

Court File No. 1272/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE R. RAIKES

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FRIDAY, the 7th day
of December, 2018

BETWEEN:

SEAN ALLOTT

Plaintiff

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Settlement Approval)

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with Okaya Electric Industries Co., Ltd. and Okaya Electric

America, Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

AND ON READING the materials filed, including the settlement agreement dated December 15, 2017 attached to this Order as Schedule "A", and on reading a confidential side-letter to that settlement agreement handed up to the Court at the hearing of this motion (together the "Settlement Agreement"), and on hearing the submissions of counsel for the parties in the Ontario Action;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting-out of the Ontario Action has passed, and there were three opt-outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of *Rules*

7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.

6. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 8, each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
7. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors who have not validly opted-out of this action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed alleged co-conspirator that is not a Releasee.
8. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
9. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

10. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendant, any named or unnamed alleged co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed alleged co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this paragraph 10;
- (b) the Ontario Plaintiff and Ontario Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees relating to the Released Claims proven at trial or otherwise;
- (c) the Ontario Plaintiff and Ontario Settlement Class members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of

profits, interest and costs (including investigation costs claimed pursuant to section 36 of the Competition Act), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiff and Ontario Settlement Class members, if any, and, for greater certainty, the Ontario Settlement Class members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the Competition Act) on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and,

- (d) this Court shall have full authority to determine the Proportionate Liability of the Releasees relating to the Released Claims at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees relating to the Released Claims shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.


11. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the Competition Act) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Action.

12. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained party to this action brought on at least ten (10) days' notice to counsel for the Settling Defendants, and not to be brought until the Ontario Action against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:
 - (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
 - (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or,
 - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
13. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 12.
14. **THIS COURT ORDERS** that a Non-Settling Defendants may serve the motion(s) referred to in paragraph 12 above on the Settling Defendants by service on counsel for the Settling Defendants in the Ontario Action.
15. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

16. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Ontario Settlement Class has or may have against the Non-Settling Defendants or named or unnamed alleged co-conspirators who are not Releasees.
17. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol.
18. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Settlement Class Members, pending further order of this Court on notice to the Defendants.
19. **THIS COURT ORDERS** that the Ontario Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
20. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Québec Court, and the BC Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled out of court, without costs and without reservation, as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
21. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

22. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 10 to 14 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action.

Date: Dec 18/18



The Honourable Justice Raikes

ORDER ENTERED
DEC 18 2018
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ORDEF ~~ENTERED~~
m DEC 18 2018

SEAN ALLOTT
Plaintiff

v.

AVX CORPORATION, et al.
Defendants

Court File No. 1272/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,
1992

**ORDER
(Settlement Approval)**

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