

CANADA

(Class Action)  
SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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**GARAGE POIRIER & POIRIER INC.**

NO: 500-06-000837-175

and

**A. BOUFFARD**

*Petitioners*

-vs.-

**FCA CANADA INC.**

and

**FCA US LLC**

*Respondents*

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
& TO APPOINT THE PETITIONERS AS REPRESENTATIVES  
(Art. 574 C.C.P. and following)**

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TO THE HONOURABLE MADAM JUSTICE MARIE-ANNE PAQUETTE OF THE  
SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR  
PETITIONERS STATE AS FOLLOWS:

**I. GENERAL PRESENTATION**

**A) The Action**

1. Petitioners wish to institute a class action on behalf of the following class, of which they are members, namely:
  - All persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Subject Vehicles equipped with a Defeat Device, or any other group to be determined by the Court;
2. The “Defeat Device” and/or “Auxiliary Emission Control Device” referred to in this litigation is an illegal software that detects when the vehicle is undergoing emissions testing and switches on the full emissions control systems only during the test – unduly “defeating” or reducing the vehicle’s emissions (and exhibiting higher fuel

efficiency) under testing conditions; otherwise, at all other times that the vehicle is running, the emissions control systems are shut off;

3. The “Subject Vehicles” means all:

- a) model years 2014 to 2016 Dodge Ram 1500 EcoDiesel vehicles, and
- b) model years 2014 to 2016 Jeep Grand Cherokees EcoDiesel vehicles

equipped with a 3.0-litre diesel engine;

4. The Petitioners reserve the right to amend the definition and list of “Subject Vehicles” should further discovery reveal that additional models, model-years, and model variations are uncovered to be affected;
5. The Respondents design, manufacture, market, distribute, warrant, lease and/or sell the Subject Vehicles as being “EcoDiesel” vehicles capable of passing federal emission standards; however, in fact, they had equipped the Subject Vehicles with illegal software designed to falsify the vehicles’ emissions during emissions testing;
6. The Petitioners contend that the Respondents failed to disclose the existence of the Defeat Device and that the Subject Vehicles emitted Oxides of Nitrogen (“NOx”) at a much higher level than stated and that they had substantially lower fuel efficiency than stated. In fact, the Respondents actively concealed the existence of the Defeat Device and the fact that its existence would diminish both the intrinsic and the resale value of the Subject Vehicles, as well as, increase the cost of fuel for consumers;

## **B) The Respondents**

7. Respondent FCA Canada Inc. (hereinafter, “FCA Canada”) is a Canadian corporation with its head office in Windsor, Ontario. It is the current owner of *inter alia* the following trade-marks: “CHRYSLER AND BAND WITHIN SHIELD DESIGN” (NFLD1502), which was registered on July 4, 1927, “DODGE” (UCA29065), which was registered on January 8, 1948, “CHRYSLER” (TMDA56220), which was registered on January 24, 1933, the whole as appears from a copy of an extract from the *Registiaire des entreprises* and from copies of said trade-marks from the CIPO trade-mark database, produced herein *en liasse* as **Exhibit R-1**;
8. Respondent FCA US LLC (hereinafter, “FCA US”) is an American corporation with its head office in Michigan. It is a motor vehicle engineer, manufacturer and licensed distributor of Chrysler, Dodge, Jeep and Ram motor vehicles. It is the current owner of *inter alia* the following trade-marks:
  - “JEEP” (design) (TMA214501), which was registered on June 25, 1976,
  - “JEEP” (word) (TMA240978), which was registered on March 14, 1980,
  - “GRAND CHEROKEE” (word) (TMA667541), which was registered on July 13, 2006,

- “CHRYSLER IMPERIAL AND SHIELD DESIGN” (NFLD1799), which was registered on August 12, 1930,
- “DODGE & RAM’S HEAD DESIGN” (TMA748793), which was registered on September 28, 2009,
- “RAM” (TMA128585), which was registered on November 2, 1962,
- “RAM’S HEAD DESIGN” (TMA675408), which was registered on October 20, 2006,

The whole as appears more fully from a copy of said trade-marks from the CIPO trade-mark database, produced herein *en liasse* as **Exhibit R-10**;

8.1 Respondents FCA Canada and FCA US (collectively, “FCA”) are motor vehicle manufacturers and licensed distributors of Chrysler, Dodge, Jeep and Ram motor vehicles. The Chrysler brand is one of the “Big Three” in the United States Automotive Industry<sup>1</sup>. As of 2015, FCA is the 7<sup>th</sup> largest automaker in the world by unit production;

9. During the Class Period, the Respondents, either directly or through a parent company, subsidiary, agent or affiliate, designed, manufactured, marketed, advertised, distributed, leased and/or sold the Subject Vehicles equipped with the Defeat Device throughout Canada, including within the province of Quebec;

10. Given the close ties between the Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

### **C) The Situation**

#### **i) Diesel Engines – Background**

11. A diesel engine is an internal combustion engine in which ignition of fuel is initiated by the high temperature which a gas achieves when it is greatly compressed. In contrast, a regular spark-ignition engine such as a gasoline engine, which ignites fuel using spark plugs;

12. Diesel engines first became popular in North American passenger vehicles in the 1970s and 1980s, but gained a reputation as “dirty” because of their emissions; they emitted noxious gases and particulate matter. As diesel engines need to be more robust than gasoline engines, diesel-powered vehicles also cost more to produce – commanding a premium price. These factors, combined with increasingly stringent emissions regulations caused diesel passenger vehicles to become increasingly unpopular in the market;

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<sup>1</sup> When used in relation to the United States automotive industry, the “Big Three” most generally refers to the three major American automotive companies: Respondent FCA US LLC, non-party Ford Motor Company, and non-party General Motors Corporation.

13. Thus, in recent decades, fewer diesel engine vehicles have appeared on Canadian roadways. Even though diesel engines can usually provide more torque than gasoline engines, they are also higher polluters and more expensive. Diesel passenger cars thus began to disappear in the 1980s and 1990s, and were all but eliminated in 2004 when the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 (the "*On-Road Vehicle and Engine Emission Regulations*") under the *Canadian Environmental Protection Act, 1999* ("CEPA") aligned with the *Environment Protection Act* in the United States and when the California Air Resources Board (CARB) came into effect, effectively banning their use;
14. The *On-Road Vehicle and Engine Emission Regulations* makes it a violation for any person to sell, manufacture, or install any component in a motor vehicle that "is an auxiliary emission control device that reduces the effectiveness of the emission control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use"<sup>2</sup>;
- 14.1 In June 2012, the World Health Organization declared that diesel vehicle emissions were carcinogenic to humans (Group 1), which is about as dangerous as asbestos, the whole as appears more fully from a copy of International Agency for Research on Cancer (WHO) Press Release entitled "IARC: Diesel Engine Exhaust Carcinogenic" dated June 12, 2012 and from a copy of the Toronto Star article entitled "Diesel exhaust as cancerous as asbestos, says WHO" dated June 13, 2012, produced herein *en liasse* as **Exhibit R-11**;
- 14.2 In February 2013, Environment Canada adopted the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations*, SOR/2013-24 establishing mandatory greenhouse gas emission standards (including NO<sub>x</sub>), which are harmonized with the U.S. EPA standards. These regulations apply to heavy-duty vehicles of the 2014 and later model years;
- 14.3 Diesel engines pose a particularly difficult challenge to the environment because they have an inherent compromise between power, fuel efficiency, and emissions – the greater the power and fuel efficiency, the "dirtier" and more harmful the emissions become. Compared to gasoline engines, diesel engines generally produce greater power, low-end power, better drivability, and much higher fuel efficiency. But these benefits come at the cost of much more harmful emissions than gasoline vehicles;
- 14.4 Instead of using a spark plug to combust highly-refined fuel with short hydrocarbon chains (as gasoline engines do), diesel engines compress a mist of liquid fuel and air to very high temperatures and pressures, which causes the diesel to spontaneously combust. This causes a more powerful compression of the pistons, which produces greater engine torque (that is, more power);

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<sup>2</sup> *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2, at s. 11.

14.5 The diesel engine is able to do this both because it operates at a higher compression ratio than a gasoline engine and because diesel fuel contains more energy than gasoline does;

ii) The Emissions Situation

15. One important by-product of a diesel combustion engine is NO<sub>x</sub>, which is comprised of nitrogen and oxygen atoms. NO<sub>x</sub> is formed primarily from the liberation of nitrogen contained in fuel and nitrogen contained in combustion air during combustion processes. Nitrogen Oxide (NO) emitted during combustion quickly oxidizes to Nitrogen Dioxide (NO<sub>2</sub>) when released into the atmosphere. NO<sub>2</sub> dissolves in water vapour in the air to form acids, and interacts with other gases and particles in the air to form particles known as nitrates and other products that may be harmful to people and the environment. These compounds develop inside the cylinder of the engine during the high temperature combustion process;

16. NO<sub>x</sub> are a highly reactive group of gases that Environment Canada and other government agencies have found to create environmental problems and public health hazards, including smog, ground-level ozone, and acid rain. For example, direct exposure to NO<sub>x</sub> can cause respiratory problems, such as lung irritation, bronchitis, or pneumonia. When NO<sub>x</sub> combines with sunlight, it may create photochemical smog, which appears as a brownish ground-level haze and causes chest pains, shortness of breath, coughing and wheezing, and eye irritation. NO<sub>x</sub> is one of the main ingredients involved in the formation of ground-level ozone. Breathing ozone can also trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion and can worsen bronchitis, emphysema, and asthma. Children are at the greatest risk of experiencing negative health impacts from exposure to ozone. When mixed with rain in the atmosphere, NO<sub>x</sub> can create nitric acid or acid rain. NO<sub>x</sub> is also a contributor to global warming, the whole as appears more fully from a copy of an extract from Environment Canada's website at [www.ec.gc.ca](http://www.ec.gc.ca), produced herein as **Exhibit R-12**;

17. 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 ("NO<sub>x</sub>"), Non-Methane Hydrocarbons ("NMHC"), Non-Methane Hydrocarbon Equivalent, Carbon Monoxide and Particulate Matter;

18. In Canada, emissions from motor vehicles are regulated by Environment Canada under CEPA, which applies to new and/or used vehicles imported into Canada or to vehicles shipped inter-provincially;

19. Increasingly, the general approach to setting vehicle emissions standards in Canada is to harmonize them with the federal United States Environmental Protection Agency ("EPA") standards as much as possible. On January 1, 2004, Environment Canada enacted the *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”<sup>3</sup>. 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-2**;

20. More specifically, the CEPA emission standards strictly regulate exhaust emissions, including oxides of nitrogen (NO<sub>x</sub>). This effectively banned the sale of diesel passenger vehicles in Canada because the nature of diesel engines inherently makes NO<sub>x</sub> emissions a particularly difficult problem to resolve;

21. Because of the serious hazards created by NO<sub>x</sub> emissions, the CEPA, in alignment with both the EPA and CARB, have regulated NO<sub>x</sub>;

21.1 Seeing a major opportunity for growth, almost all of the major automobile manufacturers rushed to develop “clean diesel” and promoted new diesel vehicles as environmentally friendly and clean. Vehicle manufacturers such as Volkswagen, Mercedes, General Motors, FCA and others began selling diesel vehicles as more powerful, yet also as an environmentally friendly alternative to gasoline vehicles. And the marketing seemed to work, as millions of diesel vehicles were purchased between 2007 and 2016;

iii) The Respondents’ Response – “EcoDiesel” and the Defeat Device

22. Facing the implementation of stringent federal regulations, the Respondents designed, manufactured, marketed, advertised, distributed, leased and/or sold the Subject Vehicles which were designed to, and did, mislead consumers and regulators about their emissions;

23. Debuting for the 2014 model year, the Respondents introduced their “EcoDiesel” trucks (the brand alone suggesting an environmental quality that was utterly lacking) and they leased and/or sold the Subject Vehicles that produced emissions level that were far higher than advertised, intentionally concealing the truth through a sophisticated scheme involving the fraudulent Defeat Devices;

24. The Defeat Device at issue uses an algorithm to detect when Subject Vehicles were being operated on dynamometers, such as is used in smog testing facilities and by federal regulators when determining compliance with emissions standards. When the Defeat Device detects that the vehicle is undergoing emissions testing, it engages full emissions controls, which allows the Subject Vehicles to pass stringent standards for NO<sub>x</sub> emissions<sup>4</sup>. During on-road driving, however, these same cars

<sup>3</sup> *On-Road Vehicle and Engine Emission Regulations*; ss. 2 & 3.

<sup>4</sup> Nitrogen dioxide and nitric oxide are referred to together as oxides of nitrogen (NO<sub>x</sub>).

emit 10 to 40 times the legal limits for NO<sub>x</sub> because the emission controls were turned off;

24.1 In order to counter the public perception that diesel engines produce dirty emissions and to capitalize on consumers' desire to protect the environment, FCA aggressively markets the EcoDiesel engine as being environmentally friendly, using a leaf and green colouring in its logo, as is depicted below:



25. For years, the Respondents marketed its diesel vehicles as fuel efficient trucks with low emissions, for example they have made the following non-exhaustive representations:

(a) 3.0L Jeep Grand Cherokee EcoDiesel V6

The 3.0L EcoDiesel V6 is a three-time winner of Ward's '10 Best Engine' and delivers 240 horsepower and 420 lb-ft of torque. This diesel engine gives the Jeep® Grand Cherokee a Best-in-Class towing capacity of up to 3,265 kg (7,200 lb).

You'll also enjoy savings with fuel economy as efficient as 8.4 L/100 km (34 mpg) highway, and a driving range up to 1,100 km that no other SUV in its class can match.

2016 Jeep Grand Cherokee EcoDiesel: Best-in-Class fuel economy

City  
11.2 L/100KM  
25 IMP. MPG

Highway  
8.4 L/100KM  
34 IMP. MPG

Yearly Fuel Cost \$2,227  
Up to \$565 Savings

(b) 3.0L Dodge Ram 1500 EcoDiesel

Canada's Most Fuel-Efficient Full-Size Pickup

Legendary durability and capability combine with advanced features like the Class-Exclusive 3.0L EcoDiesel V6 to give you Canada's most fuel-efficient full-size pickup ever, winner of Four Wheeler's 2016 Pickup Truck of the Year and the 2016 Canadian Truck King Challenge winner. The available EcoDiesel engine dominates with Best-in-Class 420 lb-ft of low-end torque and makes the Ram 1500 the only half-ton pickup in the industry to offer a diesel engine.

(i) 3.0L EcoDiesel V6

A true benchmark, the Class-Exclusive 3.0L EcoDiesel V6 delivers 240 horsepower and Class-Leading 420 lb-ft of low-end torque at an impressive 2,000 rpm. If you want diesel power, you can forget the competition. The Ram 1500 is the only half-ton truck in the industry to offer a diesel engine.

The 3.0L EcoDiesel engine also delivers Best-in-Class fuel economy as efficient as 8.0 L/100 km (35 mpg) highway and has recommend oil change intervals of up to 16,000 km to lower your total operating costs. No matter how you look at it, this engine dominates across the performance spectrum - which is why Wards named it one of their '10 Best Engines' two years in a row.

Transmission(s)

Mated to the 3.0L EcoDiesel is a TorqueFlite® 8-speed automatic transmission. With 40 different shift maps, it optimizes the engine's performance, giving you stronger power when needed and fuel economy that makes the Ram 1500 Canada's most fuel-efficient full-size pickup.

2016 RAM 1500

Best-in-Class fuel economy that dominates the competition

**CANADA'S MOST FUEL-EFFICIENT FULL-SIZE PICKUP AS EFFICIENT AS 35 MPG (8.0L/100 KM) HIGHWAY**

The dominating performance of the 3.0L EcoDiesel V6 runs deep. Not only is it Class-Exclusive, but it also puts an impressive 420 lb-ft of low-end torque in your hands along with exhilarating power. This massive capability is balanced by Best-in-Class fuel economy thanks to a Segment-First 8-speed automatic transmission. The Ram 1500 is the complete package, which is why it beat all competitors to become the back-to-back winner of the Canadian Truck King Challenge,

(ii) 3.0L EcoDiesel V6 (HFE Model)

City  
 11.3 L/100KM  
 25 IMP. MPG

Highway  
 8.0 L/100KM  
 35 IMP. MPG

Estimated fuel cost with EcoDiesel:

\$2,199 Yearly Fuel Cost

Up to \$676 in Savings,

The whole as appears more fully from copies of various extracts from the Respondents' website(s) as well as copies of various vehicle brochures from 2014 to 2016, produced herein *en liasse* as **Exhibit R-3**;

26. The 2016 Dodge Ram 1500 EcoDiesel vehicle repeatedly won the Canadian Truck King Challenge, the whole as appears more fully from a copy of an extract from the Respondents' website, produced herein as **Exhibit R-4**

27. The Respondents' success is attributed, at least in part, to the promotion of their diesel trucks as "Eco", implying that they are ecologically-friendly vehicles, when in fact, this was simply a false and misleading marketing tactic employed to increase sales;

27.1 FCA's marketing of its Subject Vehicles and their "EcoDiesel" engines has consistently been to promise clean diesel;

28. Instead of delivering on their promises of high performance coupled with low or compliant emissions, the Respondents devised a way to make it appear that their vehicles did what they said they would when, in fact, they did not. Simply put, the Respondents lied to consumers and regulators alike and continued to lie over many years;

iv) Fuel Economy/ Efficiency

29. Diesel engines, as opposed to gasoline engines, pose a difficult challenge to the environment because they have an inherent trade-off between power, fuel efficiency, and emissions. Compared to gasoline engines, diesel engines generally produce greater torque, low-end power, better drivability, and much higher fuel efficiency. But these performance benefits come at the cost of much more harmful emissions;

30. A vehicle's advertised fuel economy is determined by driving a vehicle over many standardized driving patterns (or drive cycles), all of which are performed in a laboratory on a dynamometer where the conditions for all tests can be controlled. These driving cycles include cold starts, hot starts, highway driving, aggressive and high-speed driving, driving with the air conditioner in use under conditions similar to a hot summer day and driving in cold temperatures. Data from the drive cycles are combined and adjusted for "real world" conditions in a way to represent "City" driving and "Highway" driving. The "combined" fuel economy is the average of the City and Highway values with weights of 55% and 45% respectively, the whole as appears more fully from a copy of an extract from the book "Assessment of Fuel Economy Technologies for Light-Duty Vehicles – Chapter 2, dated 2011, produced herein as **Exhibit R-5**;
31. During each of the drive cycles – all of which are performed in a lab, under the Subject Vehicles' low power/low emissions/low fuel consumption mode – the amount of each pollutant is measured. This includes un-combusted or partially combusted gasoline (hydrocarbons or HC), NO<sub>x</sub>, oxygen, carbon monoxide (CO) and carbon dioxide (CO<sub>2</sub>). The amount of carbon produced is then converted to amount of gasoline which was required to produce the carbon in the exhaust. The amount of gasoline produced during the tests is divided into the distance driven on the test to produce the fuel economy;
32. Based on this equation, as the amount of NO<sub>x</sub> produced increases, the gasoline used increases and the fuel economy decreases. Therefore, if a Subject Vehicle produced less NO<sub>x</sub> during laboratory testing, but higher NO<sub>x</sub> when driven on road, then the vehicle would have better estimated fuel efficiency than the vehicle would actually achieve on road;
33. The Respondents misstated the NO<sub>x</sub> emissions as well as the gas consumption of the Subject Vehicles significantly. Their statements of the estimated fuel efficiency and number of grams of carbon dioxide emitted per kilometre driven by the vehicle were grossly exaggerated due to the use of the Defeat Device;
- 33.1 FCA promises that the EcoDiesel vehicles provide greater fuel economy, "30% better than a comparable gasoline engine...A Jeep Grand Cherokee or Ram 1500 with the EcoDiesel V-6 has a driving range of about 730 miles on one tank of fuel", the whole as appears more fully from a copy of an extract from the Respondents' website at <https://blog.fcanorthamerica.com>, produced herein as **Exhibit R-13**;
- 33.2 FCA's website claimed that the Ram 1500 engine delivers the highest fuel economy among all full-size truck competitors – 12% higher than the next-closest competitor. On the Jeep Grand Cherokee, it offers fuel economy of 30 miles per gallon highway with a driving range of more than 730 miles"; however, its own scandal began to emerge, it removed that representation from its website, the whole as appears more fully from copies of two extracts from the Respondents' website at [www.fcanorthamerica.com](http://www.fcanorthamerica.com), produced herein *en l'iasse* as **Exhibit R-14**;

33.3 FCA further claims that the 2014 Ram 1500 “exceeds the EPA highway rating for the top-ranked small pickup. The breakthrough results mean Ram keeps the half-ton fuel-economy record set last year by the 2013 Ram 1500”, the whole as appears more fully from a copy of the Respondents Press Release entitled “2014 Ram 1500 EcoDiesel Orders Top More Than 8,000 Units in Three Days, Filling Initial Allocation” dated February 19, 2014, produced herein as **Exhibit R-15**;

33.4 FCA’s advertising has been effective. According to one press release, “[i]t’s every truck manufacturer’s dream to have this kind of initial order demand for a product. Fuel economy is the No. 1 request of half-ton buyers and the Ram 1500 EcoDiesel delivers without compromising capability” (Exhibit R-15);

v) The Investigation(s)

34. The Defeat Device technology was brought to light after the EPA expanded its vehicle testing to look for so-called defeat devices in September 2015 following a similar scandal at Volkswagen. The EPA as well as other government agencies began to look for defeat devices in other vehicles that were actually exceeding emissions standards. It was revealed that dozens of vehicle models were affected and on January 12, 2017, the EPA issued a Notice of Violation to Respondent FCA US and its parent company because it had cheated on its emissions certificates with respect to its Dodge Ram and Jeep Grand Cherokee vehicles, the whole as appears more fully from a copy of the United States Environmental Protection Agency – Notice of Violation dated January 12, 2017, produced herein as **Exhibit R-6**;

35. On January 12, 2017, the EPA officially accused the Respondents of having installed Defeat Devices in the Subject Vehicles that allowed the trucks to emit far more pollutants into the air than the law allows (Exhibit R-6);

36. Because of this software, the Subject Vehicles appear to meet emissions standards while actually emitting NOx in far greater amounts than the standard allowed under the federal regulations during the normal operation of the vehicles on the road;

37. Specifically, the EPA determined that the Respondents failed to disclose the existence of the Defeat Device in the Subject Vehicles and that the Defeat Devices are present in approximately 103,828 motor vehicles in the U.S. as identified in the following table:

<b>Model Year</b>	<b>EPA Test Group</b>	<b>Make and Model(s)</b>	<b>50 State Volume</b>
2014	ECRXT03.05PV	FCA Dodge Ram 1500	14,083
2014	ECRXT03.05PV	FCA Jeep Grand Cherokee	14,652
2015	ECRXT03.05PV	FCA Dodge Ram 1500	31,984
2015	ECRXT03.05PV	FCA Jeep Grand Cherokee	8,421
2016	ECRXT03.05PV	FCA Dodge Ram 1500	32,319 (projected)
2016	ECRXT03.05PV	FCA Jeep Grand Cherokee	2,469 (projected)

38. A spokesperson for Environment and Climate Change Canada has stated that the department's enforcement branch is "carefully evaluating the information released by the U.S. EPA to determine its relevance in Canada, and if an investigation is warranted into potential violations" of CEPA, the whole as appears more fully from a copy of the CBC News article entitled "U.S. alleges Fiat Chrysler cheated on diesel engine emissions" dated January 12, 2017, produced herein as **Exhibit R-7**;

38.1 On May 23, 2017, the United States filed a civil suit against Respondent FCA US and 3 other related entities alleging violations of the *Clean Air Act*, 42 U.S.C and its implementing regulations, the whole as appears more fully from a copy of the U.S. Complaint (2:17-cv-11633-JCO-EAS) dated May 23, 2017, produced herein as **Exhibit R-16**;

39. The Respondents' sales figures in Canada for 2016 indicate that approximately 39,000 Subject Vehicles were sold in that year alone (Exhibit R-7);

vi) Summative Remarks

40. The Respondents were well aware that emissions and fuel consumption were significant factors for customers making vehicle purchase decisions – the misrepresentations regarding these two factors was designed to influence customers to purchase their Subject Vehicles based on false information;

41. Because of the Respondents' actions, the vehicles that they sold to the Petitioners and the Class are not what they had promised. During normal operation, the Subject Vehicles pollute the atmosphere with much higher levels of NOx than the artificially-manipulated test results disclose or than are permitted by federal and environmental protection laws. Meanwhile, when the engine and transmission are operated in a manner that actually limits pollution to legal levels, the Subject Vehicles cannot deliver the performance that the Respondents advertise;

42. As a result of the Respondents' surreptitious use of the Defeat Device to downplay their NOx emissions and to exaggerate the fuel economy of the Subject Vehicles owners and lessees of the Subject Vehicles have suffered damages upon which they are entitled to claim;

## **II. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY THE PETITIONERS**

(a) Petitioner Garage Poirier

43. On March 31, 2015, Petitioner Garage Poirier purchased a used 2014 Dodge Ram 1500 Laramie Longhorn EcoDiesel pick-up truck (VIN 1C6RR7WM4ES352033) from Trois Diamants Autos (1987) Ltée at 3035 Chemin Gascon, in Mascouche, Quebec for a purchase price of \$46,000.00 plus taxes, the whole as appears more

fully from a copy of the sales contract dated March 31, 2015, produced herein as **Exhibit R-8**;

44. Petitioner Garage Poirier purchased the Subject Vehicle after visiting the Respondents' website(s) based on its advertised fuel economy and based on its appearance and it assumed that it met all federal regulations;
45. At the time, the Respondents represented that the vehicle had a fuel consumption of 12.1 litres per 100 kilometres in city driving and 8.0 litres per 100 kilometres on the highway;
46. Petitioner Garage Poirier noticed that its vehicle was consuming more fuel than was represented and that the fuel consumption was much higher than it would have expected given the Respondents' representations relating to the vehicle's fuel efficiency;
47. Petitioner Garage Poirier has become aware of the news stories about this Defeat Device that the Respondents had installed in his Subject Vehicle and also noticed that several class actions were filed in the United States due to this same issue, as appears from copies of several of the U.S. Class Action Complaints, produced herein, *en liasse*, as **Exhibit R-9**;
- 47.1 Since the institution of the U.S. Class Action Complaints (Exhibit R-9) as well as the EPA Complaint (Exhibit R-6), the United States Judicial Panel on Multidistrict Litigation has transferred them to the Northern District of California under the supervision of the Honourable Judge Chen under MDL No. 2777 and a Second Amended Class Action Complaint has been filed, the whole as appears more fully from a copy of the Second Amended Class Action Complaint in In Re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability dated May 16, 2017, produced herein as Exhibit R-17;
48. Petitioner Garage Poirier has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Defeat Device, including, but not limited to, overpayment for the Subject Vehicles, past, present, and future excessive gasoline charges, reduced resale value, and trouble and inconvenience;
49. Had Petitioner Garage Poirier known about the Defeat Device, it would not have purchased the Subject Vehicle or would not have paid such a price;

(b) Petitioner Bouffard

50. In May of 2016, Petitioner Bouffard purchased a used 2016 Dodge Ram 1500 Outdoorsman EcoDiesel pick-up truck from Blainville Chrysler at 249 Boulevard de la Seigneurie West, in Blainville, Quebec for a purchase price of \$44,500.00 plus taxes;

51. Petitioner Bouffard purchased the Subject Vehicle based on its advertised fuel economy, torque, and power as advertised on the Respondents website(s) and he assumed that it met all federal regulations;
52. At the time, the Respondents represented that the vehicle had a fuel consumption of 11.6 litres per 100 kilometres in city driving and 8.4 litres per 100 kilometres on the highway;
53. Petitioner Bouffard noticed that his vehicle was consuming more fuel than; much higher than he would have expected given the Respondents' representations relating to the vehicle's fuel efficiency;
54. Petitioner Bouffard has become aware of the news stories about this Defeat Device that the Respondents had installed in his Subject Vehicle and also noticed that several class actions were filed in the United States due to this same issue (Exhibit R-9);
55. Petitioner Bouffard has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Defeat Device, including, but not limited to, overpayment for the Subject Vehicles, past, present, and future excessive gasoline charges, reduced resale value, and trouble and inconvenience;
56. Had Petitioner Bouffard known about the Defeat Device, he would not have purchased the Subject Vehicle or would not have paid such a price;
57. Both Petitioners' damages are a direct and proximate result of the Respondents' conduct;
58. In consequence of the foregoing, the Petitioners are justified in claiming damages;

### **III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH MEMBER OF THE CLASS**

59. Every member of the Class has purchased and/or leased a Subject Vehicle and is justified in claiming at least one or more of the following as damages:
  - a. Overpayment of the purchase price and/or lease payments of the Subject Vehicles,
  - b. Lower resale value of the Subject Vehicles,
  - c. Increased fuel expenditures,
  - d. Out-of-pocket loss,

- e. Cost of future attempted repairs,
  - f. Trouble and inconvenience, and
  - g. Punitive and/or exemplary damages;
60. However, even if the Respondents were to repair the Defeat Device in the Subject Vehicles so that they comply with emissions requirements, the repair would not compensate the Class for the significant harm that the Respondents have caused because any repairs performed as part of the recall are likely to significantly diminish the performance of the Subject Vehicles;
61. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the Class makes it difficult or impractical to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings
62. Petitioners are unaware of the specific number of persons who purchased and/or leased the Subject Vehicles; however, it is safe to estimate that it is in the tens of thousands;
63. Class Members are numerous and are scattered across the province;
64. 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 and, at the very least, is not in the interests of judicial economy. 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;
- 65.1 This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;
65. Also, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;
66. These facts demonstrate that it would be impractical, if not impossible, to contact every member of the Class to obtain mandates and to join them in one action;

67. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
68. Individual issues, if any, pale by comparison to the numerous common issues that will advance the litigation significantly;
69. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
70. The claims of the Class Members raise identical, similar or related issues of fact or law as outlined hereinbelow;
71. The interests of justice favour that this application be granted in accordance with its conclusions;

#### **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

72. The action that the Petitioners wish to institute on behalf of the members of the Class is an action in damages, injunctive relief, and declaratory judgment;
73. The conclusions that the Petitioners wish to introduce by way of an application to institute proceedings appear hereinbelow;
- A) Petitioners request that they be attributed the status of representatives of the Class
74. Petitioners are members of the Class;
75. Petitioners are ready and available to manage and direct the present action in the interest of the members of the Class that they wish to represent and are determined to lead the present file to 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 and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with their attorneys;
76. Petitioners have the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
77. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;

78. Petitioners, with the assistance of their attorneys, are 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;
79. Petitioners are in good faith and have instituted this action for the sole goal of having their 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;
80. Petitioners understand the nature of the action;
81. Petitioners' interests are not antagonistic to those of other members of the Class;
82. Petitioners are prepared to be examined out-of-court on their allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
83. Petitioner, with the assistance of their attorneys, have created a webpage at [www.clg.org](http://www.clg.org) wherein other Class Members can enter their coordinates to join the class action and be kept up to date on its development;
- B) Petitioners suggest that this class action be exercised before the Superior Court of justice in the district of Montreal
84. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
85. Petitioners' attorneys practice their profession in the judicial district of Montreal;
86. The present application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory relief;

**APPOINT** the Petitioners as representatives of the persons included in the class herein described as:

- all persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Subject Vehicles equipped with a Defeat Device, or any other group to be determined by the Court;

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

- a) Did the Respondents either install the Defeat Devices or have the Defeat Devices Installed in the Subject Vehicles?
- b) Did the Respondents know or should they have known about the Defeat Device and, if so, for how long?
- c) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of the Subject Vehicles?
- d) Are the Petitioners and the Class Members entitled to a declaratory judgment stating that the Respondents committed misconduct in utilizing the Defeat Device to misstate the qualities of the Subject Vehicles?
- e) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- f) Should an injunctive remedy be order to force the Respondents to buy back the Subject Vehicles or otherwise, free of charge, remove the Defeat Device while insuring that the Subject Vehicles conform to promised performance and fuel economy guarantees?
- g) Are the Respondents responsible for all related damages (including, but not limited to: the overpayment of the purchase price and/or lease payments of the Subject Vehicles, the lower resale value of the Subject Vehicles, increased fuel expenditures, out-of-pocket loss, the cost of future attempted repairs, and trouble and inconvenience) to Class Members as a result of their misconduct and in what amount?
- 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 Petitioners and each of the members of the Class;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct with respect to their designing, marketing, advertising, leasing, selling and/or representing the Subject Vehicles as having certain levels of lower fuel economy and lower emissions than in reality;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct by designing, marketing, advertising, leasing, selling and/or representing the Subject Vehicles in a false manner;

ORDER the Defendants to recall and repair the Subject Vehicles free of charge, or otherwise, to buy back the Subject Vehicles at the original sale price or return any and all lease payments;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners 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 application 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 judgment 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 judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in the Montreal Gazette and La Presse;

**ORDER** that said notice be available on the Respondents' websites, Facebook pages, and Twitter accounts with a link stating "Notice to Audi Vehicle Owners/Lessees";

**ORDER** that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Respondents' customer list;

**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 publication and dissemination fees.

Montreal, September 8, 2017

(s) Andrea Grass

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