

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

NO: 500-06-000681-144

(Class Action)
 SUPERIOR COURT

9157-4863 QUEBEC INC.

Petitioner

-vs.-

**CATERPILLAR OF CANADA
 CORPORATION**, legal person duly
 constituted having its head office at 3700
 Steeles Avenue West, Suite 902, City of
 Woodbridge, Province of Ontario, L4L 8K8

and

CATERPILLAR, INC., legal person duly
 constituted having its head office at 100
 NE Adams Street, City of Peoria, State of
 Illinois, 61629, U.S.A.

Respondents

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

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

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which it is a member, namely:
 - all persons, entities or organizations resident in Canada who purchased and/or leased trucks, buses and other heavy duty vehicles with a model year 2007 through 2011 Caterpillar C13 and/or C15 Advanced

Combustion Emission Reduction Technology (“ACERT”) diesel engine, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all persons, entities or organizations resident in Quebec who purchased and/or leased trucks, buses and other heavy duty vehicles with a model year 2007 through 2011 Advanced Combustion Emission Reduction Technology (“ACERT”) diesel engine, or any other group to be determined by the Court;
2. The Respondents designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted the 2007 to 2011 C13 and C15 Engines (hereinafter the “Engines”) with ACERT, an exhaust emission control system which was plagued by serious and pervasive design and manufacturing defects that render the Engines and thus, the vehicles containing the Engines (hereinafter the “Vehicles”), unmerchantable, unreliable and unsuitable for use;
 3. The Vehicles could not function as required nor as represented under all operating conditions, on a consistent and reliable basis, even after repeated emissions repairs and replacements. These repeated repairs and replacements failed to repair or to correct the Engines in any lasting way;
 4. In addition, the Petitioner contends that the Respondents failed to disclose, despite longstanding knowledge, that the ACERT system in the Engines is defective and predisposed to constant failure, including, but not limited to engine derating, shutdown, aftertreatment regeneration devices plugging, failing and/or clogging, as well as other failures that prevented the engines from properly functioning (hereinafter the “Design Defect”). Caterpillar actively concealed the Design Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Vehicles;
 5. By reason of this unlawful conduct, the Petitioner and members of the class:
 - (a) Purchased and/or leased Vehicles that contained defective emissions and regeneration systems contrary to what the Respondents had represented to them,
 - (b) Have had to repair or replace their emissions and regeneration systems multiple times, thereby incurring costly out-of-pocket expenses for repairs and replacements, including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,
 - (c) Have incurred significant out-of-pocket costs associated with the towing of the Vehicles,

- (d) Have suffered a diminished value of their Vehicles including a reduced resale price,
- (e) Have overpaid for the Vehicles at the point-of-sale by paying an inflated purchase price or lease payments which reflect an Engine that is free of any defects, but instead suffers from the Design Defects, and
- (f) Have suffered trouble and inconvenience;

B) The Respondents

6. Respondent Caterpillar of Canada Corporation (hereinafter “Caterpillar Canada”) is a Canadian corporation with its head office in Woodbridge, Ontario. It is a wholly-owned subsidiary of Caterpillar, Inc. (hereinafter “Caterpillar”), that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-1**;
7. Respondent Caterpillar is a Delaware corporation with its head office in Peoria, Illinois. It designs, manufactures, tests, distributes, delivers, supplies, inspects, markets, leases and/or sells and warrants machinery and engines, including the Engines. It is the parent company of Caterpillar Canada. It is also the registrant of the trade-mark ACERT (TMA674243) which was filed on April 15, 2005, the whole as appears more fully from a copy of said trade-mark from the CIPO database, produced herein as **Exhibit R-2**;
8. Given the close ties between the Respondents and considering the preceding, both Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, both Respondents will be referred to as “Caterpillar” or “CAT” for the purposes hereof;

C) The Situation

9. Because of the potential for considerable environmental pollution, the diesel engine market is one characterized by stringent governmental regulations regarding allowable pollutants, including exhaust emissions levels of oxides of Nitrogen (“NOx”), Non-Methane Hydrocarbons (“NMHC”), Non-Methane Hydrocarbon Equivalent, Carbon Monoxide and Particulate Matter (hereinafter the “Harmful Emissions”);
10. In Canada, emissions from motor vehicles are regulated by Environment Canada under the *Canadian Environmental Protection Act, 1999* (“CEPA”), which applies to new vehicles imported into Canada or to vehicles shipped inter-provincially, as well as to used vehicles imported into Canada;

11. Increasingly, the general approach to setting vehicle emissions standards in Canada is to harmonize them with United States federal Environmental Protection Agency (“EPA”) standards as much as possible. On January 1, 2004, Environment Canada enacted the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 (hereinafter the “Canadian On-Road Vehicle and Engine Emission Regulations”), the purpose of which was to reduce emissions and to “establish emission standards and test procedures for on-road vehicles that are aligned with those of the EPA” for “vehicles and engines that are manufactured in Canada, or imported into Canada, on or after January 1, 2004”¹. Every model of vehicle or engine that is certified by the EPA and that is sold concurrently in Canada and in the United States, is required to meet the same emission standards in Canada as in the United States, the whole as appears more fully from a copy of the DieselNet article entitled “Emission Standards: Canada”, produced herein as **Exhibit R-3**;

(a) The Emissions Situation

12. On January 18, 2001, the EPA issued its *Final Rule-Control of Air Pollution from Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements* (hereinafter the “Final Rule”) which states:

“We are establishing a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As a part of this program, new emission standards will begin to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. These standards are based upon the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are also reducing the level of sulfur in highway diesel fuel significantly by mid-2006”,

The whole as appears more fully from a copy of an extract from the Final Rule, produced herein as **Exhibit R-4**;

13. The EPA promulgated the 2007 standards (hereinafter the “2007 EPA Emission Standard”) in 2001 so as to “provide engine manufacturers with the lead time needed to effectively phase-in the exhaust emissions control technology that will be used to achieve the emission benefits of the new standards” (Exhibit R-4);

14. The 2007 EPA Emission Standard regulated both diesel vehicle/engine emissions standards and diesel fuel standards simultaneously, as a single system (Exhibit R-4):

¹ Canadian On-Road Vehicle and Engine Emission Regulations; ss. 2 & 3.

“These options will ensure that there is widespread availability and supply of low sulfur diesel fuel from the very beginning of the program, and will provide engine manufacturers with the lead time needed to efficiently phase-in the exhaust emissions technology that will be used to achieve the emissions benefits of the new standards”;

15. The 2007 EPA Emission Standard sets not-to-exceed standards for Harmful Emissions and the Canadian On-Road Vehicle and Engine Emission Regulations mirror these standards;
16. As is depicted below, the EPA organized a four-tiered system with exhaust emission requirements becoming progressively stricter. In 2014, the Tier 4 Final will take effect, drastically reducing allowable exhaust emissions:



17. With the issuance of the Final Rule and the publication of the 2007 EPA Emission Standard, it was becoming clear to engine makers, including the Respondents, that tougher emissions regulations were inevitably coming into effect. As a result, engine makers turned to new and innovative engine technology to recycle exhaust back through the engine in an attempt to reduce emissions in compliance with these regulations. Caterpillar searched for a long-term emissions solution to bring its engines in compliance and it thus, designed and developed the “Cat Regeneration System” (“CRS”) branded as ACERT;

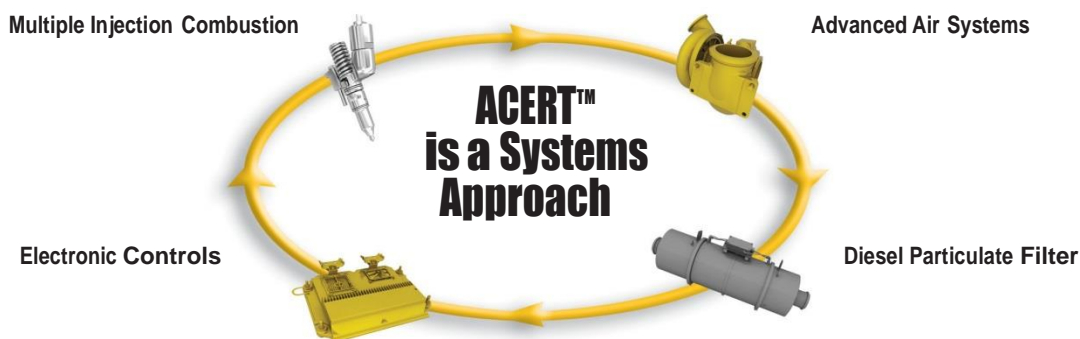
(b) The ACERT System

18. In response to the more stringent 2007 EPA Emission Standard, Caterpillar designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted the C13 and C15 Engines with



ACERT intended to reduce air pollutants to levels not to exceed those set by the EPA;

19. Caterpillar engines were to employ ACERT as a long-term emissions solution for the North American trucking, bus, construction and mining industries, and in order to meet the 2007 EPA Emission Standard for Caterpillar's entire diesel engine product line;
20. As is depicted below, the ACERT System contains integrated components intended to reduce emissions through advanced combustion technology (i.e. through Multiple Injection Combustion and through Advanced Air Systems) in combination with "Aftertreatment" to reduce Harmful Emissions and with advanced Electronic Controls to perform a monitoring function;



21. The ACERT System uses a Clean Gas Induction ("CGI") process. CGI draws off a small amount of non-combustible gas after it has passed through the engine's Aftertreatment system. The gas is then cooled, blended with more incoming cool, clear air and returned to the combustion chamber. Since the gas is passed through the Diesel Particulate Filter ("DPF"), most contaminants have been removed before the gas re-enters the intake system;
22. The ACERT System works by employing a series of turbochargers to force more cool, clean air into the combustion chamber, instead of the recycled exhaust gas of cooled technology. Working together in series, the turbos turn slower, resulting in increased turbo component life. This turbocharger arrangement is designed to improve engine response while lowering oxides of nitrogen and increasing fuel economy;
23. The DPF works to reduce emissions of hydrocarbons and other contaminants as an aftertreatment of the advanced combustion process. Specifically, the DPF is designed for self-regeneration under all conditions. When the electronic control module detects soot buildup, the CRS activates. CRS works automatically, using only the precise amount of fuel necessary to oxidize soot. With CRS, no driver action is required for regeneration;

24. Contrary to the express expectation of the EPA Final Report for the use of a DPF with precious metal catalysts, Caterpillar's CRS employs an un-catalyzed (without precious metal catalysts), or insufficiently catalyzed, DPF which can only regenerate a small amount of soot trapped by the DPF, periodically requiring active regeneration to increase exhaust temperatures needed to burn off of the filter;
25. To periodically achieve the increased temperatures necessary for regeneration in its base metal DPF, the CRS must utilize an Aftertreatment Regeneration Device ("ARD") to provide additional heat to the engine's exhaust. Compressed air and ultra-low sulfur diesel fuel enter the head of the ARD where they are mixed and ignited by the spark plug. Once ignited, the mixture mixes with engine exhaust flow directed into the inlet of the DPF to enable regeneration (burning) of the soot trapped by the DPF;
26. The operation of the CRS uses monitoring, diagnostic sensors and engine electronics software to regulate and monitor the operation of the DPF and ARD so as to ensure that the engine exhaust has sufficiently reduced pollutants to the level mandated by the 2007 EPA Emission Standard;
27. Caterpillar's engine electronics plays the major role by working to synchronize and harmonize the components of the ACERT System. First, the system is meant to sense the engine's ever-changing operating conditions. Then, in much the same way as the engine automatically adapts to airflow needs by increasing or decreasing turbocharger boost, the electronic control module sends out signals that variable valve actuators and fuel injectors convert into mechanical responses. If working correctly, the result is an efficient integration of engine components under any operating conditions;
28. The engine electronics continuously monitors engine operating conditions, controls particulate emissions by the CRS, interfaces with the vehicles sensor inputs, and performs the fault detection and diagnostic reporting requirements. The Electronic Control Module ("ECM") monitors all of the systems of the Engine, including the exhaust emissions controls- "Operating conditions of the Aftertreatment Regeneration Device" and the "Operating conditions of The Diesel Particulate Filter." In response to operating conditions, the ECM is programmed to provide one of the following levels of response to operating conditions: Warning, Derate and Shutdown. "Warning" advises the driver that action must be taken or the ECM will proceed to shut down. "Derate" means that the ECM derates the engine's performance (reduces horsepower) in order to get the driver's attention so the driver can take action in order to avoid engine damage. "Shutdown" means that the ECM takes action necessary to shut down the engine within a short period to allow the driver to get off the road. In all instances the event is logged and the vehicle requires immediate authorized maintenance;



29. The Engines are defective in that the CRS repeatedly and frequently experience warning, derate, and shutdown commands issued by the ECM as a result of fault detection in the CRS, which cause the Vehicles to require immediate authorized exhaust emission control diagnoses and remediation during which time the Vehicles are shutdown;
30. In performing emission system warranty repairs, the Respondents acknowledge that the CRS failures detected are defects in material and workmanship in the Engines because the emissions warranty repairs are performed;
31. However, the Engines repeatedly experience CRS failures that are not corrected by the emission warranty work performed. These repeated and frequent CRS failures cause the Vehicles to be unreliable and which, in spite of numerous attempts, the CRS failures have not and cannot be corrected. The numerous and frequent CRS faults cause warning, derate, and shutdown necessitate costly and time consuming emissions warranty repairs because the Engines do not and cannot effectively and reliably remove exhaust emission pollutants as required by the 2007 EPA Emission Standard on a consistent and reliable basis;
32. The Engines also feature the Caterpillar “Mechanically actuated Electronically controlled Unit Injectors (“MEUI fuel system”). The MEUI fuel system is designed to provide a patented split injection fuel delivery to the combustion chamber, reducing emissions and optimizing fuel economy. With split injection, a minute amount of fuel is injected at the beginning of combustion. This is the pilot injection. A millisecond later, during combustion, a larger volume of fuel is used as the main injection. Then a post injection, another smaller amount of fuel, completes the cycle. How much fuel is injected at each phase is determined by advanced Caterpillar electronics. The split fuel injection strategy incorporated into ACERT technology lowers peak cylinder temperatures, allowing fuel to burn more completely. In theory, this should translate into not only lower emissions, but also superior fuel economy, the whole as appears more fully from a copy of Respondents’ Application and Installation Guide: Diesel Fuels and Diesel Fuel Systems, produced herein as **Exhibit R-5**;
33. The final component that completes Caterpillar’s ACERT System is its Diesel Oxidation Catalyst (“DOC”). The DOC has no moving parts, is designed to require no maintenance, and is designed to last as long as the engine itself. The DOC is located in the exhaust system and consists of a honeycomb-like structure covered by a chemical coating that acts as a catalyst. As hydrocarbons, carbon monoxide and particulate exhaust emissions pass through the DOC and come into contact with the catalyst, they are chemically converted into carbon dioxide and water vapour, which are harmless substances that are subsequently passed on out of the exhaust system. Thus the DOC is designed as an “effective exhaust aftertreatment” system;

34. It is clear that the ACERT System is quite a complicated mechanical system; however, all that is necessary to comprehend is that this system was afflicted with serious and pervasive design and manufacturing defects that rendered the Engines and thus, the vehicles containing the Engines, unmerchantable and unsuitable for use and these defects were actively concealed by the Respondents despite longstanding knowledge;
35. According to its “ACERT Technology Brochure” (hereinafter the “Marketing Brochure”), Caterpillar has pioneered many of the most important innovations in diesel technology, because only Caterpillar has the self-professed “POWER TO LEAD”, the whole as appears more fully from a copy of the Respondents’ Marketing Brochure, produced herein as **Exhibit R-6**;
36. The Respondents assert in their Marketing Brochure (Exhibit R-6) that ACERT “maintains engine performance, efficiency and durability while dramatically reducing emissions” and “meets or exceeds the performance of the engine it replaces. By matching or exceeding the power and torque, we can insure machines with ACERT Technology meet customer needs”;
37. The Respondents allege that engine life and wear are not affected by the advanced combustion process, that “the new Cat C-Series engines with ACERT Technology deliver even better performance—often with improved power density—along with the power to lead the industry into the future” and that “ACERT means dependable engines with the reliability, low operating costs and long life you expect from Caterpillar” (Exhibit R-6);
38. Caterpillar touts the Engines as having a life of one million miles with recommended maintenance, the whole as appears more fully from a copy of an extract from Respondents’ webpage for the C13 Engine and from a copy of an extract from Respondents’ webpage for the C15 Engine, produced herein *en liasse* as **Exhibit R-7**;
39. Caterpillar marketed the ACERT System as a superior alternative to the systems installed by other truck engine manufacturers to comply with the 2007 EPA Emission Standard and represented that their “engines meet tougher emissions standards while still providing excellent reliability, low ownership costs and outstanding fuel economy”. In addition, Caterpillar claimed that “the CRS activates automatically when DPF soot builds up, with no driver action required”. The DPF and CRS are incorporated into the muffler and, according to Caterpillar, are supposed to require no maintenance or cleaning, the whole as appears more fully from a copy of the Respondents’ marketing material, produced herein as **Exhibit R-8**;
40. In addition, the Respondents represented that the expected life of the aftertreatment unit was equal to the life of the Engine itself;



41. The Respondents represent that the Engines offer “outstanding reliability”, “million-mile durability”, “fuel economy”, “low operating costs” and “dealer support” as the 2004 compliant engines, the whole as appears more fully from a copy of the Cat C13 Engine Brochure and from a copy of the Cat C15 Engine Brochure, produced herein *en liasse* as **Exhibit R-9**;
42. Caterpillar’s representations about the ACERT System proved to be wrong. As the DPF became extremely hot, the heat put extreme and harmful pressure on other Engine components as well, including the turbos, resulting in regular and catastrophic failures of the Emissions and Regeneration System, and sometimes other Engine parts;
43. The Respondents exited the North American heavy-duty engine market just before the EPA’s Tier 4 Interim 2010 regulations were to take effect;
44. Although many Engines are still in service and the Respondents had assured that they would be backed with the proper service, this promise has not been fulfilled. In fact, the Respondents stopped sending representatives to meetings of the Technology & Maintenance Council of the American Trucking Association, so that its representatives have conveniently not been present to answer the numerous complaints about the Engines made through that group;
45. In addition, despite its warranty obligations, authorized service centers are unable to obtain the necessary parts from the Respondents, such that some authorized service centers are unable to service the defective Engines;

(c) The Warranty and the Band-Aid Approach

46. The Engines are covered by two (2) different warranties, one for the Engine and one for the ACERT system. The standard warranty term for the Engines is the earlier to occur of twenty four (24) months from the date of purchase or two hundred thousand (200,000) miles. For the ACERT system, the warranty expires after only one hundred thousand (100,000) miles;
47. The Respondents have been aware for several years of the true nature and cause of the Design Defect in the Engines. In particular, Caterpillar authorized dealers have seen sharp increases in repair work since the introduction of the ACERT system beginning with the 2007 model year Engines. Further, numerous complaints on the internet and elsewhere discuss the problem, including accounts from Class Members who have complained about this very issue to the Respondents. Notwithstanding its knowledge, Respondents have intentionally withheld from and/or misrepresented to the Petitioner and to the Class Members this material information. Instead, the Respondents made numerous affirmative representations about the high quality and reliability of the Engines;

48. Most owners and lessees of Vehicles containing the Engines have had to repair or replace their emission and regeneration systems multiple times, thereby incurring costly repairs and replacements. Moreover, given the nature of the Engines, owners and lessees have incurred significant costs associated with the towing of the Vehicles;
49. Additionally, the Design Defect causes the Engines to stop the Vehicles from proceeding, forcing the Vehicle to pull over to the side of the road and be towed to a Caterpillar authorized repair shop. This creates a serious safety concern to the drivers of the Vehicles, to the occupants of other vehicles, and to the public;
50. As a result of the Respondents' unfair, deceptive and prohibited business practices, as set forth herein, the Engines and the Vehicles that house the Engines have a lower market value and are inherently worth less than they would be in the absence of the Design Defect;
51. For customers with Vehicles within the standard 100,000 mile warranty period for the emission and regeneration system, as discussed above, Caterpillar has done no more than to temporarily repair the emission and regeneration system or to replace it with another equally defective and inherently failure-prone system, but has not remedied the Design Defect. Further, Caterpillar has refused to take any action to correct this concealed Design Defect when it occurs in Vehicles outside the warranty period. Since the Design Defect surfaces well within the warranty period for the Engines, and continues unabated after the expiration of the warranty, even where Caterpillar has replaced the system several times – and given the Respondents' knowledge of this concealed Design Defect – any attempt by Caterpillar to limit its warranty with respect to the Design Defect is unconscionable;
52. Based on the Respondents' misleading and deceptive marketing and sales scheme, Respondents were able to charge a premium for their Engines over the costs of other similar 2007 EPA Emission Standard compliant engines;
53. The Respondents' advertisements and representations, as set forth herein, were, and are, false and/or misleading as a reasonable consumer would rely upon their representations and base their purchasing and/or leasing decisions upon them. The acts and practices of the Respondents as alleged herein constitute unfair and/or deceptive acts or practices and the making of false advertisements;
54. As a result of the Respondents' unfair, deceptive and/or prohibited business practices, the Petitioner and Class Members, have suffered an ascertainable loss of money and/or property and/or loss in value;
55. As a result of the Respondents' deceptive claims, consumers have purchased and/or leased a defective product that does not perform as advertised;



56. Consumers were induced into purchasing and/or leasing Vehicles containing the defective C13 and/or C15 exhaust emissions and regeneration systems entitling them to claim:

- a) A refund for the overpayment for the purchase price or lease payments of the Vehicles,
- b) A refund of out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,
- c) The fair replacement value of the of the defective parts and/or the costs of rectifying the defects,
- d) A refund of out-of-pocket costs associated with towing, including future costs of towing,
- e) The loss of use of the Vehicles and expenditures for rental vehicles,
- f) Compensation for the diminished value of their Vehicles,
- g) Lost profits from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects),
- h) The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines,
- i) Trouble and inconvenience, and
- j) Punitive or exemplary damages;

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

57. On or around August 15, 2008, Petitioner purchased three (3) Caterpillar trucks with C15 engines from Kenworth Montreal on 7500 Trans-Canada Highway, in St-Laurent, Quebec for a total cost of approximately \$345,000 plus taxes;

58. A substantial factor in the Petitioner's purchasing decisions was Caterpillar's extensive promotional and advertising campaign focusing on the superior quality, reliability, durability, fuel economy, lower operating costs and dealer support;

59. Approximately six to eight months after purchasing these trucks, Petitioner began experiencing substantial, continuous and identical problems with the ACERT systems. Some of the necessary repairs and replacements occurred within the warranty period (requiring the payment of a \$250 deductible) and some occurred outside of the warranty period (requiring payment in full);

60. Petitioner experienced numerous breakdowns of the Engines, specifically with the emissions and regeneration systems. The Engines in the Vehicles experienced repeated instances of check engine lights, engine de-rating,



aftertreatment regeneration devices clogging, as well as other issues resulting from the Design Defect that prevent the Engines from working properly;

61. Specifically, the trucks required repairs and/or replacements of the engine heads, wire harness components, injectors and turbos forcing it to pay an approximate total of \$7,500 in deductibles when the repairs and/or replacements were covered by warranty and an approximate total of \$15,000 in out-of-pocket expenses when the repairs and/or replacements occurred outside of the warranty period;
62. These problems were further exacerbated because they required the trucks to be pulled over and shut down when the problem would develop. Then, the trucks needed to be towed to a Caterpillar authorized repair facility, because the computer codes and software are proprietary, and any other mechanics or truck repair facilities are unable to perform any repair or servicing to the ACERT system;
63. Petitioner spent an approximate total of \$3,000 plus taxes in expenditures related to towing;
64. Neither the Respondents, nor any of their authorized dealers or other representatives related the Design Defect to the Petitioner and it was thus unaware of its existence. To the contrary, Petitioner was told by Respondents' representatives that the problems would be rectified;
65. To date, the Petitioner has experienced numerous problems with the trucks, which has resulted in significant expenditures as well as serious inconvenience. The total monetary expenditures, including repairs, replacements and towing that it was forced to spend out-of-pocket, totals an approximate \$25,500;
66. In addition, Petitioner was injured at the point-of-sale as the purchase price reflected a truck that was represented to be free of any defects and it suffered a prejudice in that it overpaid in reliance upon this misrepresentation and/or omission of fact;
67. Petitioner has recently discovered, while researching online, that the Respondents had been engaging in widespread deception and misrepresentations and that several class actions were filed in the United States due to the Design Defect and due to the Respondents' failure to disclose, despite longstanding knowledge of its existence and predisposition to constant failure, the whole as appears more fully from a copy of the Class Action Complaints, produced herein, *en liasse*, as **Exhibit R-10**;
68. It was at this moment in time that the Petitioner was finally made aware that it had purchased trucks that were plagued by a Design Defect;

69. Petitioner has been trying to sell the trucks and have been unsuccessful to date due to the substantially lower resale value attributed to the fact that the engines are notoriously defective in the industry;
70. Petitioner has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the Vehicles themselves, out-of-pocket loss associated with the multiple Engine failures and attempted repairs to the Engine (including deductibles paid when covered by warranty and the full cost of repair when not covered), out-of-pocket loss associated with towing costs, substantially lower resale values associated with the Vehicles because the problems with the Engines became notoriously defective in the industry and trouble and inconvenience;
71. Had Petitioner known about the Design Defect, he would either have not purchased the Vehicles or would not have paid such a high price for them;
72. Petitioner's experiences mirror those of thousands of other owners and lessees of the Vehicles containing the defective Engines. The internet is replete with references to the common and profound problems that consumers have experienced with the Engines as a result of the Design Defect. The problem with the Engines is both significant and widespread;
73. Petitioner's damages are a direct and proximate result of the Respondents' conduct, including the companies' false and misleading advertising and faulty design and/or manufacturing;
74. In consequence of the foregoing, Petitioner is justified in claiming damages;

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

75. Every member of the class has purchased and/or leased trucks, buses and other heavy duty vehicles containing defective Engines;
76. In addition, due to the Respondents' advertisements and representations, class members were induced into error by the Respondents' false and misleading advertising;
77. Had the Respondents disclosed the truth about the Engines, reasonable consumers would not have bought them or would not have paid such a high price;
78. Each member of the class is justified in claiming at least one or more of the following as damages:

- a. Overpayment for the purchase price or lease payments of the Vehicles;
 - b. Out-of-pocket expenses for repairs to the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered;
 - c. The fair replacement value of the of the defective parts and/or the costs of rectifying the defects;
 - d. Towing costs for the Vehicles, including future costs of towing;
 - e. Loss of use of the Vehicles and expenditures for rental vehicles while their Vehicles were being serviced;
 - f. Diminished value of the Vehicles, which will require future repairs and/or the replacement of parts;
 - g. Lower resale value of the Vehicles;
 - h. Lost profits from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects);
 - i. The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines;
 - j. Trouble and inconvenience, due to the problems associated with their Vehicles;
 - k. Trouble and inconvenience; and
 - l. Punitive and/or exemplary damages;
79. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
80. All of these damages to the class members are a direct and proximate result of the Respondents' conduct, including the companies' false and misleading advertising and faulty design and/or manufacturing;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

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

81. Petitioner is unaware of the specific number of persons who purchased and/or leased the Vehicles, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
82. Class members are numerous and are scattered across the entire province and country;
83. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
84. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
85. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
86. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
87. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
88. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
89. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Are the Engines defective, non-merchantable, and/or subject to premature failure in the course of their normal use?
 - b) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or

sell and warrant the Engines and to train technicians to repair, diagnose, and service the Engines?

- c) Did the Respondents misrepresent or fail to adequately disclose to consumers the true defective nature of the Engines?
- d) Did the Respondents breach its express and/or implied warranty by not providing proper repairs and/or replacement of the Engines during the warranty period?
- e) Did the Respondents engage in unfair, false, misleading, and/or deceptive acts or practices in their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting of the Engines?
- f) Are the Respondents responsible for all related damages (including, but not limited to, overpayment for the purchase price or lease payments of the Vehicles, the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, towing costs for the Vehicles, including the cost of future towing, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, the lower resale value of the Vehicles, lost profits from the inability to utilize the Vehicles equipped with the defective Engines, the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, and trouble and inconvenience) to class members as a result of the problems associated with the Vehicles?
- g) Should an injunctive remedy be ordered to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles free of charge?
- h) Are the Respondents responsible to pay punitive damages to class members and in what amount?

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

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

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

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

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

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

ORDER the Defendants to recall, repair, and/or replace the Vehicles free of charge;

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

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

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

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

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that it be attributed the status of representative of the Class

93. Petitioner is a member of the class;

94. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that it wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the

whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec;

95. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
 96. Petitioner has given the mandate to its attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
 97. Petitioner, with the assistance of its attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
 98. Petitioner is in good faith and has instituted this action for the sole goal of having its rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
 99. Petitioner understands the nature of the action;
 100. Petitioner's interests are not antagonistic to those of other members of the class;
 101. Petitioner is not aware of any reason that he would be in a conflict of interest with any other members of the class;
 102. Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those class members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
 103. Petitioner is prepared to be examined out of court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
 104. Petitioner has spent time researching this issue on the internet and meeting with his attorneys to prepare his file. In so doing, he is convinced that the problem is widespread;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
105. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

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

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

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

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

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

- all persons, entities or organizations resident in Canada who purchased and/or leased trucks, buses and other heavy duty vehicles with a model year 2007 through 2011 Caterpillar C13 and/or C15 Advanced Combustion Emission Reduction Technology ("ACERT") diesel engine, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all persons, entities or organizations resident in Quebec who purchased and/or leased trucks, buses and other heavy duty vehicles with a model year 2007 through 2011 Caterpillar C13 and/or C15 Advanced Combustion Emission Reduction Technology ("ACERT") diesel engine, or any other group to be determined by the Court;

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

- a) Are the Engines defective, non-merchantable, and/or subject to premature failure in the course of their normal use?
- b) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the Engines and to train technicians to repair, diagnose, and service the Engines?
- c) Did the Respondents misrepresent or fail to adequately disclose to consumers the true defective nature of the Engines?
- d) Did the Respondents breach its express and/or implied warranty by not providing proper repairs and/or replacement of the Engines during the warranty period?

- e) Did the Respondents engage in unfair, false, misleading, and/or deceptive acts or practices in their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting of the Engines?
- f) Are the Respondents responsible for all related damages (including, but not limited to, overpayment for the purchase price or lease payments of the Vehicles, the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, towing costs for the Vehicles, including the cost of future towing, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, the lower resale value of the Vehicles, lost profits from the inability to utilize the Vehicles equipped with the defective Engines, the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, and trouble and inconvenience) to class members as a result of the problems associated with the Vehicles?
- g) Should an injunctive remedy be ordered to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles free of charge?
- h) Are the Respondents responsible to pay punitive damages to class members and in what amount?

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

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

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

ORDER the Defendants to recall, repair, and/or replace the Vehicles free of charge;

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

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

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

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

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondents' websites with a link stating "Notice to Owners/Lessors of trucks, buses and other vehicles with a model year 2007 through 2011 containing Caterpillar C13 and/or C15 Advanced Combustion Emission Reduction Technology ("ACERT") Engines";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Montreal, February 21, 2014

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner