unfair Trade Practices Act;

- j. Award to the State of Florida its costs, including reasonable attorneys'

fees and, as may be appropriate under the law, expert witness fees and investigation costs; and

k. Order any other relief that this Court deems proper.

XI. DEMAND FOR JURY TRIAL

71. The State of Florida demands a trial by jury of all issues so triable in this case.

Respectfully submitted this 9th day of May, 2013.

The State of Florida

PAMELA JO BONDI
Attorney General
STATE OF FLORIDA

s/ R. Scott Palmer
PATRICIA A. CONNERS (Florida Bar No. 361275)
Associate Deputy Attorney General
Trish.Conners@myfloridalegal.com
R. SCOTT PALMER (Florida Bar No. 220353)
Scott.Palmer@myfloridalegal.com
GREGORY S. SLEMP (Florida State Bar No. 478865)
Greg.Slemp@myfloridalegal.com
TIMOTHY FRASER (Florida Bar No. 957321)
Timothy.Fraser@myfloridalegal.com
Office of the Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, FL 32399-1050
Tel: (850) 414-3300
Fax: (850) 488-9134

Attorneys for Plaintiff State of Florida