

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

NO: 500-06-000720-140

(Class Action)
 SUPERIOR COURT

4037308 CANADA INC.

Petitioner

-vs.-

NAVISTAR CANADA INC., legal person duly constituted having its head office at 5500 North Service Road, Suite 401, City of Burlington, Province of Ontario, L7R 6W6

and

NAVISTAR, INC., legal person duly constituted having its head office at 2601 Navistar Drive, City of Lisle, State of Illinois, 60532, U.S.A.

and

NAVISTAR INTERNATIONAL CORPORATION, legal person duly constituted having its head office at 2601 Navistar Drive, City of Lisle, State of Illinois, 60532, 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 2008 through 2013 Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel engines (collectively “MaxxForce Engines” or “Engines”), 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 2008 through 2013 Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel engines (collectively “MaxxForce Engines” or “Engines”), 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 MaxxForce Engines with “Advanced EGR”, an exhaust gas recirculation 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 Advanced EGR system in the Engines is defective and predisposed to constant failure, including, but not limited to operator warning, engine derating, shutdown, as well as other failures that prevented the Engines from properly functioning and/or operating including build-up of soot in Engine filters, Engine overheating, leaking fuel pumps, issues with the EGR coolant and particulate filter, damage to the recalculating valve, damage to the fan hub, broken sensors, and broken valves (hereinafter the “Design Defect”). Navistar 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 have suffered material and moral damages (which is further detailed herein), upon which they are entitled to claim;

B) The Respondents

6. Respondent Navistar Canada Inc. (hereinafter “Navistar Canada”) is a Canadian corporation with its head office in Burlington, Ontario. It is a wholly-owned subsidiary of Navistar, Inc., 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 Navistar, Inc. is a Delaware corporation with its head office in Lisle, Illinois. It is the parent company of Navistar Canada (Exhibit R-1);
8. Respondent Navistar International Corporation (hereinafter “Navistar International”) is a Delaware holding corporation with its head office in Lisle, Illinois. It is also the registrant of the Canadian trade-marks (design) NAVISTAR (TMA337095) which was filed on October 3, 1985 and (word) NAVISTAR (TMA337494) which was filed on September 11, 1985, the whole as appears more fully from a copy of said trade-marks from the CIPO database, produced herein as **Exhibit R-2**;
9. The Respondents design, manufacture, test, distribute, deliver, supply, inspect, market, represent, lease and/or sell and warrant the MaxxForce Engine, and, in particular, the exhaust emission control, the Advanced EGR, to be free of defects in material and workmanship;
10. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as “Navistar” for the purposes hereof;

C) The Situation

11. 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”);
12. 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;

13. 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*, 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” revision dated April 2012, produced herein as **Exhibit R-3**;

(a) The Emissions Situation

14. 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” or the “EPA Emission Standard”) 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 the Final Rule 40 CFR Parts 69, 80, and 86 entitled “Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements” dated January 18, 2001, produced herein as **Exhibit R-4**;

15. The EPA promulgated these standards 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);

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



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

“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”;

17. The EPA Emission Standard sets not-to-exceed standards for Harmful Emissions and the Canadian On-Road Vehicle and Engine Emission Regulations mirror these standards;

18. The Final Rule contemplated exhaust emission control necessary for compliance with the emission standards to be a “complete emission control system” integrated with on-board diagnostics:

“The Complete System: We expect that the technologies described above would be integrated into a complete emission control system as described in the final RIA. The engine-out emissions will be balanced with the exhaust emission control package in such a way that the results are the most beneficial from a cost, fuel, economy, emissions standpoint.

...

The manufacturers are expected to take a system approach to the problem of optimizing the engine and exhaust control systems to realize the best overall performance possible.”

19. “Reliability” of the exhaust emission control system is defined in the Final Rule as “the expectation that emission control technologies must continue to function as required under all operating conditions for the life of the vehicle”;

20. Reliability and durability criteria for the emissions controls under the EPA Standard required that “[t]o ensure that no manufacturer underdesigns their absorbers or traps (compared to the level of durability that is achievable), we are requiring that these technologies be designed to last for the full useful life or the engine. More specifically the final regulations state that scheduled replacement of the PM filter element, NOx absorber, or other catalyst module bed is not allowed during the useful life, unless the manufacturer can show that the replacement will in fact occur and pays for the replacement. Otherwise only cleaning and adjustment will be allowed as scheduled maintenance”;

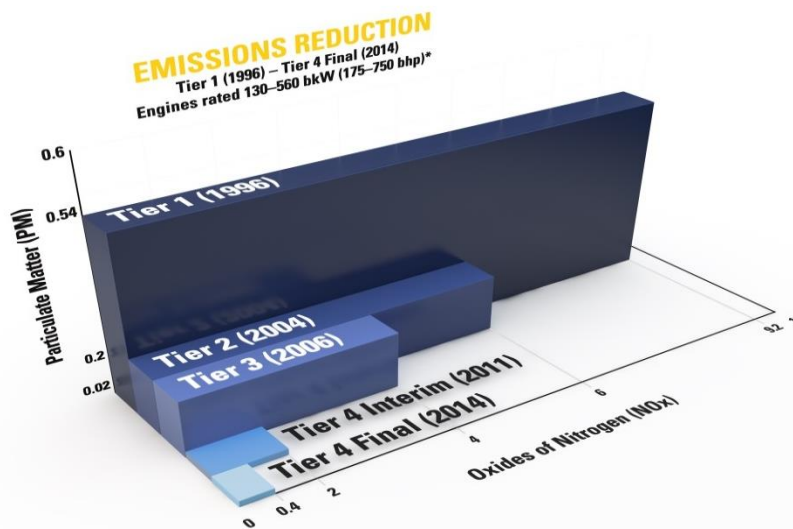
21. The EPA Emissions Standard set the not-to-exceed limits for NOx at 0.20 grams per brake-horsepower-hour (g/bhp-hr). The not to exceed NOx standard of 0.20g/bhp-hr was to be phased-in between January 1, 2007 and December



31, 2009: “The NOx and NMHC standards will be phased-in together between 2007 and 2010, for diesel engines. The phase-in will be on a percentage-of-sales basis: 50 percent from 2007 to 2009 and 100 percent in 2010”, the whole as appears more fully from a copy of the EPA Highway Diesel Progress Review Report 2, dated March 2004, produced herein as **Exhibit R-5**;

			Phase-In by Model Year			
		Standard (g/bhp-hr)	2007	2008	2009	2010
Diesel	NOx	0.20	50%	50%	50%	100%
	NMHC	0.14				
	PM	0.01	100%	100%	100%	100%

22. As is depicted below, the EPA ultimately organized a four-tiered system with exhaust emission requirements becoming progressively stricter. By the end of 2014, the Tier 4 Final is to take effect, drastically reducing allowable exhaust emissions;



23. With the issuance of the Final Rule and the publication of the 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, all engine makers, except the Respondents, developed a new and innovative engine technology called Selective Catalytic Reduction (“SCR”) to recycle exhaust back through the engine to reduce emissions in compliance with these regulations;

24. On the other hand, Navistar made the unilateral business decision to utilize an exhaust gas recirculation system in the MaxxForce Engines branded as MaxxForce Advanced EGR, which ultimately proved unable to meet the 2010 EPA Emissions Standard;
25. Instead of developing compliant technology in the nine (9) year lead time provided by the EPA when it issued the Final Rule in 2001 (Exhibit R-4), the Respondents chose instead to:
- First challenge the feasibility of the standard,
 - Amass NOx emissions credits to delay compliance,
 - Sue EPA and ARB², challenging certification of SCR (eight different lawsuits filed by Navistar),
 - Heavily promote and sell nonconforming, lower cost EGR systems while denigrating SCR in the marketplace,

The whole as appears more fully from a copy of the PowerPoint presentation prepared for the White House meeting dated August 17, 2012, produced herein as **Exhibit R-6**;

26. Navistar continued to sell its noncompliant Engines after the 2010 Emission Standard took effect through banked emission credits and in October of 2011 Navistar informed the EPA that it would run out of these credits in 2012, which would effectively force it to stop manufacturing the Engines;
27. On January 31, 2012, the EPA promulgated an “Interim Final Rule” (“IFR”) to permit “technological[ly] laggard” manufacturers of heavy-duty diesel engines to pay nonconformance penalties in exchange for the right to sell noncompliant engines, the whole as appears more fully from a copy of the EPA Interim Final Rule 40 CFR Part 86 entitled “Nonconformance Penalties for On-Highway Heavy Heavy-Duty Diesel Engines” dated January 31, 2012, produced herein as **Exhibit R-7**;
28. On June 12, 2012, the United States Court of Appeals for the District of Columbia Circuit vacated the EPA’s IFR and the nonconformance penalties based on the lack of a good cause for the EPA’s failure to provide formal notice or an opportunity to comment, the whole as appears more fully from a copy of the United States Court of Appeals for the District of Columbia Circuit Decision dated June 12, 2012 (“the USCA Decision”) and from a copy of the Bloomberg article entitled “Navistar Falls After Court Throws Out EPA Engine Rule” dated June 12, 2012, produced herein *en liasse* as **Exhibit R-8**;

29. The following are noteworthy excerpts from the USCA Decision (Exhibit R-8):

² ARB is the United States Air Resources Board.

“... the only purpose of the IFR is, as Petitioners put it, “to rescue a lone manufacturer from the folly of its own choices”.³

...

...it is a consequence brought about by Navistar’s own choice to continue to pursue a technology which, so far, is noncompliant⁴.

...

NCPs⁵ are not designed to bail out manufacturers that voluntarily choose, for whatever reason, not to adopt an existing, compliant technology...NCPs have always been intended for manufacturers that cannot meet an emission standard for technological reasons rather than manufacturers choosing not to comply... (...NCPs are inappropriate “if many manufacturers’ vehicles/engines were already meeting the revised standard or could do so with relatively minor calibration changes or modifications”). Based solely on what EPA has offered in the IFR, it at least appears to us that NCPs are likely inappropriate in this case.⁶”

30. On July 6, 2012, Navistar announced that it would switch to the SCR technology to meet the NOx standards, the whole as appears more fully from a copy of the Trucking Info article entitled “Navistar Will Add Urea-Based Aftertreatment to Meet Emissions Regulations” dated July 2012, produced herein as **Exhibit R-9**;
31. The EPA revised its Final Rule on Nonconformance Penalties August 30, 2012 based on the USCA Decision (Exhibit R-8) and almost doubled the nonconformance penalties applicable to the Respondents’ noncompliant Engines, the whole as appears more fully from a copy of the Regulatory Announcement entitled “Nonconformance Penalties for Heavy-Duty Diesel Engines Subject to the 2010 NOx Emission Standard” dated August 2012, from a copy of the Amended Final Rule on Nonconformance Penalties entitled “Nonconformance Penalties for On-Highway Heavy-Duty Diesel Engines” dated September 5, 2012, from a copy of the Cantruck article entitled “EPA Again allows Penalties to Sell Non Compliant Engines” dated September 7, 2012, from a copy of the Reuters article entitled “EPA raises fines on non-compliant Navistar engines” dated August 30, 2012, and from a copy of the Forbes article entitled “Navistar Starts Paying The Piper For Its Costly Strategic Mistake” dated August 31, 2012, produced herein *en liasse* as **Exhibit R-10**;
32. On December 11, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the EPA’s Amended Final Rule (Exhibit R-9) and the nonconformance penalties based again on the EPA’s failure to provide

³ *Mack Trucks, Inc. and Volvo Group North America, LLC v. Environmental Protection Agency*, 2012, case #12-1077, at page 11.

⁴ *Id.*

⁵ NCPs means noncompliance penalties.

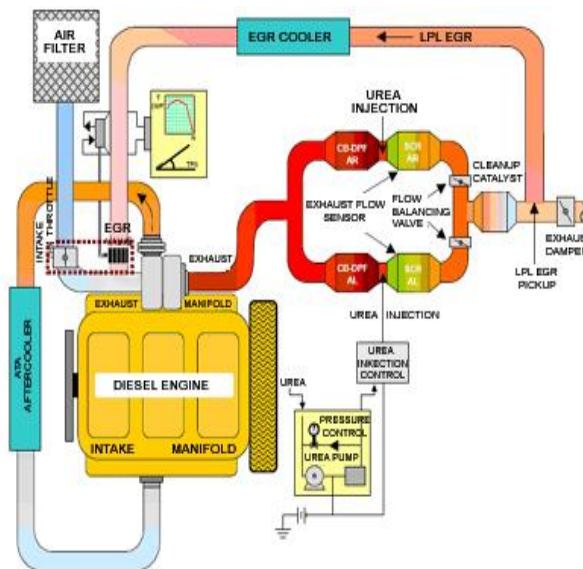
⁶ *Supra.* note 3 at page 15.



adequate notice or an opportunity to comment, the whole as appears more fully from a copy of the United States Court of Appeals for the District of Columbia Circuit Decision dated December 11, 2013 (“the Second USCA Decision”), produced herein as **Exhibit R-11**;

(b) Navistar’s Advanced EGR Emission Control System

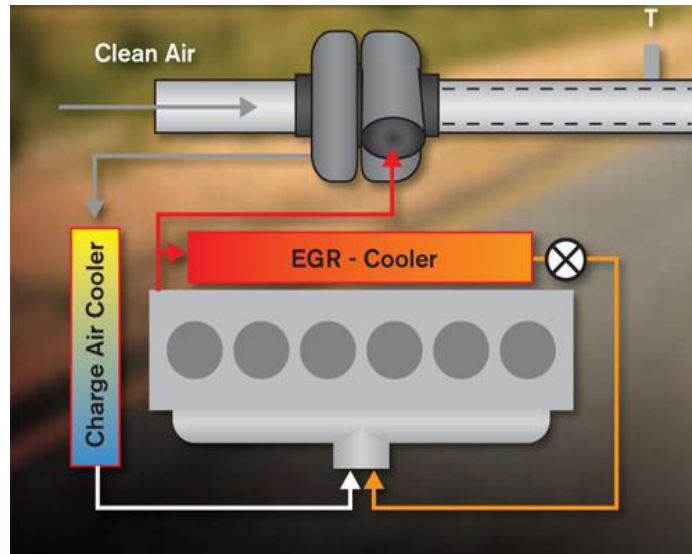
33. Navistar made the business decision to design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the MaxxForce Advanced EGR as an emissions solution for the North American trucking, bus, construction and mining industries, and it represented the Engines as being capable of reducing air pollutants in order to meet the 2010 phased-in EPA Emission Standard, which predominantly targeted NOx emissions;
34. In order to meet the 2010 phased-in standard, Navistar elected to use greater amounts of exhaust gas recirculation; i.e., Advanced EGR, which sends higher amounts of exhaust gases to engine cylinders, and uses enhanced electronic controls, even-higher-pressure fuel injection, multiple coolers, and double turbocharging. Every other engine manufacturer chose to inject diesel exhaust fluid to break down NOx in the exhaust; i.e. SCR;



35. Navistar MaxxForce Engines implemented the Advanced EGR system for NOx reduction and a Diesel Oxidation Catalyst (“DOC”) Diesel Particulate Filter (“DPF”) for reduction of particular matter;
36. The MaxxForce Advanced EGR system was calculated to be an “in-cylinder solution” to reduce NOx by diverting a portion of the exhaust gas into the “EGR cooler” which fed the cooled exhaust back through the engine’s air intake



system. The purpose of exhaust gas recirculation is to reduce combustion temperature and thereby the level of NOx entering the exhaust stream⁷;



37. Some of the known trade-offs of employing an EGR system to reduce NOx emissions are increased fuel consumption, increased emissions of particulate matter (“PM”), increased emission of carbon dioxide (“CO2”), and increased emissions of hydrocarbons (“HC”);
38. Navistar represented that “[l]ow combustion temperatures are one of the keys to Navistar’s Advanced MaxxForce EGR system for meeting EPA 2010 clean-air standards without burdening commercial truck operators with liquid urea based selective catalytic reduction (SCR) after-treatment” and that “Navistar customers benefit with high performance, high efficiency and low diesel emissions”, the whole as appears more fully from a copy of the Navistar Press Release entitled “Navistar’s Pure Power Technologies Acquires Holley EGR Valve Technology” dated January 19, 2010, produced herein as **Exhibit R-12**;
39. The Advanced EGR recirculates a high percentage of exhaust gas (up to 50%) to the engine intake subjecting the MaxxForce Engine to high operating temperatures and significant heat stress;
40. In designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting the MaxxForce Engine, Navistar knew, or should have known that the Advanced EGR system would not meet the 2010 NOx standard of 0.20 gm/bhp-hr, its representations to the contrary notwithstanding;

⁷ Navistar represented the Advanced EGR as comprised of “advanced fuel injection”; “improved air intake management”; “improved electronic calibration”; and “proprietary combustion technology”.



41. As eloquently put, Navistar's "decision to break with the rest of the industry to pursue a diesel emissions technology that ultimately failed to obtain EPA certification, was a gamble akin to choosing Betamax over VHS" (Exhibit R-10);
42. Navistar represented the MaxxForce Engines to be free of defects in material and workmanship;
43. In spite of these representations, shortly after purchasing their MaxxForce Engine equipped Vehicles, the Petitioner and the Class began to experience numerous breakdowns involving the Advanced EGR system, EGR coolers, EGR valves and other emissions controls and related equipment;
44. Navistar's Advanced EGR system produced more heat and pressure than the system was able to cope with, leading to repeated breakdowns of the EGR system, including broken sensors, valves, and other system and Engine components;
45. These breakdowns of the EGR System cause the onboard computer diagnostic control ("OBD") system to send error messages to the operator, leading to a reduction in engine performance and eventual engine shutdown. The OBD controls issued operator warning, derating and shutdown requiring authorized repair and part replacements of the Engines;
46. In spite of numerous authorized repairs and equipment replacements, neither Navistar's authorized agents nor Navistar corrected the defects in any lasting way;
47. After each repair, it was represented to the Petitioner and to the Class that the defects were remedied and that the Engines would thereafter be free of defects. These representations were false and were known to be false by Navistar and its authorized agents;
48. In May 2013, Navistar was forced to recall some of the 2012 model year Engines as they could not be certified by the EPA due to exceeding the established limits for NOx emissions, the whole as appears more fully from a copy of the EPA Program Announcement entitled "Navistar Inc. Heavy-Duty Engine Recall" dated June 2013, produced herein as **Exhibit R-13**;
49. Navistar abandoned its Advanced EGR technology for model years 2014 and thereafter (Exhibit R-9);
50. Navistar's MaxxForce Engines are defective in that the EGR system fails to reliably function as intended, does not reduce NOx emissions to the EPA Standard, causes repeated and frequent Engine malfunctions triggering OBD failure diagnosis, warning, derate, and shutdown requiring remediation during which time the vehicles are unavailable for transportation;



51. In addition, the MaxxForce Engines are defective in that Advanced EGR recirculates exhaust gas back into the engine intake reducing engine efficiency, replaces combustible air with non-combustible exhaust, produces increased engine operating temperature, and produces excessive particulate matter and soot inside the Engine reducing performance, durability, reliability and fuel economy, and causing premature failure of Engine components and emission controls;
52. The Engines repeatedly experience Advanced EGR system failures that have not been corrected by the emission work performed, both inside and outside the warranty period. These repeated and frequent failures cause the Vehicles to be unreliable and, in spite of numerous attempts, the failures have not and cannot be remedied. The numerous and frequent faults causing warning, derate, and shutdown necessitate costly and time consuming emissions repairs because the Engines do not and cannot effectively and reliably remove exhaust emission pollutants as required by the 2010 EPA Emission Standard and by the Canadian Emission Regulations on a consistent and reliable basis;
53. It is clear that the Maxxforce Advanced EGR System is quite a complicated mechanical system; however, all that is necessary to comprehend for our purposes 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 further, these defects were actively concealed by the Respondents despite longstanding knowledge;

(c) Navistar's Representations

54. Navistar represents to the Petitioner and to the Class that its Engines are “built for performance, reliability, durability and fuel economy”, that they are “rock-solid” and “time-tested”, that the “engine, which retains the platform’s legendary reliability and durability, ensure [] trucks and [] business will be “Always Performing””, and that “[t]he resulting durability and performance, providing low cost of ownership and high residual value”, the whole as appears more fully from a copy of extracts from the Respondents’ websites at www.navistarpartsandservice.com and www.maxxforce.com, produced herein *en liasse* as **Exhibit R-14**;





55. The Respondents represent that the Engines offer a “solution” with “high structural strength” and “durable block and head designs” and that they are “reliable”, “durable” with a superior “resale value” and are “serviceable”;



56. Navistar marketed the MaxxForce Advanced EGR System as a superior alternative to the systems installed by other truck engine manufacturers to comply with the 2010 EPA Emission Standard (i.e. selective catalytic reduction or SCR), the whole as appears more fully from a copy of the Navistar Press Release entitled “Navistar Demonstrates Readiness with 2010 Emissions” dated February 3, 2009 and from a copy of the Navistar Press Release entitled “Navistar on Track with 2010 Engines as Final Testing Nears Completion” dated July 13, 2009, produced herein *en liasse* as **Exhibit R-15**;

57. The Respondents represented to customers that they are selling the “best performing engine backed by the commitment of Navistar Engine Group...” and that “Navistar Customers benefit with high performance, high efficiency and low diesel emissions”, the whole as appears more fully from a copy of the Navistar Engine Group 75th Anniversary Booklet entitled “Diesel – Looking Back. Moving Forward” dated 2008 and from a copy of a media extract from the Respondents’ website at www.media.navistar.com, produced herein *en liasse* as **Exhibit R-16**;



58. Navistar represented to the Petitioner and to the Class:

- a) That the MaxxForce Engines meet the 2010 EPA Emissions Standards for NO_x;
- b) That the MaxxForce Engines were free of defects in material and workmanship;
- c) That following repair by an authorized service center, the MaxxForce Engines would be free of defects in material and workmanship;
- d) That Navistar had an extensive network of authorized service centers that would promptly provide parts and trained technicians needed to fix any problems with the MaxxForce Engines;
- e) That the MaxxForce Engines would pass without exception in the market and were fit for the purposes of transporting goods, on the highway;
- f) That the MaxxForce Advanced EGR used “proven technologies” including advanced fuel injection, air management, electronic calibrations controls and proprietary combustion technologies to meet the 2010 EPA Emissions Standard for on-highway diesel engines;
- g) That Navistar had “logged millions of miles of real-world experience before the launch of these engines”;
- h) “We are on track with our strategy of 2010 emissions compliance through the use of our EGR-only solution” providing customers with a “simple and straightforward solution that places the responsibility of emissions compliance on us, the manufacturer, not the customer”;
- i) “Low combustion temperatures are one of the keys to Navistar’s Advanced MaxxForce EGR system for meeting EPA 2010 clean-air standards without burdening commercial truck operators with liquid urea based selective catalytic reduction (SCR) after-treatment”;
- j) “MaxxForce Advanced EGR is the only no-hassle, in cylinder solution for 2010 emissions. MaxxForce engines eliminate the hassle of SCR training, additional maintenance and the handling of liquid urea. MaxxForce Engines deliver: Reliability, Durability, Power, Performance [and] Fuel Economy”;
- k) That the Advanced EGR provides long-term system performance;
- l) That Advanced EGR has “lower operating costs” due to less unscheduled downtime; and



m) “MaxxForce Advanced EGR Engines offer a customer-friendly alternative to SCR that will also deliver lower total operating costs for customers”;

59. Navistar made these representations with the intention that they be relied upon by customers and they were material to the customers’ decisions to purchase the MaxxForce Engines and/or the Vehicles;

60. Navistar was aware of, but failed to disclose to the Petitioner and Class Members, the following material facts and circumstances:

- a) That the MaxxForce Advanced EGR engines would not meet the 2010 EPA Standards, and could not be repaired to do so;
- b) That its Advanced EGR technology was defective, would not reach the 2010 EPA standards, was plagued with numerous engine and emission component failures due to the excessive heat stress caused by the Advanced EGR which could not be corrected;
- c) That Navistar had been declared a “technological laggard ” by the EPA and had sought relief from the EPA for the non-compliance of the MaxxForce Engine;
- d) That the Navistar MaxxForce Engines were experiencing higher than anticipated warranty repairs;
- e) That the warranty repairs of the Advanced EGR engines was neither curing nor correcting the defects in the MaxxForce Engines;
- f) That the MaxxForce Engines were not reliable or durable, and would not operate reliably for the useful life of the engine;
- g) That the MaxxForce Engines were not durable and would not operate for the useful life of the engine without repeated and frequent repairs;
- h) That the MaxxForce Engines were consuming as much as 50% of the combustion intake air with recirculated exhaust gas;
- i) That the MaxxForce Engines were not able to properly manage the increased heat and heat stress generated by the Advanced EGR technology;
- j) That Navistar had requested delay and exemption from the 2010 Emission standard because its Advanced EGR system would not meet the 2010 NOx standard of 0.20 gm/bhp-hr; and



- k) That customer engine failures were caused by the Advanced EGR system technology and that such failure could not be remediated, cured or corrected;

(d) The Warranty and the Band-Aid Approach

61. The powertrain and emissions systems in the MaxxForce Engines are covered by a standard five (5) year or 100,000 mile warranty, whichever comes first. Navistar's warranty provides:

All emission control system parts proven defective during normal use will be repaired or replaced during the warranty period. Warranty repairs and service will be done by any authorized International dealer with no charge for parts, labor, and diagnostics.

62. The Respondents have been aware for several years of the true nature and cause of the Design Defect in the Engines. In particular, Navistar authorized dealers around the country have seen sharp increases in repair work since the introduction of the MaxxForce EGR system. 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, the Respondents have intentionally withheld from, actively concealed 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;
63. 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;
64. Additionally, the Design Defect causes the Engines to stop the Vehicles containing the Engines from proceeding, forcing the Vehicle to pull to the side of the road and be towed. This creates a serious safety concern to the drivers of the Vehicles, to the occupants of other vehicles, and to the public;
65. As a result of the Respondents' unfair and deceptive 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;
66. For customers with Vehicles within the standard 100,000 mile warranty period for the emission and regeneration system, as discussed above, Navistar 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, Navistar 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 even after the expiration of the warranty, even where Navistar has replaced the system several times – and given the Respondents’ knowledge of this concealed Design Defect – any attempt by Navistar to limit its warranty with respect to the Design Defect is unconscionable.

(e) Summative Remarks

67. The Petitioner and the Class Members that it seeks to represent suffered damages by purchasing and/or leasing Respondents’ products with the Design Defect and they are therefore entitled to damages;
68. The Respondents placed their Engines into the stream of commerce in Canada and elsewhere with the Design Defect and with the intention and expectation that customers, such as the Petitioner and Class Members, would purchase and/or lease the Vehicles containing them based on their representations and/or omissions relating thereto;
69. The Respondents knew or ought to have known that purchasers and/or lessees of Vehicles equipped with their Engines would not be reasonably able to protect their interests, that such purchasers and/or lessees would be unable to receive a substantial benefit from the Engines and that customers would be relying on the Respondents’ representations to their detriment;
70. Canadian customers were never compensated for damages incurred as a result of purchasing and/or leasing the Vehicles with the Design Defect;
71. As a result of the Respondents’ unfair and deceptive business practices, the Petitioner and Class Members, have suffered an ascertainable loss of money and/or property and/or loss in value;
72. Consumers were induced into purchasing and/or leasing Vehicles containing the defective Engines through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim:
 - a) A refund for the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect,
 - b) A refund of out-of-pocket expenses for repairs and/or 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) Pain and suffering, trouble and inconvenience, and
- j) Punitive or exemplary damages;

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

73. On November 8, 2011, the Petitioner leased a 2012 International Prostar+ truck⁸ with Navistar's MaxxForce 13 Engine from Camions International Rive-Nord 2700 Étienne-Lenoir, in Laval, Quebec for a total cost of approximately \$148,672.12 including taxes payable in monthly installments of \$2,700 including taxes, the whole as appears more fully from a copy of an extract from the Lease Agreement dated November 8, 2011, produced herein as **Exhibit R-17**;

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

75. At the time of sale, the Petitioner was under the impression that it was purchasing a Vehicle that was free of any design defects; unbeknownst to it, it overpaid for the purchase price as the Vehicle was in fact suffering from the Design Defect;

⁸ Vin No. 3HSDSJ2CN614140.



76. Soon after purchasing this Vehicle, the Petitioner began experiencing substantial, continuous and identical problems with the MaxxForce Advanced EGR system. Some of the necessary repairs and replacements were covered by the original manufacturers limited warranty, while others were not (requiring payment in full);
77. Petitioner experienced numerous breakdowns of the Engine, specifically with the EGR system, which have been occurring on a monthly basis. The Engine in the Vehicle experienced repeated issues resulting from the Design Defect that prevent the Engine from working properly;
78. In addition, there have been five (5) recalls relating to the Vehicle due to it being in excess of the limited established by the EPA in order to bring them in compliance and the Petitioner has been forced to relinquish use of his truck for over two (2) weeks relating thereto;
79. Most recently, in March of 2014, the truck required repairs and/or replacements forcing the Petitioner to pay an approximate total of \$1,200 in out-of-pocket expenses as it was not covered by the original manufacturer's limited warranty as well as \$800 in towing costs;
80. These problems were exacerbated because they required the truck to be brought in for lengthy repairs and the Petitioner was unable to use its Vehicle for significant amounts of time. Specifically, to date, the Petitioner has been unable to use its truck for approximately one (1) month, totalling approximately \$10,000 in lost profits;
81. 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;
82. To date, the Petitioner has experienced numerous problems with the truck, 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 \$2,000;
83. In addition, Petitioner was injured at the point-of-sale as the purchase price reflected a truck that were 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;
84. 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 Canada and 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-18**;

85. It was at this moment in time that the Petitioner was finally made aware that it had purchased a truck that was plagued by a Design Defect;
86. 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, the purchase price of the Vehicle or otherwise overpayment for the Vehicle, out-of-pocket expenses for repairs and/or replacements, including future costs of repair, out-of-pocket loss associated with towing costs, loss of use of the Vehicle while it was being serviced, compensation for the diminished value of its Vehicle because the problems with the Engine became notoriously defective in the industry, lost profits, pain and suffering, trouble and inconvenience, and punitive or exemplary damages;
87. Had Petitioner known about the Design Defect, it would either have not purchased the Vehicle;
88. 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;
89. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
90. 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

91. Every member of the class has purchased and/or leased trucks, buses and other heavy duty Vehicles containing defective Engines;
92. Had the Respondents disclosed the truth about the Engines, reasonable consumers would not have bought the Vehicles or would not have paid such a high price;
93. Each member of the class is justified in claiming at least one or more of the following as damages:



- a) A refund for the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect,
- 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) Pain and suffering, trouble and inconvenience, and
- j) Punitive or exemplary damages;

94. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from Class Members;

95. 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 renders the application of articles 59 or 67 C.C.P. difficult or impractical

96. 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);



97. Class members are numerous and are scattered across the entire province and country;
98. 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;
99. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;
100. 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;
101. 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
102. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the litigation;
103. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
104. 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 their 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 costs (including, but not limited to, (i) the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect , (ii) 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, (iii) the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, (iv) towing costs for the Vehicles, including the cost of future towing, (v) the loss of use of the Vehicles and expenditures for rental vehicles, (vi) the diminished value of the Vehicles, (vi) 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), (vii) the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, and (viii) pain and suffering, trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles), and in what amount?
 - g) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair practices and/or to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, free of charge?
 - h) Are the Respondents responsible to pay punitive damages to class members and in what amount?
105. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT



106. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief, and declaratory judgment;

107. 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;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct, particularly so with respect to their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting the Engines as compliant with the EPA Standard and as free from a Design Defect;

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

ORDER the Defendants to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, 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

108. Petitioner is a member of the class;
109. 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 and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with its attorneys;
110. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
111. 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;
112. 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;
113. 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;
114. Petitioner understands the nature of the action;
115. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

116. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
117. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
118. 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, injunctive relief, and declaratory judgment;

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 2008 through 2013 Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel engines (collectively “MaxxForce Engines” or “Engines”), 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 2008 through 2013 Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel engines (collectively “MaxxForce Engines” or “Engines”), 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 their 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 costs (including, but not limited to, (i) the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect, (ii) 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, (iii) the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, (iv) towing costs for the Vehicles, including the cost of future towing, (v) the loss of use of the Vehicles and expenditures for rental vehicles, (vi) the diminished value of the Vehicles, (vii) 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), (viii) the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, and (ix) Pain and suffering, trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles), and in what amount?
- g) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair practices and/or to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, 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;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct, particularly so with respect to their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting the Engines as compliant with the EPA Standard and as free from a Design Defect;

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



ORDER the Defendants to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, 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 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 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the GLOBE & MAIL;

ORDER that said notice be available on the Respondents' websites as well as Facebook page with a link stating "Notice to Owners/Lessees of trucks, buses and other heavy-duty vehicles with a model year model year 2008 through 2013



Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel 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, November 28, 2014

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner

