

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

GOSSETT MOTOR CARS, INC., d/b/a
GOSSETT KIA; GOSSETT MOTOR CARS,
INC., d/b/a GOSSETT MAZDA;
GOSSETT MOTOR CARS, INC., d/b/a
GOSSETT HYUNDAI; GOSSETT MOTOR
CARS, INC., d/b/a GOSSETT MITSUBISHI;
GOSSETT MOTOR CARS, INC., d/b/a
GOSSETT AUDI; GOSSETT MOTOR CARS,
INC., d/b/a GOSSETT VOLKSWAGEN;
GOSSETT MOTOR CARS, INC., d/b/a
GOSSETT PORSCHE; GOSSETT MOTOR
CARS, INC., d/b/a GOSSETT CHRYSLER/
JEEP/DODGE; GOSSETT MOTOR CARS,
INC., d/b/a GOSSETT FIAT OF MEMPHIS;
WE 3 GOSSETT, LLC, d/b/a GOSSETT
VOLKSWAGEN GERMANTOWN;
WE 3 GOSSETT, d/b/a GOSSETT KIA SOUTH;
WE 3 GOSSETT, d/b/a GOSSETT HYUNDAI
SOUTH; WE 3 GOSSETT d/b/a GOSSETT FIAT;
AUTORAMA ,INC., d/b/a MERCEDES BENZ
OF MEMPHIS, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

DOCKET NO.
JURY DEMANDED
CLASS ACTION

COMPANIA SUD AMERICANA de VAPORES S.A.,
(CSAV), a Chilean Corporation; and
JOHN DOE CO-CONSPIRATORS 1-5

Defendants.

COMPLAINT – CLASS ACTION

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION:

Come now your Plaintiffs, by and through their attorneys of record, Heaton and Moore, P.C., William W. Heaton and Robert W. Moore, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for their Complaint would state as follows:

I. INTRODUCTION

1. Plaintiffs bring this action individually, and on behalf of class of car dealerships consisting of all persons and entities in Tennessee, who purchased for retail new and used automobiles and trucks ("Tennessee Auto Dealer Class"), which were shipped on ocean vessels by Defendant and other co-conspirators, starting at least as early as January 2000, through the present (the "Class Period"), for sale in Tennessee.

2. This lawsuit involves an anticompetitive conspiracy between Defendant and other co-conspirators to illegally manipulate, agree, fix and maintain prices of "roll-on, roll-off" vehicles transported for retail in Tennessee by Tennessee automotive dealers. Defendants and their co-conspirators agreed to and did in fact fix, raise, maintain and stabilize shipping prices for new and used vehicles that would be sold in Tennessee. Defendant and co-conspirators also conspired to fix and allocate customers and the market for shipping of new and used vehicles from the ocean through the mainland and intended distribution areas, such as Tennessee.

3. Defendant has engaged in an unfair and unlawful conspiracy to artificially inflate the price of ocean transported shipping costs for cars and trucks sold in Tennessee. Defendant and other co-conspirators quit competing with one another in favor of an agreement among themselves to cooperate and coordinate in the shipping of new and used automobiles and trucks, which were ultimately transported and intended to be sold in Tennessee.

4. Through these illegal acts, Plaintiffs and the Tennessee Auto Dealer Class paid and continue to pay artificially inflated prices for shipping automobiles and trucks that exceeded

the amount they would have paid if a competitive market was available for the shipping and transportation of vehicles for resale in Tennessee. Plaintiffs and the Tennessee Auto Dealer Class suffered the type of injury that Tennessee statutes are designed to prevent and protect Tennessee businesses from illegitimate, unfair, deceptive and unconscionable business practices that artificially inflate the transportation and shipping cost of an automobile or truck for Tennessee dealerships.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C.A. §1332(a)(1) in that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

6. Venue is proper in this Court pursuant to 28 U.S.C.A. §1391(b)(2) in that a substantial part of the property that is the subject of the action is situated in Memphis, Shelby County, Tennessee.

7. Venue is proper in this Court pursuant to 28 U.S.C.A. §1391(c) in that the Defendant Compania Sud Americana De Vapores S.A., (CSAV), is not a resident of the United States.

III. PARTIES

A. PLAINTIFFS

8. Plaintiff Gossett Motor Cars, Inc., is a Delaware corporation, registered to do business in Tennessee, with its principal place of business at 1900 Covington Pike Road, Memphis, Shelby County, Tennessee. Plaintiff Gossett Motor Cars, Inc., does business under the follow assumed names and locations:

Gossett Fiat of Memphis, 2670 Germantown Parkway, Memphis, Tennessee

Gossett Kia, 1900 Covington Pike Road, Memphis, Tennessee

Gossett Mazda, 1870 Covington Pike Road, Memphis, Tennessee

Gossett Hyundai, 1870 Covington Pike Road, Memphis, Tennessee

Gossett Mitsubishi, 1870 Covington Pike Road, Memphis, Tennessee

Gossett Audi, 1875 Covington Pike Road, Memphis, Tennessee

Gossett Volkswagen, 1875 Covington Pike Road, Memphis, Tennessee

Gossett Porsche, 1875 Covington Pike Road, Memphis, Tennessee

Gossett Chrysler/Jeep/Dodge, 1901 Covington Pike Road, Memphis, Tennessee

and conducts business throughout several states. Plaintiff Gossett Motor Cars, Inc. purchases and sells various types of foreign vehicles and relies heavily on low transportation and shipping costs to keep automobiles affordable for consumers in Tennessee. Plaintiff purchased automobiles and trucks which contained an artificially inflated price as a result of Defendants' unlawful price-fixing in the transportation and shipping of vehicles destined for the Tennessee marketplace and to be sold by Tennessee auto dealerships. As a result of the conspiracy, Gossett Motor Cars, Inc. has been economically injured.

9. WE 3 Gossett, LLC, is a domestic limited liability corporation organized under the laws of the State of Tennessee, with its principal place of business located at 1875 Covington Pike Road, Memphis, Shelby County, Tennessee. Plaintiff WE 3 Gossett, LLC, does business in Tennessee under the following assumed names at the following locations:

Gossett Fiat, 1875 Covington Pike Road, Memphis, Tennessee

Gossett Volkswagen of Germantown, 7420 Winchester Road, Germantown, Tennessee

Gossett Kia South, 2660 Mt. Moriah Road, Memphis, Tennessee

Gossett Hyundai South, 2680 Mt. Moriah Road, Memphis, Tennessee

Plaintiff WE 3 Gossett, LLC, purchases and sells various types of foreign vehicles and relies heavily on low transportation and shipping costs to keep automobiles affordable for consumers in Tennessee. Plaintiff purchased automobiles and trucks which contained an artificially inflated price as a result of Defendants' unlawful price-fixing in the transportation and shipping of vehicles destined for the Tennessee marketplace and to be sold by Tennessee auto dealerships. As a result of the conspiracy, WE 3 Gossett, LLC, has been economically injured.

10. Plaintiff Autorama, Inc., is a domestic corporation organized under the laws of the State of Tennessee, doing business in Tennessee under the assumed name of Mercedes-Benz of Memphis, at its principal place of business at 5389 Poplar Avenue, Memphis, Tennessee. Plaintiff Autorama, Inc. purchases and sells various types of foreign vehicles and relies heavily on low transportation and shipping costs to keep automobiles affordable for consumers in Tennessee. Plaintiff purchased automobiles and trucks which contained an artificially inflated price as a result of Defendants' unlawful price-fixing in the transportation and shipping of vehicles destined for the Tennessee marketplace and to be sold by Tennessee auto dealerships. As a result of the conspiracy, Plaintiff Autorama, Inc., has been economically injured.

B. DEFENDANT

11. Defendant Compania Sud Americana de Vapores, S.A. ("CSAV"), a Chilean Corporation, headquartered at Plaza Sotomayor 50, Valparaiso, Chile, which shipped automobiles and trucks for sale in Tennessee. During the Class Period, Defendant shipped automobiles and trucks that it knew or should have known would be transported across the United States for sale by Tennessee auto dealerships.

IV. AGENTS AND CO-CONSPIRATORS

12. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation 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.

13. All acts alleged in this Complaint to have been done by Defendant was performed by their officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of Defendant's business affairs.

14. Defendant carried out its illegal scheme with the assistance, coordination and cover of several entities, which facilitated the conspiracy, providing platforms for meetings to facilitate output-reduction and price-fixing coordination, which caused economic harm to Tennessee's Auto Dealerships and Tennessee's economy, by artificially inflating prices for automobiles and trucks sold in Tennessee due to the unlawful acts.

15. On information and belief, various other companies and individuals, not named as Defendants in this Complaint, may have participated as co-conspirators in the acts complained of herein, and performed acts and made statements in furtherance of such conspiracy.

V. TENNESSEE TRADE AND COMMERCE

16. The activities of Defendant and co-conspirators that are the subject of this action are within the flow of, and substantially affected, interstate trade and commerce within Tennessee, including trade and commerce to, from, and within this county.

17. The automotive industry in Tennessee is a very large market and has a large economic impact on the State of Tennessee. Any unlawful activities, which impact the sale and

price of vehicles sold by Tennessee Auto Dealers impacts the entire state and causes economic harm and injury to the state as a whole.

18. The named Defendant and co-conspirators control and dominate the ocean shipping and transportation market for automobiles and trucks that are sold in Tennessee. Defendant's unlawful activities have caused economic harm and injury to the Plaintiffs, Tennessee Auto Dealers and the entire State of Tennessee.

VI. THE MARKET FOR "ROLL-ON AND ROLL-OFF CARGO"

19. Tennessee Auto Dealers rely heavily on foreign transportation and shipping to supply vehicles that are manufactured in foreign countries, Mercedes-Benz, Hyundai, Audi, Porsche, Volkswagen, Mitsubishi, Mazda, Kia, Fiat, Chrysler, Jeep, and Dodge brands of vehicles, which are sold by the Plaintiffs for use by consumers in Tennessee and other states.

20. Defendant and co-conspirators transport automobiles and trucks on ocean vessels. Roll-on and roll-off means the vehicle is driven onto and off the ocean vessels and is not containerized during the shipping.

21. At all relevant times, the roll-on and roll-off cargo ocean shipping market has been a highly concentrated oligopoly controlled by the named Defendant and co-conspirators. Defendant and co-conspirators comprise the vast majority of the shippers for all automobiles and trucks shipped from foreign manufacturers and transported for sale by Tennessee Auto Dealers. This high degree of concentration facilitated the anti-competitive conduct alleged herein because it is relatively easy for a limited group of companies who control the roll-on, roll-off ocean shipping market to illegally reach an agreement on output and prices and to monitor adherence to such illegal activity.

VII. DEFENDANTS' ILLEGAL CONDUCT

22. Beginning in at least 2000, Defendant and its co-conspirators-all of whom are purported horizontal competitors-devised an illegal conspiracy to artificially inflate and/or maintain prices for ocean shipping of roll-on and roll-off automobiles and trucks. Defendants facilitated their anti-competitive conspiracy by: (1) creating and participating in anti-competitive alliances, implementing artificial barriers to entry by non-defendants, meeting and discussing confidential market information, supply chain management and negotiation with customers; (2) engaging in secret meetings where they discussed and entered into illegal pricing and output agreements with each other such as agreeing to "floor prices" below which no Defendant would ship non-containerized automobiles and trucks, agreeing to simultaneous price increases, to be falsely attributed to rising input costs, and enforcing penalties for any company that cheated on the agreements; and (3) allocating markets and refraining from bidding against each other to maintain and control the ocean shipping market and artificially inflate shipping costs for non-containerized cargo, such as automobiles and trucks. Defendant and co-conspirators engaged in anticompetitive meetings, conferences, alliances and schemes.

23. An environment conducive to Defendant's unlawful conspiracy can be traced to cooperative agreements among foreign shipping companies, who illegally worked together cooperatively to eliminate pricing wars or competitive pricing. Defendant and co-conspirators grew together to become major international shippers in highly concentrated markets where Defendant knew companies that purchased non-containerized cargo, including automobiles and trucks would be subject to the unlawful conspiracy and artificial pricing and anti-competitive shipping market.

24. As a result of the highly concentrated ocean shipping market for roll-on, roll off cargo, Defendant and co-conspirators, after controlling the market through meetings and communications, through sharing pricing and customer lists, through agreeing to markets and refraining from interfering with competitors markets and through bid rigging, gained a solid foothold in the ocean shipping market and were able to artificially fix prices, allocate customers and rig bids, resulting in higher prices for cargo that would be ultimately sold by Tennessee Auto Dealers.

25. Defendant and its co-conspirators have unique ties and knowledge within the non-containerized ocean shipping industry. Since at least 2000, Defendant and co-conspirators have set up cooperative alliances and agreements to allocate customers and agree to refrain from bidding against each other, to engage in unlawful bid rigging, to conduct meetings and share confidential pricing information, and to facilitate and continue the ongoing price-fixing conspiracy, which was knowingly concealed and suppressed from the public, including purchasers and those ultimately affected in markets, such as Tennessee. Defendant's unlawful behavior and anti-competitive actions permitted it and co-conspirators to increase profits and artificially inflate prices for shipping of non-containerized cargo impacting indirect purchasers in Tennessee.

26. Defendant and co-conspirators monitored adherence to their illegal agreements to enforce their unlawful agreements and avoid price-cutting competition. Defendant and co-conspirators required involvement in a comprehensive ocean shipping bid scheme, under which each company was expected to abide by allocated markets, agree to refrain from bidding against one another, to control the ocean shipping market for non-containerized cargo to increase market control and dominance and increase profits through anti-competitive and unfair and unlawful

behavior. Defendant knew at all relevant times that its behavior and actions would affect commerce and trade in the State of Tennessee.

27. The goal of Defendant's conspiracy was to increase its profit margins to the detriment of Tennessee Auto Dealers. The conspiracy was successful. Defendant's adherence to their ocean shipping bid conspiracy had immediate, substantial and long-lasting results, allowing it to engage in anti-competitive behavior by concealing and suppressing its conspiracy and unlawful activities and manipulating and commandeering the ocean non-containerized shipping market through its unlawful agreements with competitors.

28. Defendant's control of the non-containerized cargo ocean shipping market allowed it to set supra-competitive prices without fear that new entrants would, or could, come into the market and undercut those prices. Defendant's unlawful behavior created further barriers to entry and limited competition. Even if a would-be competitor sought to enter the bid-rigging and market allocation market, it could not survive because Defendant and its co-conspirators conspired to act against the new competitor and made it difficult for a would-be competitor to obtain shipping bids for non-containerized cargo. Once the would-be competitor was sufficiently undercut and eliminated from the market, Defendant would maintain and continue its unlawful conspiracy to artificially raise prices since it controlled the non-containerized cargo shipping market and controlled shipping areas by virtue of the unlawful agreements, which were adhered to artificially inflate prices affecting Tennessee Auto Dealers who were economically harmed by the unlawful, deceptive and unfair behavior.

29. The purpose and effect of Defendant's price fixing conspiracy has been to eliminate competition among and between themselves and to eliminate customer ocean shipping choices by establishing artificially high and noncompetitive prices for non-containerized cargo

that is sold in Tennessee. The price fixing agreement is unfair, false, deceptive and unconscionable and impacts and harms Tennessee Auto Dealers who receive automobiles and trucks that have been shipped by Defendant and its co-conspirators subject to Defendant's unlawful pricing and anti-competitive agreements.

30. From at least January 1, 2000, through the present, Defendant and co-conspirators engaged in extensive price fixing of roll-on, roll-off cargo that was shipped from foreign countries to the United States for sale in Tennessee by Tennessee Auto Dealers. Defendants' unlawful conspiracy had the effect of, among other things, raising the prices of those products, reducing capacity and eliminating competitors from the market, thereby further restraining trade in the importation, distribution and sale of automobiles and trucks in Tennessee.

31. Defendant falsely attributed the cause for the transportation higher input costs, to other reasons with the intention of concealing the true nature of their unlawful price and shipping market coordination.

32. Neither Defendant nor its co-conspirators told Plaintiffs or other Tennessee Auto Dealer Class members that it was fixing prices or allocating markets and fixing bids. Accordingly, Plaintiffs and Tennessee Auto Dealer Class members could not have discovered the violations alleged herein until shortly before filing this Complaint. Defendant and its co-conspirators conducted their conspiracy secretly, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

33. Defendant, and its co-conspirators, engaged in a successful price-fixing conspiracy, which they affirmatively concealed by, *inter alia*: (a) meeting secretly to discuss prices, customers and markets for automobiles and trucks to be transported to and sold in the

United States, including Tennessee; (b) using methods of communication in furtherance of the alleged conspiracy that were designed to avoid detection; (c) giving pretextual reasons for price increases on ocean shipping services for roll-on, roll-off cargo, such as automobiles and trucks; and (d) agreeing among themselves at meetings and in other communications not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme.

34. Defendant conspired and cooperated with its co-conspirators each during the Class Period to escape price competition in the non-containerized cargo ocean-going vessel market, thus achieving very high profitability. Defendant's illegal scheme resulted in decreased supply and objectively calculable inflated prices to Plaintiffs and the Tennessee Auto Dealer Class. Tennessee's antitrust and consumer protection laws were designed to protect legitimate businesses from being impacted by and suffering this result and type of injury.

35. The conduct of Defendant described herein has produced antitrust injury, and unless restrained, will continue to produce the following anticompetitive effects, among others:

- (a) That competition in the importation, distribution and ocean shipping of automobiles and trucks into the United States and Tennessee has been and continues to be substantially and unreasonably restricted, lessened, foreclosed and eliminated;
- (b) barriers to entry into the non-containerized cargo ocean shipping market in the United States and Tennessee have been raised;
- (c) prices for auto dealers seeking automobiles and trucks in Tennessee have risen and will continue to do so;
- (d) auto dealers in Tennessee will continue to suffer economic harm;

- (e) the importation, distribution and sale of automobiles and trucks in Tennessee will continue to be artificially restrained.

VIII. EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

36. Throughout the Class Period, Defendant, and its co-conspirators affirmatively and fraudulently concealed their unlawful conduct. Moreover, Defendant's other costs of production, like labor costs, fell during the Class Period. As a result of Defendant's and their co-conspirators' fraudulent concealment, all applicable statutes of limitations affecting the Plaintiffs and the Tennessee Auto Dealer's Class's claims have been tolled. Plaintiffs and the Tennessee Auto Dealers Class did not discover, nor could have discovered through reasonable diligence, that Defendant, and its co-conspirators were violating Tennessee's state laws and could not have discovered the existence of the combination and conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by Defendant, and their co-conspirators, to avoid detection and affirmatively conceal such violations.

37. Because the contract, combination, or conspiracy was kept secret by Defendant, Plaintiffs were unaware of the fact that the shipping prices for automobiles and trucks were secretly raised, fixed, maintained or stabilized as alleged herein.

38. As a result of the fraudulent concealment of the conspiracy, Plaintiffs assert the tolling of the applicable statute of limitations affecting the causes of action alleged by Plaintiffs and the Tennessee Auto Dealer Class.

IX. CLASS-ACTION ALLEGATIONS

39. Plaintiffs bring this action on behalf of themselves and as a class action under the Federal Rules of Civil Procedure for:

All people and entities that from January 1, 2000, through present indirectly paid for all or part of the shipping price for non-containerized automobiles and trucks in Tennessee. Excluded from this is Defendant; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate legal representative, heir or assign of any Defendant.

40. Plaintiffs purchased automobiles and trucks during the Class Period and are, therefore, members of the Tennessee Auto Dealer Class.

41. The total number of Tennessee Auto Dealers is so large that individual joinder of all members of the respective Classes is impracticable

42. Plaintiffs' claims are typical of the claims of the members of the Tennessee Auto Dealer's Class, since Plaintiffs and all members of the Tennessee Auto Dealer class purchased automobiles and trucks that had been shipped by ocean-going vessels and transported into the United States and Tennessee, during the class period alleged herein, their claims arise from the same course of conduct, and the relief sought is common.

43. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Tennessee Auto Dealer Class as its interests are typical of the rest of the Class and there is no conflict with other Class Members. Plaintiffs have retained experienced and competent counsel.

44. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether Defendants engaged in a contract, combination or conspiracy among themselves to fix, maintain, or stabilize the price of non-containerized cargo transported and sold in Tennessee;

- (b) Whether Defendant's conduct caused the prices automobiles and trucks to be artificially inflated in Tennessee;
- (c) Whether Defendant engaged in a contract, combination, and/or conspiracy to allocate markets and rig bids for ocean shipping of automobiles and trucks sold in Tennessee;
- (d) Whether Defendant's conduct caused injury to the members of the Class and if so, the proper measure of damages;
- (e) Whether Plaintiffs unjustly enriched Defendant;
- (f) Whether Plaintiffs, and the other members of the Tennessee Auto Dealer Class, are entitled to, among other things, injunctive relief, and if so, the nature and extent of such injunctive relief; and
- (g) Whether Defendant undertook actions to conceal the unlawful contract, combination or conspiracy described herein.

45. Joinder of all members of the classes is not possible, the claims of the individual Class members are too small to justify an individual action, and a class action is superior to other methods for the fair and efficient adjudication of this controversy.

46. Class certification of the respective, alternative classes is appropriate under the Federal Rules of Civil Procedure because a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims. Common questions of law and fact overwhelmingly predominate over any individual questions that may arise among or within the respective, alternative classes and, consequently, enormous economies to the court and parties exist in litigating the common issues on a class-wide basis or, alternatively, bases, instead of on a repetitive individual basis. Each individual class member's damage claim is too small to make

individual litigation an economically viable alternative, and few class members have any interest in individually controlling the prosecution of separate actions. Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by class members.

47. Class certification is appropriate under Federal Rules of Civil Procedure because Defendant acted on grounds generally applicable to Plaintiffs and the Tennessee Auto Dealer Class members, all of whom are at imminent risk of irreparable harm by continuing to pay supra-competitive prices for automobiles and trucks shipped by Defendant.

48. Class certification is appropriate under the Federal Rules of Civil Procedure because the claims of the representative parties are typical of the claims or defenses of the class.

49. Class certification is appropriate under the Federal Rules of Civil Procedure because the representative parties, Plaintiffs herein, will fairly and adequately protect the interests of the class.

X. CLAIMS ON BEHALF OF THE CLASS

Violation of Tennessee Law

50. Tennessee law permits any person injured indirectly, like the Plaintiffs and class members, to seek redress for their injuries arising out of illegal conspiracies.

51. According to T.C.A. § 47-25-106, "Any person who is injured or damaged by any such arrangement, contract, agreement, trust, or combination described in this part may sue for and recover, in any court of competent jurisdiction, from any person operating such trust or combination the full consideration or sum paid by the person for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust."

52. In *Freeman Indus., LLC v. Eastman Chemical Co.*, 172 S.W.3d 512 (Tenn. 2005), the Tennessee Supreme Court ruled that the TTPA was triggered by "the effect of the anti-competitive conduct." The Supreme Court also held that the TTPA's applicability, whether invoked by Tennessee residents or non-residents, should be judged by "whether the alleged anti-competitive conduct affects Tennessee trade or commerce to a substantial degree."

53. During the Class Period, Defendants illegal conduct substantially affected Tennessee commerce and caused injury to Plaintiffs and Tennessee Auto Dealers.

54. Due to Defendant's price-fixing and market-allocation activities, automobile and truck prices increased illegally in Tennessee despite fluctuations in the cost of production.

55. During the Class Period, prices on automobile and truck shipped by Defendant through ocean going vessels did not follow the laws of supply and demand existing in competitive markets, affecting markets in Tennessee.

56. Defendant's arrangement, contract, or agreement to fix, raise, maintain, or stabilize the prices of non-containerized cargo, which is marketed, distributed, or sold in Tennessee and to manipulate and allocate the market for non-containerized cargo marketed, distributed, or sold in Tennessee had the following substantial effects on Tennessee commerce:

- (a) The price of automobiles and trucks indirectly purchased by Plaintiffs and other Tennessee class members was fixed, raised, maintained, and stabilized at inflated, artificial and non-competitive levels;
- (b) Plaintiffs and other Tennessee class members lost profits and were deprived of free and open competition in the purchase of automobiles and trucks;

- (c) Competition in the marketing, shipping and transportation of automobiles and trucks was restrained in Tennessee; and
- (d) Plaintiffs, and other Tennessee class members, paid higher prices for automobiles and trucks shipped by Defendant than they would have paid absent Defendant's conspiracy.

57. During the Class Period, Plaintiffs, and other Tennessee class members received vehicles from foreign manufacturers shipped by Defendants and other co-conspirators, for sale by these class members in Tennessee. By reason of Defendants' violations of the TTPA, Plaintiffs and other Tennessee class members paid significantly more for automobiles and trucks shipped by ocean-going vessels than they would have paid in the absence of Defendant's illegal combination and conspiracy, and, as a result, Plaintiffs, and the other Tennessee class members were injured in their businesses and property and have suffered damages in amounts presently undetermined.

58. Defendant's conspiracy further substantially affected Tennessee commerce because Defendant, either directly or through their agents, engaged in the following activities in or affecting Tennessee:

- (a) Transacted shipping business substantially affecting Tennessee;
- (b) Contracted to supply or obtain goods or revenue substantially affecting the automotive and truck business in Tennessee;
- (c) Intentionally availed itself of the benefits of business in Tennessee by shipping vehicles as non-containerized cargo, which it knew would be sold in Tennessee;

- (d) Produced, promoted, sold, marketed, and/or distributed and shipped automobiles and trucks to Tennessee, thereby purposefully profiting from access to Tennessee's direct-purchaser and indirect-purchaser automobile and truck markets;
- (e) Caused tortious damage in Tennessee by fixing non-containerized cargo shipping prices;
- (f) Caused tortious damage in Tennessee by acts or omissions committed outside Tennessee by regularly doing or soliciting business in Tennessee; engaging in other persistent courses of conduct within Tennessee; and/or deriving substantial revenue from goods used or consumed or services rendered in Tennessee;
- (g) Committed acts and omissions that they knew or should have known would cause damage (and, in fact, did cause damage) in Tennessee while regularly doing or soliciting business in Tennessee; engaging in other persistent courses of conduct in Tennessee; and/or deriving substantial revenue from goods used or consumed or services rendered in Tennessee.

59. As a direct and proximate result of Defendant's unlawful actions and violation of Tennessee law, Plaintiffs may bring an action under Tennessee law for relief because:

- (a) auto and truck price competition was restrained, suppressed, and eliminated in Tennessee;
- (b) auto and truck prices were raised, fixed, maintained, and stabilized at artificially high levels in Tennessee;

- (c) Plaintiffs, and class members, who indirectly purchased non-containerized automobiles and trucks, were deprived of free and open market competition, including in Tennessee, and were injured; and
- (d) Plaintiffs and class members paid more than they otherwise would have for automobiles and trucks purchased for sale in Tennessee.

XI. JURY DEMAND

Plaintiffs demands trial by jury on all triable issues.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that this Court enter judgment in the class members' favor and against Defendant, as follows:

- A. That this action may be maintained as a class action under the Federal Rules of Civil Procedure, for appointment of Plaintiffs as class representative and counsel for Plaintiffs as counsel for the Auto Dealer Class;
- B. For all actual damages permitted by Tennessee and Federal law;
- C. For costs and attorney's fees as permitted by Tennessee and Federal statute and common law, including common benefit fund, pre-and post-judgment interest;
- D. That this Court order any other relief as it deems just and proper.

Respectfully submitted,

HEATON AND MOORE, P.C.

By: /s/ WILLIAM W. HEATON

William W. Heaton (BPR 9185)
Attorney for Plaintiffs
100 North Main Building, Suite 3400
Memphis, TN 38103-0534
901-526-5975 ext. 554
facsimile 901-527-3633
wheaton@heatonandmoore.com