

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

SUPERIOR COURT OF QUEBEC
 (CLASS ACTION)

No.: 500-06-00105-200

A S, [REDACTED]
 [REDACTED]
 [REDACTED]

Plaintiff

v.

FCA CANADA INC., a legal person duly constituted according to the Law having an establishment at 3000 Autoroute Trans-Canada, Pointe-Claire, District of Montreal, Province of Quebec, H9R 1B1.

- and -

FCA US LLC, a legal person duly constituted according to the Law having its head office at 1000 Chrysler Drive, Auburn Hills, State of Michigan, United States of America, 48326.

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
 (Articles 574 C.C.P. and following)**

TO ONE OF THE HONORABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES THE FOLLOWING:

Introduction:

1. Plaintiffs wish to institute a class action on behalf of the following Group of which he is a member:

All persons in Quebec who own, owned, lease and/or leased a 2014 to 2019 Dodge Ram 1500 or 2014 to 2019 Dodge Ram1500 Classic vehicle, equipped with a 3.0 litre EcoDiesel engine containing exhaust gas recirculation coolers, designed, manufactured,

assembled, tested, marketed, advertised, distributed, leased and/or sold by the Defendants, or any other Group(s) or Sub-Group(s) to be determined by the Court.

(hereinafter referred to as the “**Plaintiff(s)**”, the “**Class Member(s)**”, the “**Class**”, the “**Group Member(s)**”, the “**Group**”, the “**consumer(s)**”).

2. Plaintiff communicates herewith a copy of the *Registraire des entreprises* (CIDREQ) report on Defendant FCA Canada Inc. (hereinafter “**FCA Canada**”), as **Exhibit R-1**.
3. Plaintiff communicates extracts from the Defendant FCA US LLC (hereinafter “**FCA US**”) websites, together with a copy of the State of Delaware, Division of Corporation Entity details report and a copy of the Search summary of the State of Michigan Corporation Division regarding Defendant FCA US LLC, *en liasse*, as **Exhibit R-2**.
4. The Defendants will sometimes collectively be referred to as “**FCA**” hereinbelow.
5. At all material times to the cause of action herein, the Defendant FCA Canada, was and is a wholly owned and controlled subsidiary of the Defendant FCA US, which, *inter alia*, designs, manufactures, tests, assembles, markets, distributes, supplies, sells and/or leases Dodge Ram 1500 3.0 litre EcoDiesel vehicles, including the Affected Class Vehicles containing the ERG Cooler Defect, in Canada and within the Province of Quebec, as more fully detailed below.
6. At all material times to the cause of action herein, the Defendant FCA US is an American vehicle manufacturer which, *inter alia*, designs, manufactures, tests and/or assembles Dodge Ram 1500 3.0 litre EcoDiesel vehicles, including the Affected Class Vehicles containing the EGR Cooler Defect, at automobile plants located, *inter alia*, in the State of Michigan, United States of America and within the Federal Republic of Mexico, for distribution, sale and/or lease in the United States of America and Canada, including the Province of Quebec.

7. At all material times to the cause of action herein, the Defendants shared the common purpose of, *inter alia*, designing, developing, manufacturing, testing, assembling, marketing, advertising, distributing, supplying, selling and/or leasing the Affected Class Vehicles containing the EGR Cooler Defect in Canada and within the Province of Quebec. Further, the business and interests of the Defendants are interwoven with that of the other as to the EGR Cooler Defect in the Affected Class Vehicles, such that each is the agent of the other.
8. The “**Affected Class Vehicles**” means the model year 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles designed, manufactured, tested, assembled, marketed, advertised, distributed, leased and/or sold by the Defendants FCA, equipped with a 3.0 litre EcoDiesel engine containing Exhaust Gas Recirculation (hereinafter “**EGR**”) coolers that are susceptible to thermal fatigue, leading the ERG coolers to crack internally over time and leak coolant, which can cause combustion within the intake manifold and lead to engine compartment fire and/or a sudden loss of power (hereinafter referred to as the “**EGR Cooler Defect**”). Plaintiff reserves the right to amend these proceedings in order to include any other vehicle models sold by Defendants which have the same defect.

The situation:

Marketing of EcoDiesel Vehicles

9. Diesel trucks have a loyal following in the North American vehicle market because of their reliability, fuel efficiency and power. Diesel engines produce higher torque, even at low revolutions per minute, making them popular in buses, heavy-duty pick-ups, vans, commercial vehicles, farm trucks and ambulances.
10. The 3.0 litre EcoDiesel engine equipped in the Affected Class Vehicles was developed by VM Motori, an Italian diesel engine manufacturer that has been owned by the Defendants since 2013.

11. As early as 2014, the Defendants' communications to consumers included representations regarding the durability and reliability of the EcoDiesel engine. The Defendants touted the "Aptly branded EcoDiesel, the 3.0-liter powerplant is a turbocharged 60-degree, dual overhead camshaft (DOHC) 24-valve V-6 that produces 240 horsepower and 420 lb.-ft. of torque is more efficient than all V-6 gasoline engines in the half-ton category. This abundant torque from a 3.0-liter engine is the enabler for 9,200 pounds of towing capacity while delivering fuel economy of 28 mpg on the highway".
12. These representations to consumers intended to, and did in fact, result in significant media attention for EcoDiesel vehicles to which the Class Members were exposed. The representations that resulted were false (because the vehicles contained a defective part) and deceptive (because the vehicles were not durable or reliable and could not perform as represented due to the fire risk).

The EGR Cooler Defect

13. The EGR system in the Affected Class Vehicles works by recirculating a portion of an engine's exhaust gas back to the engine cylinders. As such, this dilutes the oxygen in the incoming air stream and provides gases inert to combustion to act as absorbents of combustion heat to reduce peak in-cylinder temperatures.
14. A key component of the EGR system is the EGR cooler. This component is used to lower the temperature of the exhaust gases that are recirculated by the EGR system. The EGR cooler is constantly subjected to high heat.
15. The picture below illustrates an EGR cooler:



Image: EGR cooler
Credit: Valeo

16. The Defendants' EGR cooler in the Affected Class Vehicles is unreasonably fragile in design and/or manufacture as it is subject to internal cracking due to thermal fatigue. This cracking is catastrophic as it can introduce pre-heated vaporized coolant into the vehicle's EGR system. As such, this can result in combustion within the intake manifold leading to engine compartment fire and/or a sudden loss of power.
17. In or about October 2019 the Defendants announced a voluntary recall of the Affected Class Vehicles containing the EGR cooler. The Defendants acknowledged and admitted that the EGR Cooler Defect places vehicle occupants, as well as those outside the vehicle, at risk of serious injury or harm and is present in all of the Affected Class Vehicles, the whole as appear from the October 24, 2019 and October 31, 2019 National Highway Traffic Safety Administration (hereinafter the "NHTSA") Safety Recall Reports and the October 25, 2019, Transport Canada Recall Details, communicated hereto as **Exhibit R-3, en liasse**.
18. The Defendants knew or were aware as early as 2014, or earlier, from industry sources and/or other vehicle manufacturers, of the tendency of EGR coolers to crack due to thermal fatigue and the need to implement design features to mitigate this risk. However, it was not until May 2019 that the Defendants

opened an investigation into the matter and finally admitting and acknowledging, pursuant to the October 2019 recalls (Exhibit R-3) that the EGR cooler was susceptible to thermal fatigue, which could crack internally over time leading to engine compartment fire and posing a serious safety hazard to vehicle occupants, as well as those outside the vehicle.

19. When the October 2019 recall was announced the Defendant FCA US advised American owners and/or lessees of the Affected Class Vehicles that “the remedy for this condition is not currently available” but that the company was “making every effort to finalize the remedy as quickly as possible” . Customers were told they would be notified “when the remedy is available. Once you receive your follow-up notice, simply contact your . . . dealer right away to schedule a service appointment.” This created the expectation that a fix or repair would be available soon for all Affected Class Vehicles regardless of whether the EGR Cooler Defect had already resulted in a crack or not, and that the Defendant FCA US would contact owners and/or lessees of the Affected Class Vehicles when a fix or repair was available.
20. Further, American owners and/or lessees of the Affected Class Vehicles were advised in the interim to “monitor their coolant levels” and contact their dealerships if the levels were “consistently low.” This created the impression that monitoring would be adequate to mitigate the danger, and that if an owner and/or lessee advised a dealership of low coolant levels, then contacting the dealership would enable the owner and/or lessee to obtain some remedy.
21. Similarly, the Defendant FCA Canada, pursuant to the October 2019 recall, advised Canadian owners and/or lessees of the Affected Class Vehicles of the EGR Cooler Defect, which may lead to engine compartment fire and the risk of injury or harm to vehicle occupants and persons outside of the vehicle. Canadian owners and/or lessees of the Affected Class Vehicles were further advised to contact an authorized Defendant FCA Canada dealership to schedule a service appointment as to replacement of the EGR cooler with a new EGR cooler that was not susceptible to thermal fatigue.

22. The Defendant FCA US subsequently sent notices to certain American owners and/or lessees of the Affected Class Vehicles informing them that a fix or repair was available for their specific vehicle. The notice indicated “it is extremely important to take steps now to repair your vehicle to ensure the safety of your passengers.” This notice, in addition to suggesting that the earlier message that monitoring coolant levels would be sufficient, was not correct and misrepresented to owners and/or lessees of the Affected Class Vehicles that a fix or repair was available. However, despite these specific notifications to American owners and/or lessees of the Affected Class Vehicles and the Defendant FCA US’ announcement that a fix or repair was available for the 2014–2015 and 2016 model years, American and Canadian owners and/or lessees of the Affected Class Vehicles are still routinely being denied a fix or repair due to part unavailability.
23. The Defendants indicated that the EGR cooler is defective in all of the Affected Class Vehicles as the defect lies in the EGR cooler’s propensity to crack. The Defendants announced that they would conduct a recall on all Affected Class Vehicles to replace the EGR cooler with a new EGR cooler that was not susceptible to thermal fatigue. However, authorized dealerships were advised by the Defendants that “part supply is extremely limited” and as such, that the EGR cooler should only be replaced “if the part has failed”.
24. The Defendants seemingly admit that they are making repair determinations based on part scarcity in the following contradictory instruction to their authorized dealerships: “An EGR Cooler should only be replaced if the part has failed. *If the vehicle does not need any repairs* and the customer is still concerned for their safety, please provide the customer with a loaner vehicle *until such time that the remedy for the recall is available*”.
25. No reasonable consumer would have purchased and/or leased the Affected Class Vehicles and/or paid the price they paid for these vehicles had they known about the EGR Cooler Defect. The Defendants concealed the EGR Cooler Defect and led owners and/or lessees of the Affected Class Vehicles to

believe that a fix or repair was imminent but nevertheless allowed owners and/or lessees to continue to drive the Affected Class Vehicles without a fix or repair.

26. At least from 2014 through 2019, the Defendants have extensively advertised the benefits of the 3.0 litre EcoDiesel engine in the Affected Class Vehicles. At all material times to the cause of action herein, the Defendants omitted and/or concealed the EGR Cooler Defect. At no material time prior to, during and/or after the purchase and/or lease of the Affected Class Vehicles by consumers did the Defendants inform or warn owners and/or lessees of the Affected Class Vehicles that the EGR cooler could crack leading to engine compartment fire and posing a serious safety hazard. The Defendants represented that the Affected Class Vehicles were free from defect and advertised that they were safe, durable and reliable, all of which was untrue.
27. As such, the Defendants led consumers, including the Plaintiff and proposed class members, to believe that the Affected Class Vehicles would be free from defects that result in engine compartment fire and/or a sudden loss of power.
28. Despite the Defendants' knowledge of the EGR Cooler Defect, they failed to initiate a widespread recall in a timely manner or to develop or institute a sufficient fix or repair for the EGR Cooler Defect in the Affected Class Vehicles.
29. The EGR Cooler Defect endangers drivers, passengers and other persons and property in the vicinity of an Affected Class Vehicle. The EGR Cooler Defect thus renders the Affected Class Vehicles less safe and less valuable than consumers would reasonable expect and it makes them less safe and less valuable than the Affected Class Vehicles would be if the Defendants did not design, manufacture, assemble, distribute, lease and/or sell the Affected Class Vehicles with the EGR Cooler Defect.
30. As a result of the Defendants' unfair, deceptive and/or fraudulent business practices in failing to disclose the EGR Cooler Defect to the Plaintiff and proposed class members, owners and/or lessees of the Affected Class

Vehicles have suffered losses and damages in money and/or property (and personal injuries as well). Had the Plaintiff and proposed class members known of the EGR Cooler Defect, they would not have purchased and/or leased the Affected Class Vehicles or would have paid substantially less for them. The EGR Cooler Defect in the Affected Class Vehicles also requires expensive repairs, car rentals, car payments, towing charges, time off work and other miscellaneous costs. Moreover, as a result of the EGR Cooler Defect and the Defendants' concealment thereof, the Affected Class Vehicles have a lower market value, and are inherently worth less than they would be.

31. This class action seeks relief for all owners and/or lessees of the Affected Class Vehicles containing the EGR Cooler Defect, including, *inter alia*, recovery of compensatory damages, breach of warranty, reimbursement of all expenses associated with the repair, fix and/or replacement of the Affected Class Vehicles, moral damages and punitive damages.

The Defendants Knew That the EGR Cooler in the Affected Class Vehicles Was Susceptible to Cracking from Numerous Sources

32. The Affected Class Vehicles contain a defective EGR cooler which was an internal, hidden component part in the Affected Class Vehicles. The Class Members did not have reason to know at the time of purchase and/or lease until at least October 2019 when the Defendants announced the recall that this internal component of the Affected Class Vehicles was devastatingly defective to the entire engine system.
33. However, the Defendants knew or ought to have known that the Affected Class Vehicles were compromised and presented an unreasonable safety risk to vehicle occupants due to the risk of fire.
34. By design, EGR coolers are vehicle parts that are put under tremendous pressure from heat and need to reliably manage thermal loads.
35. As a result thereof, the Defendants were aware, at least as early as 2014, if not

earlier, that the top concern when designing EGR coolers was thermal fatigue, which can cause EGR coolers to crack and lose coolant and/or result in engine overheating. The Defendants were aware of this tendency because:

- (a) they had vehicles presented to them for fixes and fires due to cracked EGR coolers;
- (b) thermal fatigue design issues in EGR coolers were well-known within the automobile industry;
- (c) cracks in EGR coolers had developed in other vehicles of the Defendants;
- (d) there were complaints on Dodge Ram online forum blogs and to the United States National Highway Transportation Safety Administration (“**NHTSA**”), an American government regulator, monitored by the Defendants as to the EGR Cooler Defect; and
- (e) another vehicle manufacturer had announced an EGR cooler defect recall due to a similar issue.

36. In particular, the Defendants were aware of the following as to EGR coolers:

- (a) thermal fatigue was a cause of leaking in EGR coolers induced by the expansion and contraction of the components as the hot exhaust gas flows through the cooler;
- (b) coolant leaks were not visible externally;
- (c) excessive coolant consumption without external leaks was a strong indicator of an EGR cooler with an internal leak;

- (d) corrosion resistant material was considered to improve the performance of EGR coolers and that thermal stress produced by the temperature difference between exhaust gas and coolant was a significant factor from the point of safety operation; and
 - (e) due to the risk of progressive harm to the engine, including the turbocharger and exhaust after treatment devices, the ability to estimate EGR cooler thermal fatigue prior to production launch was essential so as to meet reliability and customer requirements.
37. The Defendants were also aware since at least 2016 of smoke and engine fire in vehicles caused by the EGR cooler and of vehicles leaking coolant and cracked EGR coolers being presented to their authorized dealerships for service. By 2017 authorized dealerships of the Defendants were diagnosing vehicles with faulty EGR coolers and that parts used at the time to replace the EGR coolers were on a national back order. In 2018, the Defendants were also aware of the EGR Cooler Defect when another vehicle manufacturer, BMW, announced a recall of EGR coolers in certain models of its vehicles due to fire risk. The BMW recall, like the Defendants' recall, was based on the admission that cooling fluid could leak and melt the intake manifold, increasing the risk of engine fire and/or a sudden loss of power.

Investigation and EGR Cooler Recall

38. Despite the Defendants' knowledge as early as 2014 of the tendency of EGR coolers to crack due to thermal fatigue and the need to implement design features to mitigate this risk, it was not until May 22, 2019 that the Defendants' Vehicle Safety and Regulatory Compliance organization opened an investigation into the matter.
39. At the time of the investigation, the Defendants were aware of engine compartment fires in the Affected Class Vehicles.

40. The Defendants' investigation determined that a number of Affected Class Vehicle fires reported to them had originated in the general vicinity of the center of the engine compartment. The Affected Class Vehicles inspected and examined by the Defendants showed holes in the intake manifold.
41. By October 11, 2019, the Defendants were aware of injuries related to EGR cooler failures, of 61 field reports related to EGR cooler failure, 1,289 computerized accident incident reports and a total of 8,909 EGR cooler warranty replacements reports.
42. On October 24, 2019, the Defendants submitted a Part 573 Safety Recall Report to NHTSA voluntarily recalling 107,979 Affected Class Vehicles equipped with the 3.0 litre EcoDiesel engine containing the EGR Cooler Defect, which described the EGR Cooler Defects as follows:

“Description of the Defect: Thermal fatigue may cause the cooler to crack internally over time. An EGR cooler with an internal crack will introduce pre-heated, vaporized coolant to the EGR system while the engine is running. In certain circumstances, this mixture interacts with other hydrocarbons and air in the system, potentially resulting in combustion within the intake manifold, which may lead to a vehicle fire.”

43. The Defendants further described the safety risk arising from the EGR Cooler Defect in the NHTSA Part 573 Safety Recall Report as follows:

“Description of the Safety Risk: A vehicle fire may increase the risk of injury to occupants and persons outside of the vehicle, as well as property damage.”

44. The Defendants further indicated in the NHTSA Part 573 Safety Recall Report that a fix or remedy for the EGR Cooler Defect was not available at the time but

was under development.

45. On October 25, 2019, a similar Transport Canada recall of 50,259 Affected Class Vehicles equipped with the 3.0 litre EcoDiesel engine containing the ERG Cooler Defect was initiated in Canada, which stated the following:

“Issue:

On certain trucks equipped with a 3.0-L EcoDiesel engine, the exhaust gas recirculation (EGR) cooler could crack internally and leak. If this happens, a driver may notice a low coolant level or heater that does not work properly.

Safety Risk:

A cracked EGR cooler could create the risk of an engine fire.

Corrective Actions:

FCA Canada will notify owners by mail and instruct you to take your vehicle to a dealer to replace the EGR cooler. Dealers will also inspect intake manifold and replace it as necessary.”

46. The Defendants updated the NHTSA Part 573 Safety Recall Report on October 31 and November 14, 2019, February 25, April 2, April 21 and June 11, 2020 pertaining to the EGR Cooler Defect and possible fix. Similarly, the Defendants updated the Transport Canada recall on February 25, 2020.

The Defendants Fail to Provide a Timely Fix for the EGR Cooler Defect

47. At the time of the recall, the Defendants represented that all owners and/or lessees of the Affected Class Vehicles would have the EGR cooler replaced with a new EGR cooler that was not susceptible to thermal fatigue.
48. While some impacted owners and/or lessees of the Affected Class Vehicles received a fix, a significant number of owners and/or lessees of the Affected Class Vehicles have been left with no recourse for the EGR Cooler Defect which renders their vehicles unsafe and presents an unreasonable risk to vehicle occupant safety, and no option for returning their vehicles.
49. The Defendants notified their authorized dealerships that a fix was available for the 2014–2016 model year Affected Class Vehicles and notified owners and/or lessees of the Affected Class Vehicles that “it is extremely important to take steps to repair your vehicle to ensure the safety of you and your passengers.” Despite a phased notice mail campaign for the fix, owners and/or lessees of these model year Affected Class Vehicles are still routinely being told a fix is not available as set forth in the following sample complaints found on the NHTSA website, <http://www-odi.nhtsa.dot.gov/complaints>, (spelling and grammar mistakes remain as found in the original complaint):

NHTSA ID Number: 11331819

Incident Date June 30, 2020

Consumer Location HARLINGEN, TX

Vehicle Identification Number 1C6RR6LM7GS****

TL* THE CONTACT OWNS A 2016 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER

EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. BERT OGDEN CHRYSLER DODGE JEEP RAM (8421 W. EXPY 83, HARLINGEN, TX 78552, (956) 335-3018) WAS CONTACTED AND CONFIRMED THAT PARTS WERE NOT AVAILABLE FOR THE RECALL REPAIR. THE MANUFACTURER WAS NOT NOTIFIED OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. VIN TOOL CONFIRMS PARTS NOT AVAILABLE.

NHTSA ID Number: 11330406

Incident Date June 22, 2020

Consumer Location SAN JOSE, CA

Vehicle Identification Number 3C6JR7DM3EG****

RECEIVED RECALL NOTICE VB1 TO REPLACE EGR COOLER THAT MAY CAUSE ENGINE FIRE. THE RECALL SAYS THAT PARTS ARE AVAILABLE. I CONTACTED 2 DEALER AND HAD CHAT WITH FCA DIRECTLY. ALL OF THEM TOLD ME THAT PARTS ARE NOT AVAILABLE. NEITHER DEALER WOULD GIVE ME AN APPOINTMENT DATE AND SAID THAT THERE WERE MANY AHEAD OF ME. FCA SAID THAT PARTS ARE ALLOCATED AT 1 SET OF PARTS PER DEALER PER WEEK. THE BOTTOM LINE IS THAT THESE TRUCKS ARE AT RISK FOR FIRE THAT COULD RESULT IN INJURY, BUT FCA IS NOT RESPONSIVE BY THE FACT THAT THE PARTS ARE NOT AVAILABLE.

NHTSA ID Number: 11329574

Incident Date May 1, 2020

Consumer Location SYLACAUGA, AL

Vehicle Identification Number 1C6RR7PM9GS****

TL* THE CONTACT OWNS A 2016 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT CALLED TO MCSWEENEY CHRYSLER DODGE JEEP RAM (2605 DR JOHN HAYNES DR, PELL CITY, AL 35125; (205) 813-7020) WHERE IT WAS CONFIRMED THAT THE PART WAS NOT AVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE MANUFACTURER HAD NOT BEEN MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. PARTS DISTRIBUTION DISCONNECT.

NHTSA ID Number: 11340956

Incident Date October 24, 2019

Consumer Location SEQUIM, WA

Vehicle Identification Number 1C6RR7NM5HS****

TL* THE CONTACT OWNS A 2017 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND

ENGINE COOLING). THE CONTACT CALLED THE WILDER CHRYSLER JEEP DODGE RAM DEALER LOCATED AT 53 JETTA WAY, PORT ANGELES, WA 98362, AND IT WAS CONFIRMED THAT THE PARTS WERE NOT YET AVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE MANUFACTURER WAS MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. PARTS DISTRIBUTION DISCONNECT.

NHTSA ID Number: 11340466

Incident Date July 20, 2020

Consumer Location MURRAY, KY

Vehicle Identification Number 1C6RR7NM7HS****

TL* THE CONTACT OWNS A 2017 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE DEALER DAVID TAYLOR CHRYSLER-DODGE-JEEP-RAM-FIAT (2052 US-641, MURRAY, KY 42071) WAS CONTACTED AND CONFIRMED THAT PARTS WERE NOT YET AVAILABLE. THE MANUFACTURER WAS NOT MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT

EXPERIENCED A FAILURE. VIN TOOL CONFIRMS PARTS NOT AVAILABLE.

NHTSA ID Number: 11338371

Incident Date June 12, 2020

Consumer Location EAGLE, WI

Vehicle Identification Number 1C6RR7NM9HS****

TL* THE CONTACT OWNS 2017 RAM 1500. THE CONTACT RECEIVED RECALL NOTIFICATION FOR NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING). HOWEVER, THE PARTS TO DO THE REPAIR WERE AVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE DEALER LYNCH CHEVROLET OF MUKWONAGO (280 E WOLF RUN, MUKWONAGO, WI 53149) WAS CONTACTED AND STATED THE PARTS WERE ON BACKORDER FOR THE RECALL REMEDY. THE MANUFACTURER WAS NOT NOTIFIED OF THE ISSUE. THE CONTACT STATED THAT SEVERAL MONTHS AFTER HE RECEIVED THE RECALL NOTIFICATION, THE VEHICLE STALLED WHILE DRIVING AT AN UNKNOWN SPEED. THE CONTACT WAS ABLE TO PULL TO THE SIDE OF THE ROAD AND TURN THE VEHICLE OFF. AN UPON OPENING THE HOOD THE CONTACT NOTICED FLAMES AROUND THE ENGINE CORDS AND WIRE. THE CONTACT STATED HE WAS ABLE TO EXTINGUISH THE

FIRE HIMSELF WITH WATER. THE VEHICLE WAS TOWED TO LYNCH CHEVROLET OF MUKWONAGO FOR DIAGNOSTIC TESTING AND REPAIRS. THE FAILURE MILEAGE WAS APPROXIMATELY 58,000. PART DISTRIBUTION DISCONNECT.

The EGR Cooler Defect Poses an Inherent Risk to Vehicle Occupant Safety and Renders the Affected Class Vehicles Defective

50. Vehicle safety acts and regulations in both Canada (*Motor Vehicle Safety Act*, S.C. 1993, c.16; *Motor Vehicle Safety Regulations* C.R.C., c. 1038) and the United States of America (49 U.S.C. § 30166) require vehicle manufacturers to provide, *inter alia*, “early warning reporting” data to government regulators including, *inter alia*, claims relating to property damage received by a vehicle manufacturer, warranty claims paid by the vehicle manufacturer, consumer complaints, incidents involving injury or death and field reports prepared by the vehicle manufacturers’ employees or representatives concerning failure, malfunction, lack of durability or other performance issues.
51. These acts and regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect includes, *inter alia*, any defect that creates an unreasonable risk of accidents occurring because of the design, construction or performance of a motor vehicle or unreasonable risk of death or injury in an accident. Upon learning of a safety defect, a vehicle manufacturer must notify government regulators and provide a description of the vehicles potentially containing the defect including, *inter alia*, the make, line, model year, dates of manufacture, a description of how these vehicles differ from similar vehicles not included in a recall, a summary of all warranty claims, field or service reports and other information that formed the basis of the determination that the defect was safety related. Then, within a reasonable time after deciding that a safety issue exists,

a vehicle manufacturer must notify the owners and/or lessees of the defective vehicles. Violating these notification requirements can result in civil penalties.

52. Based on their duty to monitor safety-related complaints or concerns, the Defendants knew or ought to have known of the numerous consumer complaints regarding the EGR cooler failure in the Affected Class Vehicles. Further, the Defendants had notice of the EGR Cooler Defect via replacement part sales, warranty repair requests, indirect complaints from customers through online forms, NHTSA complaints, from other vehicle manufacturers, industry sources including articles, white papers, testing and investigations.

The Defendants Concealed the EGR Cooler Defect Through Misrepresentations and/or Omissions

53. From 2014 through 2019, the Defendants extensively advertised the benefits of the 3.0 litre EcoDiesel engine equipped in the Affected Class Vehicles. At all material times to the cause of action herein, the Defendants omitted and/or concealed the EGR Cooler Defect. At no point during the period relevant to this action did the Defendants inform owners and/or lessees of the Affected Class Vehicles that the EGR cooler could crack and lead to an engine fire. The Defendants represented that the Affected Class Vehicles were free from defect and advertised that they were durable and reliable, all of which was false.
54. As such, the Defendants led consumers, including the Plaintiff and Class Members, to believe that the Affected Class Vehicles would be free from defects that result in engine compartment fire and/or a sudden loss of power.
55. The Defendants claimed that their 2014 Dodge Ram 3.0 litre EcoDiesel vehicles were durable, touting that “the available 3.0L EcoDiesel V6 utilizes dual-filtration technology for greater...durability”. In their EcoDiesel advertising, the Defendants specifically target consumers “who want to drive an efficient, environmentally friendly truck without sacrificing capability or performance.” The Defendants further claim that the 3.0 litre EcoDiesel engine has best-in-

class torque: “The EcoDiesel engine delivers best-in-class 420 lb-ft of torque. Paired with an impressive 240 horsepower, this engine has serious muscle”.

56. Other online advertisements of the Defendants proclaim that the Dodge Ram 1500 3.0 litre EcoDiesel is “expected to deliver an outstanding combination of best-in-class fuel efficiency, best-in-class torque and impressive capability. This new EcoDiesel is among today’s most advanced diesel engines. Has emissions that are 60% lower than those produced by diesel powertrains 25 years ago. The impressive combination of torque and fuel economy marks a new level of performance”.
57. Not only did the Defendants conceal the EGR Cooler Defect, they denied warranty claims relating to leaking coolant and cracked hoses, claimed that they were not responsible for vehicle fires, informed owners and/or lessees of the Affected Class Vehicles that a fix was available when it was not, denied requests for loaner vehicles pending a fix, misrepresented that loaner vehicles would be provided for all concerned owners and/or lessees of the Affected Class Vehicles and continued to sell and/or lease vehicles containing the subject EGR cooler after the announcement of the recall.
58. The above recalls and investigation clearly evidence a serious and important safety and security risk affecting the Affected Class Vehicles, which puts the safety and security of the Plaintiff, the Class Members and any passengers of the Affected Class Vehicles at great risk of damages, injury, crash and possibly death.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFFS

59. Plaintiff is the owner of a fully loaded 2016 Dodge Ram Eco Diesel Tradesman equipped with a V6, Turbo, Diesel, 3.0L engine, bearing vehicle identification number (VIN): 1C6RR7KM7GS236592. A copy of the NHTSA Safety Issues & Recalls report regarding the Plaintiff’s vehicle VIN is communicated hereto as

Exhibit R-4.

60. Plaintiff purchased said vehicle on August 28, 2019 from Ste-Thérèse Toyota, in Ste-Thérèse, Quebec. The vehicle had 81,282 kms at the time of purchased and was purchased for \$23,909.05 (included taxes and applicable fees). A copy of the sale agreement ("*Contrat de vente*") of the Plaintiff's vehicle is communicated herewith as **Exhibit R-5**.
61. Defendants are hereby summoned to retain and communicate all reports, repair reports, invoices, documents, recall reports, and/or call or interaction recordings or notes regarding Plaintiff and his particular 2016 Dodge Ram 1500 Eco Diesel.
62. Plaintiff received a letter about the EGR cooler recall in June 2020.
63. After receiving the recall letter, Plaintiff called the Landry Auto Dodge Jeep Ram dealership in Laval, which told him that there was no EGR recall available, and that Plaintiff should wait and check his coolant level.
64. From June 2020 to November 2020, Plaintiff called the said dealership approximately 9 times to inquire about the EGR cooler Defect and in order to have the recall conducted on his vehicle.
65. On November 6, 2020, at around 9:25 am, the Plaintiff's Vehicle tragically and unexpectedly caught fire while Plaintiff was driving on the highway, shortly after he had dropped off his three (3) young children at school. Multiple pictures and videos of the incident taken by the Plaintiff are communicated herewith as **Exhibit R-6**, *en liasse*, two of which are below:



66. Plaintiff was very lucky to escape from the burning vehicle with his life. The vehicle, including the three children car seats, were completely destroyed.
67. Since the terrible accident, Plaintiff feels very anxious and suffers from insomnia for which he has consulted his family doctor, the whole because he usually brings his three children to school every day at around the same hour. If the incident had occurred just a little bit earlier, it could have harmed or even killed his children.
68. On November 11, 2020, Plaintiff filed a Transport Canada Defect complaint form, copy of which is communicated hereto as **Exhibit R-7**.
69. On November 18, 2020, Plaintiff also went to the Landry Auto Dodge Jeep Ram dealership to obtain more information about his calls and his vehicle, but the dealership refused to give him any information or the requested documentation about his vehicle.
70. Plaintiff left the dealership that day with nothing more than a screenshot from its computer system, copy of which is communicated hereto as **Exhibit R-8**.
71. Plaintiff estimates the value of the items destroyed in the vehicle fire at approximately \$2,500, which includes but is not limited to three (3) children car seats, a mobile phone stand and charger, booster cables, rims, straps, and tools. Plaintiff claims this amount from Defendants.
72. Plaintiff also claims from Defendants the sum of \$1,273.78 for the purchase of 4 new tires which were also destroyed in the fire, a copy of the Canadian Tire receipt for the tires is communicated herewith as **Exhibit R-9**;
73. Plaintiff claims compensatory damages and moral damages, including without limitation for the stress, fear, shock, insomnia, loss of time, inconvenience, embarrassment, aside from punitive damages as detailed below.

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

74. Each Class Member has purchased or leased an Affected Class Vehicle and/or has suffered damages, such as total loss of their vehicle, loss of time, disbursements, paid repair costs or car rental fees as a result of the EGR Cooler Defects of the Affected Class Vehicles.
75. Plaintiff's and the Class Members' consent when purchasing or leasing the Affected Class Vehicle was vitiated as a result of the discovery of this serious defect and security/safety risk, as described hereinabove.
76. Plaintiff and the Class Members would not have purchased or leased the Affected Class Vehicle had they been made aware of the defects mentioned above.
77. Certain Class Members have paid to repair their Affected Class Vehicle but to no avail, and other like Plaintiff have seen their vehicle catch fire and burn entirely since Defendants have been unable to properly address the issues to date, for which the Class Members claim reimbursement and/or damages from Defendants.
78. The safety of the current owners or lessees of the Affected Class Vehicles, and their passenger, is at great risk due to the serious defects mentioned above, which involve risk of sudden stalling without warning, crash, fire, etc.
79. Defendants malicious intention to refuse to properly recall and repair the Affected Class Vehicles or to buy back the vehicles and resiliate the purchase or lease agreement, over many years, notwithstanding widespread comments and complaints by owners of the Affected Class Vehicle, show an intentional, malicious, oppressive and/or high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, and reiterating all the allegations above, punitive damages should

be awarded to Plaintiff and the Class Members, independently from the compensable damages claimed by Plaintiff and the Class Members.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

80. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (Article 575 (3) C.C.P.) for the following reasons:
81. Plaintiff is unaware of the specific number of persons who purchased or leased the Affected Class Vehicles, however, it is safe to estimate that it is in the tens of thousands across the country considering the Transport Canada recall document detailed above, which indicate and confirm the total number of affected units in Canada for the various Affected Class Vehicles being recalled, and considering the NHTSA Safety Recall Reports (Exhibit R-3).
82. Class Members are numerous and are scattered across the entire province and country.
83. In addition, given the costs and risks inherent to litigation before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the Court system could not handle it as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the Court system.
84. Moreover, a multitude of actions instituted risk leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members.
85. These facts demonstrate that it would be impractical, if not impossible, to contact each individual Class Member to obtain mandates and to join them in

one action.

86. In these circumstances, a class action is the only appropriate procedure for all the Class Members to effectively access justice and pursue their respective rights.
87. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Defendants' defectively designed and/or manufactured EGR Cooler system.
88. The claims of the Class Members raise identical, similar or related issues of law and fact (Article 575 (1) C.C.P.), namely:
 - a) Do the Affected Class Vehicles suffer from common latent design and/or manufacturing defects?
 - b) Did Defendants know of this issue and fail to warn Class Members of the defect and if they knew, when they knew or should have known?
 - c) Did Defendants fail to disclose material information to Class Members?
 - d) Are Defendants' omission of material facts misleading and/or reasonably likely to deceive a Class Member?
 - e) Are Defendants legally obligated to make the recall available and properly repair the Affected Class Vehicles with new non-defective replacement parts?
 - f) Do the Affected Class Vehicles perform or not in accordance with the standard of fitness for the purposes for which the Affected Class Vehicles are normally used?
 - g) Do the Affected Class Vehicles perform or not in accordance with the standard of durability for normal use for a reasonable length of time,

having regard to the price, terms of the contract and conditions of use for the Affected Class Vehicles?

- h) Should the sale or lease contracts signed by the Class Members for the Affected Class Vehicles be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed in full or in part?
 - i) Are Defendants liable to pay compensatory and/or moral damages to the Class Members, and if so, in what amount, including without limitation for the reimbursement of the purchase or lease price (or a portion thereof), any repair costs disbursed, rental car fees, other disbursements incurred, loss of time, loss of use of the Affected Class Vehicle, embarrassment and inconvenience?
 - j) Are Defendants liable to pay exemplary and/or punitive damages to the Class Members, and if so, in what amount?
89. The majority of the issues to be dealt with are issues common to every Class Member.
90. The interests of justice favor that this Application be granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

91. The action that the Plaintiff wishes to institute for the benefit of the Class Members is an action in damages, product liability, consumer protection and injunctive relief.
92. The facts alleged herein appear to justify the conclusions sought by the Plaintiff (Article 575 (2) C.C.P.), namely the following conclusions that Plaintiff wishes to introduce by way of an originating application:

GRANT the class action of the Representative Plaintiff and each of the Class Members;

ORDER Defendants to properly conduct a recall of the Affected Class Vehicles and to repair them free of charge **FAILING WHICH: ANNUL** the sale or lease contract signed by Plaintiff and the Class Members for the Affected Class Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiff and the Class Members for their Affected Class Vehicle and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

CONDEMN the Defendants to pay to Plaintiff and each of the Class Members a sum to be determined in compensatory damages, including without limitation for the reimbursement of the purchase or lease price, any repair costs disbursed, rental costs paid, other disbursements incurred, loss of time, inconvenience, loss of use of the Affected Class Vehicle, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to Plaintiff and each of the Class Members a sum to be determined in moral damages, including without limitation for embarrassment, stress, fear, and anxiety and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to the Plaintiff and to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to the Law from the date of service of the Application for Authorization to Institute 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, additional indemnity, 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 experts' fees and all notice fees;

RENDER any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses, including expert's fee and publication fees to advise the Class Members;

93. Plaintiff suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a. Many Class Members are domiciled in the District of Montreal;
 - b. Defendant FCA Canada has an establishment located in the District of Montreal (Exhibit R-1);
 - c. The undersigned attorneys practice law in the District of Montreal;
94. Plaintiff, who is requesting to be appointed as Representative Plaintiff, is in a position to properly represent the Class Members (Article 575 (4) C.C.P.) since Plaintiff:
- a. is a member of the class who purchased an Affected Class Vehicle, which caught fire and was entirely destroyed due to the common latent defect;
 - b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
 - c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
 - d. is ready and available to manage and direct the present action in the interest of the Class Members and are determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
 - e. does not have interests that are antagonistic to those of other Class Members;
 - f. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class

Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members;

- h. conducted online research in order to locate and consult the various recalls dealing with the defects affecting the Affected Class Vehicles and he sought out the undersigned attorneys in order to institute the present class action proceedings on his behalf and on behalf of the Class Members;
- i. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

95. 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 institution of a class action in the form of an originating application in damages, product liability, consumer protection, and injunctive relief.

APPOINT the Plaintiff as the Representative Plaintiff representing all persons included in the Class herein described as:

All persons in Quebec who own, owned, lease and/or leased a 2014 to 2019 Dodge Ram 1500 or 2014 to 2019 Dodge Ram 1500 Classic vehicle, equipped with a 3.0 litre EcoDiesel engine containing exhaust gas recirculation coolers, designed, manufactured, assembled, tested, marketed, advertised, distributed, leased and/or sold by the Defendants, or any other Group(s) or Sub-Group(s) to be determined by the Court.

IDENTIFY the principal issues of law and fact to be treated collectively as

the following:

- a) Do the Affected Class Vehicles suffer from common latent design and/or manufacturing defects?
- b) Did Defendants know of this issue and fail to warn Class Members of the defect and if they knew, when they knew or should have known?
- c) Did Defendants fail to disclose material information to Class Members?
- d) Are Defendants' omission of material facts misleading and/or reasonably likely to deceive a Class Member?
- e) Are Defendants legally obligated to make the recall available and properly repair the Affected Class Vehicles with new non-defective replacement parts?
- f) Do the Affected Class Vehicles perform or not in accordance with the standard of fitness for the purposes for which the Affected Class Vehicles are normally used?
- g) Do the Affected Class Vehicles perform or not in accordance with the standard of durability for normal use for a reasonable length of time, having regard to the price, terms of the contract and conditions of use for the Affected Class Vehicles?
- h) Should the sale or lease contracts signed by the Class Members for the Affected Class Vehicles be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed in full or in part?
- i) Are Defendants liable to pay compensatory and/or moral damages to the Class Members, and if so, in what amount, including without

limitation for the reimbursement of the purchase or lease price (or a portion thereof), any repair costs disbursed, rental car fees, other disbursements incurred, loss of time, loss of use of the Affected Class Vehicle, embarrassment and inconvenience?

- j) Are Defendants liable to pay exemplary and/or punitive damages to the Class Members, and if so, in what amount?

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

GRANT the class action of the Representative Plaintiff and each of the Class Members;

ORDER Defendants to properly conduct a recall of the Affected Class Vehicles and to repair them free of charge **FAILING WHICH: ANNUL** the sale or lease contract signed by Plaintiff and the Class Members for the Affected Class Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiff and the Class Members for their Affected Class Vehicle and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

CONDEMN the Defendants to pay to Plaintiff and each of the Class Members a sum to be determined in compensatory damages, including without limitation for the reimbursement of the purchase or lease price, any repair costs disbursed, rental costs paid, other disbursements incurred, loss of time, inconvenience, loss of use of the Affected Class Vehicle, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to Plaintiff and each of the Class Members a sum to be determined in moral damages, including without limitation for embarrassment, stress, fear and anxiety and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to the Plaintiff and to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to the Law from the date of service of the Application for Authorization to Institute 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, additional indemnity, 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 experts' fees and all notice fees;

RENDER any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses, including expert's fee and publication fees to advise the Class Members;

DECLARE that all Class Members who have not requested their exclusion from the Group in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

FIX the time limit for opting out of the Class at thirty (30) days from the date of the publication or notification of the notice to the Class Members;

ORDER the publication or notification of a notice to the Class Members in accordance with Article 579 C.C.P., within sixty (60) days from the Judgment to be rendered herein, by way of direct mail and or emails to Class Members, bilingual press releases, and notices published in LA PRESSE, the MONTREAL GAZETTE, and the JOURNAL DE MONTREAL, and **ORDER** Defendants to pay for all said publication costs;

ORDER that said notices be available on all of Defendants' websites, Facebook page(s), and Twitter account(s) regarding the Affected Class Vehicles, with a proper link the wording of which will be determined by the Court;

THE WHOLE with legal costs, including all publication costs and the *timbre judiciaire*.

MONTREAL, November 20, 2020

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Class Counsel / Attorneys for Plaintiff

4101 Sherbrooke St. West

Westmount, (Québec), H3Z 1A7

Telephone: 514.451.5500 ext. 321

Fax: 514.940.1605