Court File No. CV-17-567773-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

JACK ROMBOUTS

Plaintiff

and

FCA CANADA INC., FIAT CHRYSLER AUTOMOBILES N.V. and FCA US LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

Notice of Action issued January 16, 2017

1. The plaintiff's claim is for:

   (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;

   (b) a declaration that Fiat Chrysler Automobiles N.V. ("**FCA NV**"), FCA US LLC ("**FCA US**") and FCA Canada Inc. ("**FCA Canada**") (collectively, "**FCA**") equipped model years 2014-2016 Jeep Grand Cherokee 3.0 litre EcoDiesel and Dodge Ram 1500 3.0 litre EcoDiesel motor vehicles in Canada (collectively, the "**Vehicles**") with defeat devices, contrary to section 11(2) of the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 and section 9(2) of the *Passenger*

Automobile and Light Truck Greenhouse Gas Emission Regulations (collectively, the "**CEPA Regulations**")

(c) a declaration that FCA knowingly or recklessly represented to the public that the Vehicles complied with emission regulations, which was false or misleading in material respects;

(d) a declaration that FCA engaged in unfair practices in respect of consumer transactions;

(e) a declaration that FCA breached warranty obligations pertaining to the Vehicles;

(f) a declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to develop and to conceal illegal defeat devices to mislead Canadian consumers, regulators and purchasers of Vehicles;

(g) compensation in an amount not exceeding $250,000,000:

(i) pursuant to section 40 of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, ("**CEPA**"), for losses and damages suffered as a result of conduct that contravened the CEPA Regulations by equipping the Vehicles with defeat devices;

(ii) pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c. C-34 ("***Competition Act***"), for losses and damages suffered as a result of conduct that contravened s. 52 of the *Competition Act*;

(iii) for losses and damages suffered as a result of conduct contrary to the *Consumer Protection Act, 2002,* S.O. 2002, c. 30 and equivalent consumer protection statutes in other provinces; and

(iv) for damages suffered arising from negligent misrepresentation, breach of warranty, and conspiracy;

(h) punitive, exemplary and aggravated damages in the amount of $10,000,000;

(i) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended ("***Courts of Justice Act***")

(j) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;

(k) investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 40 of CEPA, section 36 of the *Competition Act* and section 131 of the *Courts of Justice Act*; and

(l) such further and other relief as this Honourable Court deems just.

(1) NATURE OF THE ACTION

2. The U.S. and Canada have a common regulatory framework requiring automobile manufacturers to comply with emissions restrictions. One of the chemicals regulated is nitrogen oxide ("**NOx**"), a noxious pollutant that contributes to smog and airborne particles that adversely affects human health and the environment.

3. This action involves the defendants' conspiracy to intentionally design devices, which had the effect of suppressing true measures of polluting NOx in the Vehicles. Contrary to U.S. and

Canadian law, the devices constituted prohibited defeat devices, which had the effect of increasing the amount of NOx and causing the cars to violate North American emission standards. The defendants concealed the defeat devices to avoid their detection, failing to report their existence as required by law. The defendants did so intentionally, knowing the difficulties involved with detecting defeat devices if they go unreported. The defeat devices were only detected after enhanced testing and would not have been detected otherwise.

4. At the same time, FCA promoted the Vehicles as having "EcoDiesel" engines, which FCA misleadingly marketed as fuel efficient and powerful, "clean diesel", "ultra clean", "emissions compliant", and with "no NOx" exiting the tailpipe. FCA knew that these attributes enhanced the value of the Vehicles in the minds of customers. As a result, the Vehicles were sold at significant markups to the Proposed Class compared to non-diesel vehicles.

5. As revealed by the EPA in January 2017, FCA's representations were untrue. The Vehicles could not achieve these results without cheating emissions tests by using defeat devices. In truth, the defeat devices caused increased pollution and resulted in the Vehicles violating emission control laws. Even if the devices are modified to bring the Vehicles into compliance with emissions standards, the Vehicles will not perform as promised when they were purchased. As a result of the defendants' actions, the Proposed Class suffered damages, for which the defendants are liable.

(2) THE PLAINTIFF AND THE CLASS

6. Jack Rombouts resides in Watford, Ontario. He purchased a 2015 Dodge Ram 1500 3.0 litre EcoDiesel during the Class Period (as defined below).

7. The plaintiff seeks to represent a proposed class (the "**Class**" or "**Proposed Class**") comprised of all persons or entities in Canada who purchased or leased a new Vehicle between August 1, 2013 and the date of certification of this proceeding (the "**Class Period**").

(3) THE DEFENDANTS

8. FCA NV is a Dutch corporation headquartered in London, United Kingdom. It is the world's seventh largest auto maker. FCA NV and its wholly owned subsidiaries are responsible for the engineering, design, development, research and manufacture of the Vehicles.

9. FCA US is an American corporation headquartered in Auburn Hills, Michigan. FCA US is an indirect wholly-owned subsidiary of FCA NV. FCA US manufactures, markets and sells motor vehicles in the U.S. and worldwide under its flagship Chrysler brand, as well as the Dodge, Jeep and Ram motor brands.

10. FCA Canada is a Canadian corporation headquartered in Windsor, Ontario. FCA Canada is a wholly-owned subsidiary of FCA US. FCA Canada manufactures, markets and sells Chrysler, Dodge, Jeep and Ram motor vehicles in Canada and worldwide.

11. At all material times, FCA Canada was the sole distributor of new Vehicles in Canada. It sold new Vehicles through its dealer and retailer network.

12. The business of each of FCA NV, FCA US and FCA Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of Vehicles and for the purposes of the claims described herein.

(4) STATUTORY FRAMEWORK APPLICABLE TO VEHICLE EMISSION TESTING IN U.S. AND CANADA

13. The purpose of CEPA is to contribute to sustainable development through pollution prevention. Canada enacted the CEPA Regulations pursuant to section 160 of CEPA.

14. The purpose of the CEPA Regulations is to reduce vehicle emissions as prescribed and to establish emission standards and test procedures that are aligned with the U.S. Environmental Protection Agency ("**EPA**").

15. To these ends, the CEPA Regulations prescribe exhaust emission and evaporative emission standards for light-duty and other vehicles, specifying that these vehicles must conform to standards prescribed by the U.S. Code of Federal Regulations (the "**CFR**").

16. An important aspect of the harmonization of Canadian and U.S. standards is the recognition of certificates of conformity ("**COC**") issued by the EPA. Under CEPA and the Canadian Emission Regulations, vehicles and engines that are granted a COC by the EPA and sold concurrently in Canada and the U.S. do not require further approvals under Canadian law.

17. The COC granted by the EPA in relation to the Vehicles indicated that the Vehicles complied with emission legislation in the U.S. and therefore Canada as well under the harmonized regime, and allowed FCA Canada to sell Vehicles to the Proposed Class.

(5) PROHIBITION ON DEFEAT DEVICES

18. One of the equivalent vehicle emission standards applicable in both the U.S. and Canada pertains to a ban on defeat devices.

19. Defeat devices bypass, defeat or render inoperative elements of a vehicle's emission control system, which exists to comply with emission standards prescribed by U.S. and Canadian laws.

20. "Defeat devices" are defined under the CEPA Regulations as 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." The CFR contains a similar definition of AECD.

21. In the U.S. and Canada, AECDs that are "defeat devices" are prohibited. AECDs are only permitted under very limited circumstances, such as when they are needed to protect the vehicle against damage or accident, or where their use does not go beyond the requirements of engine starting.

22. Under U.S. law applicable to emission standards, all AECDs must be disclosed to the EPA in initial motor vehicle applications for COC. Under U.S. law, the COC application must include "a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and [a] rationale for why it is not a defeat device." The requirement to disclose the existence of all AECDs is in part due to the difficulties involved in detecting undisclosed AECDs.

(6) JANUARY 2017 NOTIFICATION OF VIOLATION BY EPA TO FIAT CHRYSLER

23. On or about January 12, 2017, the EPA notified FCA NV and FCA US that the EPA had determined there was a failure to disclose AECDs in Dodge Ram 1500 diesel trucks and Jeep Grand Cherokee diesel light-duty vehicles model years 2014 to 2016 equipped with 3.0 litre

engines. By failing to disclose the existence of these AECDs, the vehicles did not conform to specifications described in the EPA COC applications. In particular, contrary to U.S. and Canadian laws, the operation of the undisclosed AECDs resulted in excessive emissions of NOx under various operating conditions that would reasonably be expected to be encountered in normal vehicle operation and use.

24. NOx are a family of highly reactive gases that play a major role in atmospheric reactions with volatile organic compounds that produce ozone on hot summer days. Breathing ozone can trigger a variety of health problems, ranging from chest pain, coughing and congestion and can worsen breathing conditions such as bronchitis, emphysema and asthma.

25. Manufacturers of diesel-fueled motor vehicles equip vehicles with exhaust gas recirculation ("**EGR**") and selective catalyst reduction ("**SCR**") systems to reduce NOx emissions. Certain defeat devices involving AECDs can cause EGR or SCR systems to operate less effectively, or not at all, during certain operating conditions.

26. The EPA determined that at least eight AECDs used in 2014-2016 diesel Dodge Ram 1500 and diesel Jeep Grand Cherokees 3.0 litre engines had the effect of increasing emissions of tailpipe NOx under conditions reasonably expected to be encountered in normal vehicle operation and use. These AECDs were neither described nor justified in the applicable COC applications, as required by EPA regulations.

27. The AECDs were prohibited defeat devices, contrary to U.S. and Canadian law.

28. Despite having the opportunity to do so, FCA NV and FCA US failed to justify to the EPA that the AECDs were not prohibited defeat devices. FCA knew that a principal effect of one or

more of the AECDs was to bypass, defeat or render inoperative one or more elements of design installed to comply with Canadian and U.S. emission standards.

(7) JANUARY 2017 NOTIFICATION OF VIOLATION BY CALIFORNIA AIR RESOURCES BOARD TO FIAT CHRYSLER

29. On or about January 12, 2017, California's Air Resources Board ("**CARB**") also notified FCA NV and FCA US of a Notice of Violation for failing to disclose AECDs pertaining to Dodge Ram 1500 diesel trucks and Jeep Grand Cherokee diesel light-duty vehicles model years 2014 to 2016 equipped with 3.0 litre engines. As described in CARB's letter and Notice of Violation, the failure to disclose AECDs made it possible to obtain COCs so that vehicles could be sold. The failure to comply with test and certification procedures together with the failure to comply with on-board diagnostic requirements, including invalid labeling and violations of emission warranty provisions, were significant violations that "must be addressed expeditiously", CARB stated.

(8) BREACH OF CEPA REGULATIONS

30. Section 11(2) of the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 and section 9(2) of the *Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations* prohibit the use of defeat devices in vehicles.

31. The defendants breached the CEPA Regulations by equipping the Vehicles with defeat devices, as a result of which, the plaintiff and members of the Class suffered losses and damages as described below.

(9) BREACH OF S. 52 OF THE COMPETITION ACT

32. FCA knowingly and recklessly represented to the public that the Vehicles complied with U.S. and Canadian emission regulations, which was false or misleading in a material respect. FCA further knowingly and recklessly represented that the Vehicles emitted less pollutants than they actually did.

33. FCA's representations were made to the public for the purpose of promoting their business interests.

(10) BREACH OF CONSUMER PROTECTION ACTS

34. The plaintiff is a consumer located in Ontario as defined by the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A ("**CPA"**).

35. FCA engaged in unfair practices by making false, misleading or deceptive representations contrary to the CPA and equivalent consumer protection statutes in other provinces in Canada. FCA knowingly and recklessly and falsely represented:

(a) that the Vehicles complied with Canadian emissions regulations, which they did not;

(b) that the Vehicles were EPA-compliant, which they were not;

(c) that the Vehicles were "clean diesel" or "ultra clean" with ultra-low emissions, which they were not;

(d) that the Vehicles had levels of NOx emissions which they did not have;

(e) that the Vehicles had road performance characteristics combined with emissions performance, which they did not have;

(f) that the Vehicles had fuel economy combined with emissions performance, which they did not have; and

(g) such further conduct, which is unknown by the plaintiff.

36. FCA's representations to consumers were unconscionable because they knew or ought to have known that consumers were not reasonably able to protect their interests due to the complex testing required to reveal the existence of the defeat devices. It was not until the EPA began engaging in an expanded testing program beginning September 2015 that the existence of the defeat devices in the Vehicle was subsequently identified.

37. It is in the interests of justice to waive notice pursuant to s. 18(15) of the CPA and equivalent consumer protection statutes in other provinces.

(11) BREACH OF WARRANTY

38. FCA warranted to the Proposed Class that the Vehicles were designed, built and equipped to conform at the time of sale with applicable federal and provincial emissions standards and that the Vehicles were free from defects in material and workmanship which would cause them to fail to conform to applicable emission standards within the warranty periods specified.

39. FCA breached warranties provided to purchasers of the Vehicles, causing damages to the Proposed Class. By incorporating illegal and undisclosed defeat devices in the Vehicles, the Vehicles were not designed, built or equipped to comply with applicable federal and provincial emissions standards.

(12) NEGLIGENT MISREPRESENTATION

40. FCA negligently represented to the Proposed Class that the Vehicles complied with emissions regulations in the U.S. and Canada and emitted levels of NOx as permitted by law. These representations were untrue. FCA owed a duty of care to the Proposed Class, who were vulnerable to be deceived by unreported defeat devices installed in the Vehicles. The Proposed Class reasonably relied on the defendants' representations to their detriment, suffering damages. The defendants knew the Proposed Class would rely on representations as to emissions compliance, to their detriment.

(13) UNLAWFUL MEANS CIVIL CONSPIRACY

41. FCA and other unknown co-conspirators unlawfully conspired to design, develop, install and to deceptively conceal the existence of defeat devices in the Vehicles. The defendants' conduct was unlawful, as contrary to US and Canadian laws. The defendants' conduct was directed towards the Class and the EPA. The defendants knew or should have known that damage to the Class was likely.

(14) DISCOVERABILITY

42. A reasonable person would not have been alerted to investigate the existence of defeat devices in the Vehicles. The plaintiff and other members of the Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

(15) FRAUDULENT CONCEALMENT

43. The defendants and its co-conspirators actively, intentionally and fraudulently concealed the existence of the conspiracy and defeat devices from the public, including the plaintiff and other members of the Proposed Class. The affirmative acts of the defendant alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

44. The defendants and its co-conspirators' activities were surreptitious and deceptive.

45. Because the defendants' agreements, understandings and conspiracies were kept secret, the plaintiff and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period.

(16) DAMAGES

46. As a result of the above conduct, the Class has suffered the following damages in the form of inflated sales prices of the Vehicles. The Class paid a premium price for "clean diesel" EcoDiesel engines, which were not in fact emissions compliant. If the defendants recall the Vehicles to make them emissions compliant, this will result in worsened performance and fuel consumption. The Class has equally suffered damages in the form of reduced value of the Vehicles for resale purposes, due to decreases in performance and efficiency and increased wear and tear on the Vehicles arising from the failure to comply with emissions control legislation.

(17) PUNITIVE, EXEMPLARY AND AGGRAVATED DAMAGES

47. The defendants' conduct was highly reprehensible misconduct that departed to a marked degree from ordinary standards of decent behaviour. The defendants knew that defeat devices are

illegal under U.S. and Canadian law and have been illegal for many years. The defendants knew that Chrysler was previously reprimanded for installing other defeat devices. The defendants knew that AECDs that may be considered defeat devices must be disclosed to the EPA in applying to obtain permission for vehicles to be sold to the public. The defendants further knew that if AECDs or defeat devices are not disclosed, they can be exceedingly difficult to detect and may escape being found. As a result, due to the defendants' egregious conduct, excessive amounts of noxious pollutants were emitted by the vehicles, resulting in harm to the environment and health impacts to the general public. As a result, in addition to compensating the Class for their losses or damages, this Court should make a substantial award of punitive damages to reflect the Court's disapproval of the defendants' actions.

(18) SERVICE OF STATEMENT OF CLAIM OUTSIDE ONTARIO

48. This plaintiff is entitled to serve this originating process outside Ontario without court order pursuant to the following rules of the *Rules of Civil Procedure,* RRO 1990, Reg 194 because:

(a) Rule 17.02 (a) – the claim is in respect of real or personal property in Ontario;

(b) Rule 17.02 (c) – the claim is for the interpretation or enforcement of a deed, will contract or other instrument in respect of real or personal property in Ontario;

(c) Rule 17.02 (f) – the claim is in respect of a contract where the contract was made in Ontario, the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario, and a breach of contract has been committed in Ontario;

(d) Rule 17.02 (g) – the claim is in respect of a tort committed in Ontario;

(e) Rule 17.02 (n) – the claim is authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario; and

(f) Rule 17.02 (p) – the claim is against a person ordinarily resident or carrying on business in Ontario.

49. The plaintiff proposes that this action be tried in the City of Toronto, Ontario.

February 15, 2017

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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM
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