

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Class Action)**

NO: 500-06-000827-168

DOMENIC CORICA

Plaintiff

v.

**FORD MOTOR COMPANY OF
CANADA, LIMITED**, legal person duly
constituted, having its principal
establishment at 6505 route Trans-Canada,
City of Montréal, Province of Québec, H4T
1S3

and

FORD MOTOR COMPANY, legal person
duly constituted, having its principal
establishment at 1 American Road, City of
Dearborn, State of Michigan, 48126, USA

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE
(Articles 574 - 575 C.C.P. and following)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF
RESPECTFULLY SUBMITS THE FOLLOWING:**

Introduction

1. Ford Explorers, Model Years 2011 – 2015 Model (the “Vehicles”) share a distinct and dangerous characteristic: they leak exhaust emissions, including carbon monoxide, into their passenger compartments. Carbon monoxide is a colourless, odourless and tasteless gas that is toxic to humans. The Defendants failed to warn the owners of the Vehicles and the public about this dangerous defect of which the Defendants had knowledge. This failure has exposed the Plaintiff, the proposed class members, and others, to a health and life safety hazard.

The Class

2. The Plaintiff, Domenic Corica, intends to institute a class action on behalf of the persons forming part of the following class (the “Class Members” or “Class”) of which the Plaintiff is a member, namely:

“All persons who reside or have resided in Québec who purchased and/or leased one or more Ford Explorers, Model Years 2011 – 2015. ”

Plaintiff’s Circumstances

3. The Plaintiff is a resident of Varennes, Québec.
4. In September 2014, the Plaintiff purchased one of the Vehicles, namely a 2015 Ford Explorer.
5. The Plaintiff was not aware when he purchased his Vehicle that it suffered from a serious defect. Had he known, he would not have purchased the Vehicle and he most certainly would not have paid the price that he did if he thought he would need to invest significant sums of money to repair the defect.
6. The Plaintiff’s damages are a direct and proximate result of the Defendants’ negligent conduct and the Defect associated with the Vehicles. But for the Defendants’ fault and negligence, he would not have incurred his damages.
7. In consequence of the foregoing, the Plaintiff is justified in claiming damages.

Defendants’ Liability

8. The Respondent Ford Motor Company (“Ford USA”) is an American automotive company.
9. The Respondent Ford Motor Company of Canada, Limited (“Ford Canada”) is an affiliate of Ford USA and is involved in the manufacture, sale, lease, distribution and servicing of motor vehicles throughout Canada, including the province of Québec (**Exhibit R-1**).

10. Both Ford USA and Ford Canada and have either directly or indirectly designed, manufactured, tested, inspected, assembled, promoted, advertised, marketed, distributed, imported and/or sold the Vehicles to Canadian consumers.
11. The business of each of Ford USA and Ford Canada (collectively referred to as the “Defendants”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the design, manufacture, marketing, sale and/or distribution of the Vehicles in Canada.
12. At all material times, the Defendants each participated in and/or shared the common purpose of one or more of the following: designing, manufacturing, testing, inspecting, assembling, supplying, exporting, importing, marketing, and selling the Vehicles in Canada for profit. The Defendants also shared the common purpose of concealing the Defect (as defined below) in the Vehicles from the Plaintiff and Class Members.
13. At all material times, each Respondent was the agent of the other and as such, each Respondent is individually, as well as solidarily, liable to the Plaintiff and other Class Members for their injuries, losses and damages. Unless the context indicates otherwise, both Defendants will be referred to as “Ford” for the purposes hereof.

The Dangerous Defect

14. Ford began selling and leasing a new generation of Ford Explorer, specifically the fifth generation, with the 2011 model year Ford Explorer.
15. The Vehicles were designed, engineered and manufactured by Ford with design flaws and/or defective exhaust and/or HVAC systems and/or parts that permit carbon monoxide and exhaust to enter into the passenger compartments of the Vehicles while being driven in a normal and customary manner (the “Defect”).
16. The Defect was described in an independent expert report of automotive engineer David Renfroe Ph.D., P.E., filed on behalf of the plaintiff for trial in the proceeding before the U.S. District Court, Southern District of Florida, *Knutson v. Ford Motor Company*, Case 0:14-cv-61344-WPD (the “Florida Action”) (**Exhibit R-2, Exhibit R-3**).
17. The dangerousness of the Defect was addressed in an independent expert report of toxicologist David G. Penney, Ph.D., filed by the plaintiff for trial in the Florida Action (**Exhibit R-4**).
18. The Defect in the Vehicles results from the following three facts:
 - (a) Engine exhaust tends to splash against the rear outside liftgate of the Vehicle. This phenomenon tends to worsen at higher speeds;
 - (b) The Vehicles are not remotely airtight. Part of this is intentional. Drainholes are cut into the Vehicles’ rear liftgates and, just as water can

run down these holes, exhaust can float up through them. Moreover, part of the problem results from poor workmanship and inferior products: the rubber mounting that cushions the liftgate window against the liftgate itself is not airtight; gaps caused by poor placement and inconsistent use of adhesive leaves observable gaps. In addition, the Vehicles have air extractors built above the rear tires. These extractors are supposed to act like check valves and modulate the flow of air and air pressure in the passenger compartment of the Vehicle. The flaps on the extractors, however, are poorly made. They stiffen and curl and/or otherwise do not sit flat over the extractor's opening when they should; and

- (c) At certain air conditioning settings – and especially when the air conditioning is set at maximum (which causes the air inside the compartment to recycle) – the pressure inside the Vehicle's passenger compartment drops.
19. The result of these factors is that the Vehicle's engine exhaust, which tends to build up against the rear liftgate at high speeds, is pulled into the passenger compartment through the many holes and gaps in the back end of the car because the pressure inside the compartment is less than the pressure outside. These failures can also cause fumes to enter under static conditions as well, such as when the heat and air conditioning is set to recirculation mode. When the Vehicle's HVAC system is placed in recirculation mode, with or without the air conditioner engaged, the pressure in the passenger compartment is below the pressure just outside the rear hatch of the Vehicle. As a result, the rear air conditioning system picks up the gas entering around the rear ejector valve and blows it into the passenger compartment of the Vehicle.
20. The Defect is latent in nature because it is not obvious or ascertainable upon reasonable examination or inspection and only manifests during a Vehicle's operation once the Vehicle is placed into normal usage.
21. Ford designed, manufactured, assembled, inspected, distributed, sold and leased the Vehicles containing the Defect by, among other things:
- (a) Designing and/or manufacturing the Vehicles such that exhaust and other gases, including carbon monoxide, may enter the passenger compartments of the Vehicles;
 - (b) Designing and/or manufacturing the bumpers and/or tailpipes on the Vehicles such that exhaust and other gases, including carbon monoxide, may accumulate behind the bumper and within the interior and exterior panels, allowing those gases to permeate the passenger compartments of the Vehicles;
 - (c) Designing, manufacturing and/or assembling the Vehicles using defective rear air extractors which permit exhaust and other gases,

including carbon monoxide, to enter the passenger compartments of the Vehicles;

- (d) Designing, manufacturing and/or assembling the liftgates in the rear of the Vehicles using defective drain valves, which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the Vehicles;
- (e) Designing, manufacturing and/or assembling the Vehicles with sheet metal panels and overlaps which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the Vehicles;
- (f) Designing, manufacturing and/or assembling the Vehicles with joints and seams which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the Vehicles; and
- (g) Designing, manufacturing and/or assembling the Vehicles with rear auxiliary air conditioning system parts which are defectively designed and/or located too close in proximity to the driver side rear air extractor, such that exhaust and other gases, including carbon monoxide, may enter the auxiliary air conditioning system and the passenger compartments of the Vehicles.

Ford's Knowledge of the Defect

- 22. Ford has known about the Defect since at least 2012. There have been hundreds of complaints relating to the Defect including from Canadian consumers (**Exhibit R-5**).
- 23. Ford has serviced thousands of vehicles around the world, including in Canada, almost all without succeeding in eliminating the Defect. It has bought back hundreds of vehicles around the world, mostly overseas, because it has been unable to repair the Defect. Ford has attempted a variety of fixes, all without success.
- 24. Ford has recognized the Defect in Technical Service Bulletins ("TSBs"). TSBs are documents that Ford issues to its dealers to aid them in locating and repairing certain problems or defects. TSBs describe the symptoms of the problem or defect and either detail a method of diagnosing, mitigating or repairing it, or refer the technician to another Ford document that describes a repair procedure.
- 25. Ford prepared certain TSBs in response to customer complaints of an "exhaust", "burnt oil", or "sulfuric" odour in the passenger compartments of the Vehicles. It issued TSB 12-12-4 in December 2012 to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odour in 2011 through 2013 model year Ford Explorers. It stated:

“Some 2011 - 2013 Explorer vehicles may exhibit an exhaust odor in the vehicle with the auxiliary climate control system on. Customers may indicate the odor smells like sulfur. This Technical Service Bulletin contains steps to correct the condition, including replacing the left side rear air extractor, installing a new drain valve, and applying new layers of undercoating.” (**Exhibit R-6**)

26. In July 2014, Ford issued TSB 14-0130 which added 2014 and 2015 model year Explorers to the list of affected Vehicles. TSB 14-0130 was intended to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odour in 2011 through 2015 model year Ford Explorers. (**Exhibit R-7**)
27. TSBs 12-12-4 and 14-0130 identify flaws in the initial design and manufacture of the 2011 through 2015 model year Ford Explorer, and prescribe repairs and/or replacements that are inadequate and equally flawed and defective.
28. Despite issuing TSBs 12-12-4 and 14-0130, and having prepared the unreleased TSBs, Ford did not inform the Plaintiff and other Class Members of the Defect even though it presents health and life safety issues to occupants of the Vehicles.
29. Notably, TSBs 12-12-4 and 14-0130 fail to disclose that the exhaust odour acknowledged in those TSBs is accompanied by toxic and potentially lethal carbon monoxide in the passenger compartment.
30. Ford’s TSBs 12-12-4 and 14-0130 fail to repair or rectify the Defect and Vehicles which have received the repairs outlined in TSBs 12-12-4 and 14-0130 have continued, or may continue to have, exhaust and other gases, including toxic and potentially lethal carbon monoxide, enter the passenger compartment.
31. The systemic nature of the Defect and the inability of Ford to repair that Defect has been conceded by a Ford representative, under oath, at a non-binding arbitration concerning a claim by a Ford Explorer owner that his car was leaking exhaust into the passenger compartment. In urging that the arbitrator rule against the vehicle owner, the Ford representative gave the following admissions under oath on January 2, 2015:
 - (a) “It seems to be happening across the only – across the design line. They can’t – so then it really is a design issue, not a problem with this particular vehicle.”
 - (b) “And then, in terms of -- of repairs, as I said, we’re working on it. I wish I had a better answer for that. I don’t, and I can only apologize on behalf of Ford for that, because, you know, it’s obviously taking longer than anybody wants, especially our customers who have the vehicle.”
 - (c) “In terms of the request for repairs, as soon as we can get it – get them done, as soon as we have a robust fix, something that's going to

actually do the job, we would love to get it done. That should be very soon. I know that that's what the customer was told, you know, all those months ago; but we do feel that we've taken steps along the way. We have come out with the two technical service bulletins trying to address it, and we do want to get it fixed. So we are not saying no to a repair; we are just saying we have to have the fix first". (**Exhibit R-8**)

32. Ford designed, manufactured, sold and leased the 2011 through 2015 model year Vehicles when it knew or should have known of the Defect, or Ford otherwise learned of the Defect and failed to notify the Plaintiff and the other Class Members of the Defect that exposed them, and others, to a health and life safety hazard.
33. The Class Members reasonably expected that their Vehicles would operate in a normal and customary manner – that is, free from exposure to potentially noxious and potentially deadly or injurious exhaust gases such as carbon monoxide entering the Vehicle's passenger compartment during normal and expected use.
34. The Plaintiff and other Class Members have sustained ascertainable losses and damages in connection with their lease or purchase of the Vehicles, including the impairment of the use and enjoyment of the Vehicles:
 - (a) They have not received what they paid for: a motor vehicle that can be safely and comfortably used to drive because of the intrusion of carbon monoxide into the passenger compartment under normal operating conditions and use;
 - (b) They have been damaged by Ford's conduct and/or inaction, as they have been exposed to harmful carbon monoxide and exhaust; they unknowingly leased or purchased defective Vehicles that cannot be comfortably and safely operated; they have been forced to pay, or will pay, substantial amounts of money to repair the Vehicles, if a repair can be made; and the value of their Vehicles has been diminished because of the Defect; and
 - (c) The Vehicle is worth less than a Vehicle free from that Defect. Given that the Defect renders driving the Vehicles a health hazard that is potentially deadly, the Vehicles are valueless. For those class members who leased Vehicles, they paid a price based on the value of such a vehicle free of the Defect.
35. Despite knowing there were serious design and manufacturing defects in the Vehicles, Ford never disclosed these issues to Canadian consumers and never issued a recall of the Vehicles.
36. On July 1, 2016, the U.S. Department of Transportation, National Highway Traffic Safety Administration opened a formal investigation into consumer complaints it had

received about occupants smelling exhaust odours in the passenger compartment of Ford Explorers and those consumers' concerns about exposure to carbon monoxide (**Exhibit R-9, Exhibit R-10, Exhibit R-11**).

The Defendants' Fault

37. At all material times, the Defendants owed to the Plaintiff and the other Class Members the following duties of care to avoid the acts and omissions detailed below:
- (a) To ensure that the Vehicles were designed, marketed, tested and/or manufactured safely, properly and in a good and workmanlike manner so that they would not be defective and be unreasonably dangerous to their occupants;
 - (b) To ensure the Vehicles were of merchantable quality and fit for their intended purpose, namely, to operate as functional motor vehicles which are not plagued by a serious and systemic defect;
 - (c) To disclose to the Plaintiff and the other Class Members the quality, design, manufacturing and reliability defects (such as the Defect) once Ford became aware (or through reasonable diligence could have become aware) of their existence;
 - (d) To remedy the quality, design, manufacturing and reliability deficiencies (such as the Defect) upon discovering them through the recall and repair of the Vehicles or, if that was impossible, by recalling the Vehicles and compensating the Class.
38. The Defendants, through their employees, officers, directors, and agents, failed to meet the reasonable standard of care expected in the circumstances in that:
- (a) They wrongfully and intentionally accepted the foreseeable risk of injury to the Vehicles' occupants because of the Defect;
 - (b) Notwithstanding that they foresaw the health risk to the occupants of Vehicles posed by the Defect, they failed to eliminate or correct the Defect;
 - (c) They knew or ought to have known about the Defect and failed to warn the drivers, passengers, and the public about the Defect;
 - (d) They knew or ought to have known about the Defect and failed to issue a recall of the Vehicles;
 - (e) They designed, developed, tested, manufactured, assembled, distributed and sold the Vehicles containing the Defect;

- (f) They failed to change the design, manufacture and assembly of the Vehicles in a reasonable and timely manner;
- (g) They failed to properly test the Vehicles;
- (h) They failed to carry out the proper repairs to or replace the Vehicles;
- (i) They failed to establish any adequate procedures to educate their distributors, dealerships or the ultimate users of the Defect;
- (j) They failed to identify, implement and verify that procedures were in place to address the Defect;
- (k) They failed to establish any, or any adequate, procedures to ensure that the design of the Vehicles was adequate;
- (l) They failed to establish any, or any adequate, procedures for evaluating the Defect;
- (m) They failed to properly instruct its employees to evaluate the complaints received in relation to the Defect;
- (n) They failed to review and evaluate the complaints received in relation to the Defect;
- (o) They failed to initiate timely review, evaluation and investigation of the Vehicles and the Defect after complaints were received;
- (q) They failed to review, evaluate, and maintain all records of written and oral complaints relative to the reliability, safety, effectiveness and performance of the Vehicles;
- (r) They knew or ought have known that the Vehicles suffered from the Defect;
- (s) They failed to conform with good manufacturing practices;
- (t) They hired incompetent personnel;
- (u) They failed to properly supervise their employees;
- (v) They failed to protect the Class Members and the public;
- (w) They failed to make full, frank and complete disclosure to the regulators, the public, its customers and the Class Members;

- (x) They failed to institute a proper risk/management system;
- (y) They failed to adequately warn owners and drivers of the Vehicles that there was a serious risk of injury associated with the Vehicles;
- (z) They failed to exercise reasonable care and judgment; and
- (aa) Such further and other particulars of negligence within the knowledge of the Defendants.

39. The Defendants continue to fail to fulfill their ongoing obligations to the Class.

Breach of Contractual and Legal Warranties

- 40. By marketing, advertising, distributing and selling the Vehicles without adequate warnings as to the Defect, the Defendants created and breached both contractual and legal warranties that the Vehicles were safe for their intended uses.
- 41. The Defendants warranted to the Plaintiff and the other Class Members that the Vehicles were of merchantable quality and fit for use. The Defendants breached this warranty to the Plaintiff and other Class Members by manufacturing, marketing, distributing and selling the Vehicles which were inherently dangerous to consumers.
- 42. In purchasing and leasing the Vehicles, the Plaintiff and the other Class Members relied on the skill, judgment, representation and warranties of the Defendants. These warranties and representations were false in that the Vehicles were not safe and were unfit for the uses for which they were intended because of the Defect. The defective condition of the Vehicles existed at the time they left the Defendants' control.
- 43. As a result of these breaches, the Plaintiff herein and other Class Members have suffered damages in an amount to be proven at the trial of this action.

The Situation of Class Members

- 44. The facts giving rise to an individual action on behalf of each Class Member against the Defendants, other than the facts set out above with the necessary adaptations, are as follows:
- 45. Every member of the Class currently or has previously owned or leased one of the Vehicles in Québec.
- 46. None of the Class Members were adequately warned about the Defect.
- 47. Each member of the class is justified in claiming at least one or more of the following as damages:

- (a) out-of-pocket expenses for repairs to the Vehicles;
 - (b) towing costs for the Vehicles;
 - (c) loss of use of the Vehicles and expenditures for rental vehicles while their Vehicles were being serviced;
 - (d) diminished value of the Vehicles, which will require future repairs and/or the replacement of parts;
 - (e) trouble and inconvenience, due to the problems associated with their Vehicles; and
 - (f) punitive and/or exemplary damages.
48. All of these damages to the class members are a direct and proximate result of the Defendants' conduct and the defect associated with the Vehicles.
49. The Defendants' conduct in continuing to market, sell and distribute the Vehicles after obtaining knowledge of the Defect and their inability repair it, adequately or at all, showed complete indifference to or a conscious disregard for the safety of Class Members, thereby justifying an award of punitive damages in such an amount as will serve to deter the Defendants from similar conduct in the future.

The composition of the class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

50. The Plaintiff 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 thousands. The Defendants, on the other hand, should have this information readily available to them.
51. Class Members are numerous and are scattered across the entire province.
52. 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 Defendants. 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 Defendants would increase delay and expense to all parties and to the court system.
53. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the Class.

54. 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.
55. 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.

Identical, Similar or Related Questions

56. The identical, similar or related questions of fact and law between each Class Member and the Defendants which the Plaintiff wishes to have decided by the class action are as follows:
- (a) Do the Vehicles contain a defect? If so, what is the nature of that defect?
 - (b) Did the Defendants negligently perform their duties to design and manufacture the Vehicles and to train its technicians to test, inspect, repair, diagnose, and service the Vehicles?
 - (c) Did the Defendants know or should they have known that the Vehicles are unsafe, defective or non-merchantable?
 - (d) Did the Defendants fail to adequately warn consumers about the true defective nature of the Vehicles?
 - (e) Did the Defendants commit a fault in violation of the *Civil Code of Quebec* and/or the *Consumer Protection Act* ?
 - (f) Did the Defendants breach their express warranties by refusing to provide proper repairs and/or replacement of the Vehicles during the warranty period?
 - (g) Are the Defendants responsible for all related costs (including, but not limited to, the out-of-pocket expenses for repairs to the Vehicles, towing costs for the Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, trouble and inconvenience) to Class Members as a result of the problems associated with the Vehicles?
 - (h) Should an injunctive remedy be ordered to force the Defendants to notify, recall, repair and/or replace class members' Vehicles free of charge?
 - (i) Are the Defendants responsible to pay compensatory, moral, punitive damages to the Class Members and in what amount?

Individual Question

57. The only question of fact and law which is specific to each Class Member is the quantum of each Class Member's damages.

The Nature of the Recourse

58. The nature of the recourse which the Plaintiff wishes to advance on behalf of the Class Members is a civil liability damages action.

The Conclusions

59. The conclusions sought by the Plaintiff are:

GRANT the class action of the Plaintiff and the Class Members against the Defendants;

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

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiff 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 the Defendants solidarily to pay such other amounts and grant Class Members such further relief as this Honourable Court may determine as being just and proper;

THE WHOLE with interests and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action .

Representative Status

60. The Plaintiff requests that he be ascribed the status of representative for the following reasons:
- (a) he is a Class Member;
 - (b) he is well informed of the facts alleged in this motion;
 - (c) he has all the required time, determination and energy to bring this matter to a conclusion and adequately represent the Class Members;
 - (d) he cooperates with his lawyers and responds diligently and articulately to requests they make and he fully comprehends the nature of the class proceedings;
 - (e) he is not aware of any conflict of interest with other Class Members;
 - (f) he is acting in good faith and has instituted this action for the sole goal of having his 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 Defendants' conduct.
61. The Plaintiff communicates herewith a copy of the Statement of Claim filed on October 5, 2015 in the Superior Court of Justice of Ontario in the matter of *Marchand v. Ford Motor Company*, Court file no. CV-15-22778, which deals with the same subject matter (**Exhibit R-12**).
62. The Respondent Ford Canada has an establishment or an agent in the District of Montréal and the District of Montréal is a convenient judicial district for the Plaintiff and his counsel.
63. The present application is well-founded in fact and in law.

WHEREFORE, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the institution of a class action as follows: A civil liability action for damages;

ASCRIBE the status of representative to Domenic Corica for bringing the said class action for the benefit of the Class described as follows:

“All persons who reside or have resided in Québec who purchased and/or leased one or more Ford Explorers, Model Years 2011 – 2015 Model”.

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

- (a) Do the Vehicles contain a defect and, if so, what is the nature of that defect?
- (b) Did the Defendants negligently perform their duties to manufacture and design the Vehicles and to train technicians to inspect, test, repair, diagnose, and service the Vehicles?
- (c) Did the Defendants know or should they have known that the Vehicles are unsafe, defective, and/or non-merchantable?
- (d) Did the Defendants fail to adequately disclose to consumers the true defective nature of the Vehicles?
- (e) Did the Defendants commit a fault in violation of the *Civil Code of Quebec* and/or the *Consumer Protection Act*?
- (f) Did the Defendants breach their express warranties by refusing to provide proper repairs and/or replacement of the Vehicles during the warranty period?
- (g) Are the Defendants responsible for all related costs (including, but not limited to, the out-of-pocket expenses for repairs to the Vehicles, towing costs for the Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, trouble and inconvenience) to Class Members as a result of the problems associated with the Vehicles?
- (h) Should an injunctive remedy be ordered to force the Defendants to notify, recall, repair and/or replace Class Members' Vehicles free of charge?
- (i) Are the Defendants responsible to pay compensatory, moral, punitive and/or exemplary damages to Class Members and, if so, in what amount?

IDENTIFY the conclusions sought with respect to such questions be identified as follows:

GRANT the class action of the Plaintiff and the Class Members against the Defendants;

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

CONDEMN the Defendants solidarily liable for the damages suffered by the Plaintiff 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;

CONDEMN the Defendants solidarily to pay such other amounts and grant Class Members such further relief as this Honourable Court may determine as being just and proper;

THE WHOLE with interests and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

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

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class members;

ORDER the publication of a notice to the Class members in accordance with article 576 C.C.P.;

REFER the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

THE WHOLE with costs including the costs of notice and experts.

Montréal, November 28, 2016

Siskinds, Desmeules, Avocats, S.E.N.C.R.L.

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SUMMONS
(Articles 145 and following C.C.P.)

Filing of a Judicial Application

Take notice that the Applicant has filed this Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montréal.

Defendants' Answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 Rue Notre-Dame Street Est, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Quebec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Quebec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the

special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiffs legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative, the Applicant intends to use the following exhibits:

EXHIBIT R-1: Ford Motor Company of Canada extract from the *Registraire des entreprises*

EXHIBIT R-2: Expert Report of David Renfroe PH.D., P.E. (November 13, 2015)

EXHIBIT R-3: Third Amended Class Action Complaint filed in *Sanchez-Knutson v. Ford Motor Company*, Case No. 14-cv-61344 WPD (U.S. District Court, Southern District of Florida)

EXHIBIT R-4: Expert Report of David G. Penney, Ph.D. (November 13, 2015)

EXHIBIT R-5: Customer complaints to U.S. and Canadian regulators

EXHIBIT R-6: Technical Service Bulletin 12-12-4

EXHIBIT R-7: Technical Service Bulletin 14-0130

EXHIBIT R-8: Transcript of BBB Auto Line Arbitration Involving Ford Motor Company, Case No. FRD1430502-IR (January 2, 2015)

EXHIBIT R-9: U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Defects Investigation notice (July 1, 2016)

EXHIBIT R-10: Article, B. Halvorson, "Cat Back: Federal Investigation into Ford Explorer a Reminder of Progress with Carbon Monoxide Reduction", *Car and Driver* Blog (July 25, 2016)

EXHIBIT R-11: Article, D. Wood, "Ford Explorer Exhaust Smells Investigated", *CarComplaints.com* (July 8, 2016)

EXHIBIT R-12: Statement of Claim filed in Marchand v. Ford Motor Company et al., CV-15-22778 (Ontario Superior Court of Justice)

These Exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, November 28, 2016

Siskinds, Desmeules, Avocats, S.E.N.C.R.L.

Samy Elnemr, Lawyer

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Fax: (514) 849-7934

Notification: notification@siskindsdesmeules.com

**NOTICE OF PRESENTATION
(Articles 146 and 574 al.2 CP.C)**

TO: FORD MOTOR COMPANY
1 American Road
Dearborn, Michigan 48126
United States of America

and

FORD MOTOR COMP ANY OF CANADA, LIMITED
200-6505 route Transcanadienne
Montréal, Québec
H4T 1S3

TAKE NOTICE that the present APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montréal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montréal, November 28, 2016

Siskinds Desmeules, Avocats, S.E.N.C.R.L.
Samy Elnemr, Lawyer
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Fax: (514) 849-7934
Notification: notification@siskindsdesmeules.com

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT – CLASS ACTION
NO : 500-06-000827-168

DOMENIC CORICA

Plaintiff

v.

**FORD MOTOR COMPANY OF CANADA,
LIMITED**

AND

FORD MOTOR COMPANY

Defendants

**APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO OBTAIN
THE STATUS OF REPRESENTATIVE
(Articles 574 and 575 C.C.P. and following)**

BS-2497
Me Sammy Elnemr
O/F : 67-192

SISKINDS
MONTREAL

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