

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
MR. JUSTICE R. RAIKES )

FRIDAY, THE 28<sup>th</sup> DAY  
OF APRIL, 2023

**B E T W E E N :**

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; NEC TOKIN CORPORATION;  
NEC TOKIN AMERICA INC.; KEMET CORPORATION; KEMET ELECTRONICS  
CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON  
CORPORATION; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY  
AMERICA, LTD.; HITACHI CANADA; NICHICON CORPORATION; NICHICON (AMERICA)  
CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA  
INC.; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUO ELECTRIC CO., LTD.; TOSHIN  
KOGYO CO., LTD.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS  
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM  
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS  
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,  
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a  
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a  
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c. 6



**ORDER  
(Contested Certification)**

**THIS MOTION**, made by the Plaintiffs for an Order certifying this proceeding as a class proceeding as against Hitachi Chemical Co., Ltd., Hitachi Canada, Hitachi Chemical Company America, Ltd., Hitachi AIC Inc., Hitachi Chemical Electronics Co., Ltd., Rubycon Corporation, Rubycon America Inc., AVX Corporation, Matsuo Electric Co., Ltd., Toshin Kogyo Co., Ltd., Nichicon Corporation, Nichicon (America) Corporation, Nippon Chemi-Con Corporation and United Chemi-Con Corporation (collectively, the “Defendants”), was heard on September 28, 29

and October 6, 7, 2022 at the Court House, 700 Christina St N, Sarnia, Ontario, the decision being reserved to this day.

**ON BEING ADVISED THAT** after the conclusion of the hearing and while the decision on this motion for certification was under reserve, a settlement was reached between the Plaintiffs and Nichicon Corporation and Nichicon (America) Corporation (collectively “Nichicon”), which settlement agreement remains subject to Court approval in Ontario, British Columbia and Québec.

**ON BEING FURTHER ADVISED THAT** following the release of the reasons for decision on this motion, a settlement was reached between the Plaintiffs and Nippon Chemi-Con Corporation and United Chemi-Con Corporation (collectively “NCC/UCC” and with Nichicon, the “Settling Defendants”), which settlement agreement remains subject to Court approval in Ontario, British Columbia and Québec.

**ON BEING FURTHER ADVISED THAT** this matter was certified for settlement purposes only as against Nichicon by Order of this Court dated April 13, 2023 and that the NCC/UCC agreement provides that this matter will be certified for settlement purposes only as against NCC/UCC, with both certifications for settlement purposes being null and void and of no force or effect if the applicable settlement agreement is not approved by any of the Courts in Ontario, British Columbia and Québec, is terminated in accordance with its terms or otherwise fails to take effect for any reason.

**ON BEING FURTHER ADVISED THAT** the Plaintiffs and each of the Settling Defendants have agreed that the applicable time periods for the exercise by the Settling Defendants of any rights to seek leave to appeal in respect of this Certification Order shall be tolled pending final approval of the settlement agreements by the Courts in Ontario, British Columbia and Québec, and shall start running in the event that the applicable settlement agreement is not approved by

any of the Courts in Ontario, British Columbia and Québec, is terminated in accordance with its terms or otherwise fails to take effect for any reason.

**ON READING** the Motion Records and factums filed by the Plaintiffs and the Defendants, and on hearing the submissions from counsel for the Plaintiffs and the Defendants.

**WHEREAS** the nature of the claims asserted on behalf of the Class (as defined herein) are civil conspiracy, breach of the *Competition Act*, RSC 1985, c C-34 ss. 45 and 46 and unjust enrichment on behalf of the direct and indirect purchaser Class members.

**WHEREAS** the Amended Fresh as Amended Statement of Claim seeks, *inter alia*, remedies on behalf of some or all of the Class in the form of general damages, restitution, aggravated, exemplary and punitive damages, an equitable rate of interest on all sums found due and owing, costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act* and interest thereon, and notice, distribution and other costs:

1. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Defendants pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended (the “CPA”).
2. **THIS COURT ORDERS** that the class (the “Class”) is certified as follows:

*All persons and entities in Canada who purchased Electrolytic Capacitors or products which contained Electrolytic Capacitors between September 1, 1997 and December 31, 2014, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities who purchased said products in Quebec during that period.*

*Electrolytic Capacitors are components of electrical circuits capable of collecting and storing an electrical charge.*

*The term “Electrolytic Capacitors” means aluminum and tantalum electrolytic capacitors. It does not include ceramic or film capacitors.*

*Electrolytic Capacitors may be used in a wide array of products including but not limited to consumer electronic devices such as smartphones, gaming consoles, appliances, televisions, computers, laptops, iPads and cameras as well as in a number of commercial applications such as industrial equipment, satellites,*

*rockets and aerospace equipment, aviation systems, power generation systems, motor vehicles, trains, airplanes, communication systems, medical equipment and devices and military equipment.*

3. **THIS COURT ORDERS** that the following issues are certified as common issues:

**Competition Act**

1. During the period between September 1, 1997 and December 31, 2014 (the “Class Period”), did the Defendants, or any of them, conspire, agree, or arrange with a competitor to:
  - a. fix, maintain, increase or control the price for the supply of Electrolytic Capacitors;
  - b. allocate sales, territories, customers, or markets for the production and supply of Electrolytic Capacitors; or
  - c. fix, maintain, control, prevent, lessen, or eliminate the production or supply of Electrolytic Capacitors?
2. Did the Defendants, or any of them, carry out that conspiracy, agreement, or arrangement during the Class Period?
3. For that part of the Class Period before March 12, 2010, did the Defendants, or any of them, by their agreement and conduct pursuant to their conspiracy/agreement/arrangement:
  - a. unduly lessen competition for Electrolytic Capacitors; or
  - b. unreasonably enhance the price of Electrolytic Capacitors?
4. Did members of the Class who were direct or indirect purchasers suffer a loss as a result?
5. Are the Defendants, or any of them, liable to direct and indirect purchaser Class members pursuant to s. 36 of the *Competition Act*?

**Tort of Conspiracy**

6. Did the Defendants or any of them unlawfully conspire with each other to unduly limit or lessen the supply of Electrolytic Capacitors or to unreasonably enhance the price of Electrolytic Capacitors during the Class Period?
7. Did the Defendants or any of them carry out that unlawful conspiracy during the Class Period?
8. Was the Defendants’ unlawful conduct directed toward Class members?

9. Did the Defendants know, or ought they to have known, in the circumstances that injury to Class members was likely to result?
10. Did members of the Class who were direct and indirect purchasers suffer a loss as a result?
11. Are the Defendants, or any of them, liable in tort to direct and indirect purchaser Class members for conspiracy to fix the price of Electrolytic Capacitors during the Class Period?

**Unjust Enrichment**

12. Were the Defendants, or any of them, unjustly enriched by overcharges to direct and indirect purchaser Class members for Electrolytic Capacitors during the Class Period?
13. Did direct and indirect purchasers Class members suffer a corresponding deprivation for the overcharges for Electrolytic Capacitors during the Class Period?
14. Is there any juridical reason why the Defendants, or any of them, should be entitled to retain the overcharges?
15. Are the Defendants, or any of them, liable to direct and indirect purchaser Class members for unjust enrichment?

**Damages**

16. Can damages for the direct and indirect purchaser members of the Class or a defined subset of them be determined on an aggregate basis pursuant to s. 24 of the *CPA*?
17. Should exemplary or punitive damages be awarded to direct and indirect purchaser members of the Class and, if so, in what amount?

4. **THIS COURT ORDERS** that, for greater certainty, members of the Class who are umbrella purchasers, being those who purchased Electrolytic Capacitors or products containing Electrolytic Capacitors manufactured by someone other than the Defendants to the action, are bound by the determination of whether the Defendants acted contrary to s. 45 of the *Competition Act* and whether they conspired and carried out their conspiracy/agreement/arrangement to increase or fix prices for Electrolytic Capacitors (common issues 1, 2, 3, 6, 7, 8, and 9).

5. **THIS COURT ORDERS** that the Plaintiffs, Cygnus Electronics Corporation and Sean Allott are appointed as the Representative Plaintiffs on behalf of the Class.
6. **THIS COURT ORDERS** that the litigation plan is approved substantially in the form attached as Schedule "A" to this Order.
7. **THIS COURT ORDERS** that notice shall be given to the Class in the time and manner to be directed by this Court after further submissions by the parties.
8. **THIS COURT ORDERS** that the opt-out period provided pursuant to the order of this Court made on June 28, 2018, which expired on October 24, 2018, satisfies the requirement of section 9 of the *CPA* for the purposes of this action, and that no further opt-out period is necessary.
9. **THIS COURT ORDERS** that Foreman & Company Professional Corporation is appointed as counsel to the Class.
10. **THIS COURT ORDERS** that there shall be no costs of this motion.

Date: August 10, 2023



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The Honourable Mr. Justice R. Raikes

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

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PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
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HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

**PLAINTIFFS' LITIGATION PLAN**

(pursuant to Section 5(1)(e)(ii) of the *Class Proceedings Act, 1992*)

**PLEADINGS:**

1. The defendants shall deliver their Statements of Defence immediately following the certification order in the event that they were not delivered at an earlier time. Any reply by the plaintiffs will follow within the time frame prescribed in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

**DOCUMENTARY DISCOVERY AND PRODUCTION:**

2. The plaintiffs will ask the Court for an Order that the delivery of Affidavit of Documents and production of documents take place no later than 120 days following service of the Statements of Defence.
3. Counsel for the plaintiffs will arrange and deliver their productions using document management software. All productions will be organized and produced electronically. The plaintiffs propose that the defendants similarly organize and produce all of their productions electronically.

**EXAMINATIONS FOR DISCOVERY:**

4. The plaintiffs will ask the Court for an Order that examinations for discovery take place within 90 days from the date that documentary production has been completed, unless it is otherwise agreed between the parties that oral examinations will be commenced prior to the completion of documentary production.
5. The plaintiffs anticipate that the examination for discovery of all parties will take a maximum of 4 weeks subject to refusals and undertakings. A discovery plan shall be prepared by the parties, including the witnesses to be examined, the location of each examination, the anticipated duration of each examination and any other matter that may be agreed upon by counsel.
6. The plaintiffs propose that all answers to undertakings be provided within 60 days of the conclusion of the examinations for discovery.

**NOTICE TO CLASS MEMBERS AND OPT-OUT PROCEDURE:**

7. Class Counsel will maintain a general form of ongoing notice respecting the conduct of the proceedings on their website.

8. If these actions are certified as class proceedings, the plaintiffs will ask the Court to:
  - a. Settle the form and content of the notice after the certification decision is released (the “Notice of Certification”);
  - b. Settle the means by which the Notice of Certification shall be disseminated to class members (the “Notice Plan”); and
  - c. Set a date for the expiry of the opt-out period of 60 days following the commencement of the Notice Plan.
  
9. A comprehensive multi-media Notice Plan which is tailored to the characteristics of the proposed class will be sought. The plaintiffs will seek approval of a Notice Plan substantially in the following form:
  - a. Direct communication shall be made to class members and potential class members that are identified through the following processes:
    - i. Production of customer contact information by the defendants;
    - ii. The accumulation of a class member contact list by Class Counsel, including class member contact data sets assembled in the DRAM litigation consisting of approximately 1 million businesses, institutions, governments, and individuals;
    - iii. The purchase of mailing and contact lists for technology-related services and subscriptions in Canada in order to assemble lists of class members likely to have been exposed to the Capacitors and Capacitor products at issue in these actions during the class period; and
    - iv. Any other process that can be identified by Class Counsel or the settlement administrator to facilitate direct contact with class members or likely class members.

- b. Published through a national print media notice program in both official languages;
- c. Distribution to all major news and broadcast outlets across Canada, in English and French, through a press release by Canada Newswire, including a social media news feed;
- d. Publication through a social media distribution strategy, utilizing Google ad words, Twitter, Facebook, LinkedIn, select consumer product message boards and Consumer Report message boards, and any other social media proposed by counsel and the representative plaintiffs for approval by the Court;
- e. Distribution by various consumer associations including but not limited to: the Consumers' Council of Canada and The Consumer's Association of Canada;
- f. By posting the Notice on the website of class counsel and on a dedicated website solely for the purposes of this litigation; and
- g. To be provided by class counsel to any person or organization who requests a copy of the Notice.

## **OPTING OUT**

- 10. The plaintiffs propose the following opt-out procedure:
  - a. A person may opt-out of the class proceedings by sending a written election to opt-out to a person designated by the Court before a date fixed by the Court; and
  - b. No member of the Class may opt-out of the class proceedings after the expiration of the opt-out period set by the Court except by Court order.
- 11. The plaintiffs will ask the Court to appoint Class Counsel or an administrator retained by them to receive the written elections to opt-out of the class actions and, within thirty (30)

days after the expiration of the opt-out period, to deliver to the Court an affidavit providing information respecting the number of persons who have opted-out of the class actions.

12. The plaintiffs will ask the Court to order the defendants to pay the costs of the Notice Plan.

**CASE MANAGEMENT:**

13. The plaintiffs propose to advance the matter in a fair and expeditious manner utilizing the case management tools contained in the *Class Proceedings Act, 1992*, SO 1992, c 6.
14. The plaintiffs propose to schedule case management conferences as necessary between the parties and the Court to advise the Court on the progress of the litigation.
15. The plaintiffs do not anticipate any motions at this time other than the motion for certification and the motions necessary to consolidate the pleadings. The plaintiffs acknowledge that motions may be necessary as the cases progress and propose that each can be scheduled if and when issues arise.

**DISPUTE RESOLUTION:**

16. The plaintiffs are willing to participate with the defendants in a non-binding alternative dispute resolution mechanism following certification and the conclusion of documentary and oral discovery.

**EXPERT ASSISTANCE:**

17. Expert witnesses will be retained by the plaintiffs in various fields. Each witness will provide expert testimony at the trial of the common issues. It is anticipated that the defendants will require expert testimony as well. The plaintiffs propose the early

exchange of expert reports between the parties and failing agreement, to seek case management assistance in order to achieve early and organized exchange of expert material.

**TRIAL OF THE COMMON ISSUES:**

18. The plaintiffs will ask the Court to fix the date for the trial of the common issues promptly following the conclusion of examinations for discovery, delivery of undertakings and any motions for refusals.
19. The plaintiffs propose the creation of a Trial Management Plan in advance of the trial under the supervision of the Case Management Judge. The Trial Management Plan shall pertain to the following issues, including but not limited to:
  - a. Joint Document Brief;
  - b. Chronology and Glossary;
  - c. Discovery Read-Ins;
  - d. Request to Admit and Notices;
  - e. List of Anticipated Witnesses;
  - f. Written Opening Briefs;
  - g. Trial Schedule;
  - h. Written Closing Submissions;
  - i. Digital Trial Management;
  - j. Protective Order; and,
  - k. Further Directions.
20. It is currently anticipated that the common issues trial will last approximately 6-8 weeks in duration. The plaintiffs propose to work with the defendants' counsel to establish and organize the trial schedule to the greatest extent possible in the context of the Trial Management Plan.
21. If the plaintiffs are successful at the trial of the common issues, it is anticipated that the resolution of the common issues will conclude the litigation, including settling on the

manner in which each class member is to benefit from the remedies obtained. If damages are ordered by the Court, the plaintiffs anticipate that such damages can be calculated and distributed to the class members based on information in the possession of the defendants, which is subject to confirmation by class members, and, if necessary, through an aggregate plan of distribution pursuant to Section 24 of the *Class Proceedings Act, 1992*.

22. In the event that there are issues which are specific to individuals or subgroups of individuals as amongst the class, the plaintiffs will design and seek approval of management protocols for the resolution of all such outstanding issues pursuant to the procedural tools provided under Sections 25 and 26 of the *Class Proceedings Act*.

**DISTRIBUTION OF RECOVERIES:**

23. If the actions are successful, and recoveries are achieved on behalf of the class, the plaintiffs will prepare a fair and reasonable compensation system for participants in the distribution chain for Capacitors and Capacitors products in Canada during the class period. The plaintiffs will seek to design a compensation system which facilitates a simple and automated process with streamlined proof requirements.
24. The plaintiffs propose that the claims administration process shall provide for the following:
  - a. Proactive identification and payment of claims by the claims administrator;
  - b. The creation of a dedicated claims administration website featuring a claims portal for the receipt of claims and the provision of claims information from class members;
  - c. The claims process shall utilize a single, consistent common point of entry with respect to the necessary data to be filed in support of a claim;

- d. The claims process shall feature simple user-friendly claims documentation crafted in plain language without “legalese”; and
- e. The claims period shall feature a lengthy and generous time period within which to claim.

#### **NOTICE OF SETTLEMENT OR JUDGMENT AND DISTRIBUTION OF RECOVERIES:**

- 25. If the plaintiffs are successful at the trial of the common issues, the plaintiffs will ask the Court to settle the form and content of a notice to be delivered to class members (the “Notice of Resolution”).
- 26. The plaintiffs will ask the Court to order that the Notice of Resolution be distributed to class members substantially in accordance with the Notice Plan for the Notice of Certification as set out herein.
- 27. For the purposes of achieving a successful notice to class members respecting the distribution of recoveries, Class Counsel shall implement a separate robust notice program specifically designed to broadcast the fact that recoveries are available to be claimed and to specifically attract a high rate of claims activity.

#### **REVIEW OF LITIGATION PLAN**

- 28. The plaintiffs propose that this litigation plan should be reconsidered and revised as necessary under the continuing case management authority of the Court pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6.

CYGNUS ELECTRONICS  
CORPORATION, et al.  
Plaintiffs

v. PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON  
Proceeding Under the *Class Proceedings Act*,  
1992

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**ORDER  
(Contested Certification)**

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