

C A N A D A

S U P E R I O R C O U R T
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000799-169

NATHALIE PICOTTE, residing and domiciled at
3094 Dumont, in the city of Longueuil, Province of
Quebec, J4L 3T1;

Applicant

-vs-

FORD MOTOR COMPANY, a legal person,
having its principal place of business at 1 American
Road, Dearborn, Michigan, 48126, United States of
America;

-and-

FORD MOTOR COMPANY OF CANADA,
LIMITED, a legal person, having its principal place
of business at 1 The Canadian Rd, Oakville, Ontario,
L6J 5E4, Canada;

Defendants

**AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO APPOINT A REPRESENTATIVE
PLAINTIFF**

(Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT
STATES AS FOLLOWS:

GENERAL PRESENTATION

1.1 The Applicant wishes to institute a class action on behalf of the following group, of which she
is a member, namely:

All persons in Quebec who own or have owned, or lease or have leased, one or more of the following vehicles containing a Ford “PowerShift” transmission: 2011 to 2015 Ford Fiesta models and 2012 to 2015 Ford Focus models (the “Subject Vehicles”);

(hereinafter, referred to as “Class Member(s)”, the “Class”, the “Member(s)”);

The Defendants

1. The Defendant, Ford Motor Company (“Ford USA”) is an American corporation. Ford Motor Company’s Corporate Headquarters is located at 1 American Road, Dearborn, Michigan 48126., as it appears in a report from Hoovers, communicated herein as **Exhibit P-1**.
2. The Defendant, Ford Motor Company of Canada, Limited, (“Ford Canada”) is a corporation organized pursuant to the Ontario Business Corporations Act. A subsidiary of the Ford Motor Company, Ford Motor Company of Canada, Limited, maintains its head office at 1 The Canadian Rd, Oakville, Ontario, L6J 5E4, as it appears in a copy of a business profile report from Service Ontario communicated herein as **Exhibit P-2**.
3. Both Ford USA and Ford Canada have either directly or indirectly designed, manufactured, marketed, distributed, imported, serviced, repaired and/or sold the Vehicles throughout Canada, including within the province of Quebec, as it appears in a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit P-3**.
4. Given the close ties between the Defendants Ford USA and Ford Canada and considering the following, the Defendants are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, both Defendants will be referred to as “Ford” for the purposes hereof;

General Facts

5. Since 2010, Ford has designed, manufactured, distributed, and sold, directly or indirectly, through dealers and other retail outlets, tens of thousands of Subject vehicles equipped with the PowerShift Transmission in Canada, including in Quebec;

6. Ford's PowerShift Transmission while often referred to as "automatic," is actually a computerized set of twin gearboxes linked by a pair of clutches; one gearbox handles the first, third and fifth gears, while the other covers the second, fourth and sixth gears; in a hydraulic automatic transmission, a fluid coupling or torque converter hydraulically locks and unlocks the gears, while in the PowerShift transmission, the two clutches directly connect and disconnect the engine to and from the transmission;
7. Whereas in other "automated manual" transmissions on the market use "wet" clutches bathed in oil, Ford's PowerShift Transmission clutches lack the oil pumps and other components of a wet clutch system, and instead operate "dry";
8. The PowerShift Transmission is offered as the sole "automatic" option for both the Ford Fiesta and Ford Focus. The PowerShift Transmissions for both vehicles have the same design and components;
9. Ford's PowerShift Transmission was negligently designed, defective, and has been plagued by numerous problems and safety hazards;

Latent Defect

10. The issues with the transmission causes one or more of the following: shuddering, kicking, jerking, harsh engagement, sudden acceleration, delayed acceleration, delay in downshifts, inability to accelerate, difficulty stopping the vehicle and difficulty climbing slopes.
11. Since at least 2010, Ford was aware of the defects of the PowerShift Transmission, having issued at least 56 Technical Service Bulletins to notify dealers of known problems with the PowerShift Transmission in the affected vehicles but without publicising these problems to potential customers, as appears more fully at the following AutoMD weblink, communicated herein as **Exhibit P-6**

(<https://www.automd.com/recall-tsb/search/?question=Ford+Focus+Fiesta+transmission>)
12. The transmission defects not only cause many inconveniences but also render the vehicles unsafe because they significantly affect drivers' ability to control the vehicle's speed, acceleration and deceleration.

13. Class members would not have bought Subject vehicles or would have paid less for them, had they known about the defects.

Negligence

14. Ford was negligent, inter alia, through the following acts and omissions:

- a) Failure to properly and adequately design and/or manufacture Ford vehicles equipped with a PowerShift transmission system, components, and parts thereof;
- b) Failure to properly and adequately disclose the PowerShift transmission defects to potential and present customers of the affected vehicles;
- c) Failure to furnish a long-term repair and/or recall solution to the defect, instead customers must return many times to their dealer to obtain “repairs” that do not fix their transmission’s problems.

15. As a result of Ford’s faults, the Applicant and Class Members have sustained economic and moral damages, and faced unreasonable danger;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

16. The Applicant, Ms. Nathalie Picotte, is a resident of Longueuil, Quebec;

17. On November 16, 2013, the Applicant purchased a Ford Fiesta 2012, equipped with a Ford PowerShift automatic transmission;

18. Beginning around June 2015, the Applicant has experienced various problems with her car’s transmission; on numerous occasions, upon accelerating after a stop or at low speed, her car has exhibited one or more of the following issues: shuddering, kicking, jerking, harsh engagement, sudden acceleration, delayed acceleration, delay in downshifting, inability to accelerate and climbing slopes with difficulty;

19. For instance, in May 2016, the Applicant had a very frightening incident. While merging onto the 132 highway, her Ford Fiesta's transmission suddenly stopped working. She was halfway onto the highway and a car behind her and another car to her side were simultaneously approaching her at high speed. Fortunately, the transmission, after some kicking and jerking, finally accelerated to a safer speed;
20. The Applicant did not receive any letters or notices from Ford to inform her of the transmission defect; rather, it was when she called her dealer to tell them about the problem, that she was informed of a "recall" of her transmission;
21. Since her transmission problems began, the Applicant has visited her dealership 5 times (every two months on average) to attempt to have the issues with her transmission fixed; however, for 4 out of the 5 visits, the mechanic simply made programming adjustments. Only once, in February 2016, her dealership replaced a component of the transmission, the whole as it appears on copies of her invoices from her dealer, communicated herein en liasse as **Exhibit P-8**;
- 21.1 Although the Applicant did not have to pay for the attempted repairs by her dealership, she had to take time off from work to bring her vehicle to the dealership, and she would spend several hours at the dealership;
22. The attempted repairs by her Ford dealership were ultimately ineffectual; any improvements to the transmission following these numerous repairs were short-lived and the problems soon returned and she continued to regularly experience issues with her transmission, including frequent shuddering;
23. At present, Ford still has not offered a permanent fix to her car's transmission problems;
24. The Applicant has experienced psychological and emotional distress knowing that her vehicle is unsafe;
25. (...) Finally, on June 29, 2016, the Applicant purchased a 2016 Hyundai Accent and traded in her Ford Fiesta;

29. The Applicant has suffered (...) economic damages, moral damages, loss of income and inconvenience due to her car's defective transmission;
30. Had the Applicant known about this defect and the danger associated with it, she would not have purchased her vehicle;
31. (...)
32. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
33. As a consequence of the foregoing, the Applicant is justified in claiming damages;

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

34. Every Member of the Class owns, leases or otherwise possesses one of the Subject vehicles;
35. Each Member of the Class is justified in claiming one or more of the following:
 - a. Resiliation of the sale or lease of their vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Subject vehicles;
 - b. Damages for the costs associated with the defects or repairs to the Subject vehicles;
 - c. Damages for loss of use and enjoyment of their Subject vehicles;
 - d. Damages for trouble, inconvenience and loss of time;
 - e. Damages for anxiety and fear;
 - f. Punitive and exemplary damages;

- g. Such further and other relief as counsel may advise and this Honourable Court may allow.

- 36. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:

- 37. The number of persons included in the Class can reasonably be estimated to be in the thousands considering that there are approximately 140,000 vehicles in Canada affected by the subject matter of the action (as appears more fully in the sales statistics presented by Good Car Bad Car, communicated herein as **Exhibit P-7**);
- 38. The names and addresses of all persons included in the Class are not known to the Applicant but are known to the Defendants;
- 39. 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;
- 40. 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;
- 41. 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;

The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:

42. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Is there a latent defect in the transmission of the Subject vehicles?
 - b) Are the Subject vehicles unfit for the purpose they were intended, or is their usefulness diminished so much that the Class members would not have bought them or would have paid less for them, had they known about the defects?
 - c) Did the Defendants know or ought to have known about these defects affecting the Subject vehicles?
 - d) Did the Defendants' fail to properly and adequately design and/or manufacture the Subject Vehicles;
 - e) Did the Defendants' fail to properly and adequately disclose the PowerShift transmission defects of the affected vehicles to Class Members?
 - f) Have the Class Members suffered damages as a result of the Defendants' faults?
 - g) Are the Defendants liable to pay compensatory damages to Class Members?
 - h) Are the Defendants liable to pay moral damages to Class Members, and if so, in what amount?
 - i) Are the Defendants liable to pay exemplary or punitive damages, and if so, in what amount?
43. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

44. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages for latent defect;
45. The conclusions that the Applicant wishes to introduce by way of a motion to institute proceedings are:

GRANT Applicant's action against Defendants;

GRANT the class action of the Applicant on behalf of all the Members of the Class;

ORDER the resiliation of the sale or lease of the Subject vehicles purchased or leased by the Class Members;

ORDER and CONDEMN Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

OR SUBSIDIARILY, CONDEMN Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

CONDEMN Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

CONDEMN Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

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

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

46. The Applicant 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. The Defendants have a business establishment in the District of Montreal;
 - c. Many of the Subject vehicles were purchased or leased by Class Members in District of the Montreal;
 - d. The Applicant's counsel is domiciled in the District of Montreal;
47. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since she:
- a. owned a 2012 Ford Fiesta which was affected by the defect alleged above, and is thus a Member of the Class;
 - b. understands the nature of the action, and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;
 - c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
 - d. is ready and available to manage and direct the present action in the interest of the Class Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
 - e. does not have interests that are antagonistic to those of other members of the Class;

- 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. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;
- h. has communicated with numerous individuals who have experienced the same issues with their Ford Focus or Ford Fiesta;

48. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as:

All persons in Quebec who own or have owned, or lease or have leased, one or more of the following vehicles containing a Ford “PowerShift” transmission: 2011 to 2015 Ford Fiesta models and 2012 to 2015 Ford Focus models (the “Subject Vehicles”);

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

- a) Is there a latent defect in the transmission of the Subject vehicles?
- b) Are the Subject vehicles unfit for the purpose they were intended, or is their usefulness diminished so much that the Class members would not have bought them or would have paid less for them, had they known about the defects?

- c) Did the Defendants know or ought to have known about these defects affecting the Subject vehicles?
- d) Did the Defendants' fail to properly and adequately design and/or manufacture the Subject Vehicles;
- e) Did the Defendants' fail to properly and adequately disclose the PowerShift transmission defects of the affected vehicles to Class Members?
- f) Have the Class Members suffered damages as a result of the Defendants' faults?
- g) Are the Defendants liable to pay compensatory damages to Class Members?
- h) Are the Defendants liable to pay moral damages to Class Members, and if so, in what amount?
- i) Are the Defendants liable to pay exemplary or punitive damages, and if so, in what amount?

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

GRANT Applicant's action against Defendants;

GRANT the class action of the Applicant on behalf of all the Members of the Class;

ORDER the resiliation of the sale or lease of the Subject vehicles purchased or leased by the Class Members;

ORDER and CONDEMN Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members

in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

OR SUBSIDIARILY, CONDEMN Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

CONDEMN Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

CONDEMN Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

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

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

DECLARE that all Members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment 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 Members;

ORDER the publication of a notice to the Members of the Class in accordance with Article

579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, November 30, 2016

MERCHANT LAW GROUP LLP

Attorneys for the Applicant