

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

No: 500-06-000837-175

GARAGE POIRIER & POIRIER INC.
-and-
ALEX BOUFFARD

Applicants

v.

FCA CANADA INC.
-and-
FCA US LLC

Defendants

APPLICATION BY THE DEFENDANTS TO STAY THE CLASS ACTION
(Articles 18 and 577 CCP and Article 3137 CCQ)

TO THE HONOURABLE PIERRE C. GAGNON, J.S.C., THE DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The Defendants FCA Canada Inc. and FCA US LLC, Inc. (collectively hereinafter referred to as "**FCA**") seek a stay of the *Application to Authorize the Bringing of a Class Action and to Appoint the Petitioners as Representatives* filed on January 25, 2017 (the "**Quebec Action**").
2. This Application for a stay is intended to achieve judicial economy, cost-efficiency and the avoidance of foreseeably problematic legal issues posed by a multiplicity of proceedings due to the existence of the following overlapping putative class action proceedings:
 - a) a consolidated national class action filed in Ontario -- *Shane Witham and Robert Ballog v. FCA Canada Inc., FCA US LLC and Fiat Chrysler Automobiles N.V.*, court file number CV-17-567691, which consolidates four identical class actions that had previously been issued by four separate plaintiff law firms; and
 - b) a national, class action filed in British Columbia -- *Hugo Castaneda v. Fiat Chrysler Automobiles N.V., FCA US LLC and FCA Canada Inc.*, court file

number 187086 (FCA is aware of another proposed class action that was recently issued in British Columbia, but that claim has not yet been served upon FCA).

3. All of the actions pursue the same objectives and raise the same or substantially similar issues.
4. FCA submits that it is in the interests of proportionality, judicial economy, cost-efficiency and the good administration of justice that these overlapping issues raised in the Quebec Action, the national action in Ontario and the national action in British Columbia, be adjudicated first in Ontario.

II. THE NATIONAL CLASS ACTIONS

5. The proposed class in Quebec is the following:

“all persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Subject Vehicles equipped with a Defeat Device, or any other group to be determined by the Court”;

6. The Subject Vehicles are defined as:

- a) “Model years 2014 to 2016 Dodge Ram 1500 EcoDiesel vehicles, and,
- b) Model years 2014 to 2106 Jeep Grand Cherokees EcoDiesel vehicles
Equipped with a 3.0 litre diesel engine.”

7. On January 19, 2017, Plaintiff Hugo Castaneda (“**BC Plaintiff**”) filed a Statement of Claim raising similar facts in British Columbia, as appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-1** (the “**BC Action**”).

8. The BC Plaintiff is seeking to represent the following putative class:

“all resident of (a) British Columbia and (b) Canada, who own or have owned, or who lease or have leased, one or more of the following vehicles equipped with 3L diesel engines:

2014, 2015, or 2016 model year FCA Dodge RAM 1500

2014, 2015, or 2016 model year FCA Jeep Grand Cherokee”

9. In January 2017, the following class actions raising similar facts and issues were commenced in Ontario:

- a) *Victor Mendham v. Fiat Chrysler Automobiles N.V., FCA US LLC and FCA Canada Inc.*, in court file number CV-17-567693 (“**Mendham**”), as

appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-2**;

- b) *Damen MacGillivray v. Fiat Chrysler Automobiles N.V., FCA US LLC and FCA Canada Inc.*, in court file number CV-17-568086 (“**MacGillivray**”), as appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-3**;
 - c) *D-K Equipment Limited v. FCA Canada Inc. and FCA US LLC*, in court file number CV-17-567691 (“**D-K Equipment**”), as appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-4**;
 - d) *Kyle Devine and Tim Cada v. FCA US LLC, f/k/a Chrysler Group LLC, FCA Canada Inc., f/k/a/ Chrysler Canada Inc., Robert Bosch GmbH and Robert Bosch, LLC*, in court file number CV-17-24582 (“**Devine**”), as appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-5**;
 - e) *Jack Rombouts v. FCA Canada inc., Fiat Chrysler Automobiles N.V. and FCA US LLC*, in court file number CV-17-567773 (“**Rombouts**”), as appears from a copy of the Statement of Claim communicated herewith as **Exhibit R-6**.
10. In March 2017, Mendham’s attorneys, Merchant Law Group LLP, advised that Mendham’s action would be discontinued.
11. In mid-March, 2017, Plaintiffs MacGillivray, D-K Equipment and Rombouts informed counsel for FCA that they have agreed to consolidate their respective actions into one new consolidated action to be represented by a consortium of class counsel including Siskinds LLP, Sotos LLP, Koskie Minsky LLP and Lenczner Slaght LLP (the “**Consortium**”). Subsequently, on May 29, 2017, Siskinds LLP advised counsel for FCA that counsel for Devine are also joining this consolidated action.
12. On April 28 2017, the Consortium served FCA’s counsel with a motion for certification of the above-noted consolidated action-- *Shane Witham and Robert Balog v. FCA Canada Inc., FCA US LLC and Fiat Chrysler Automobiles N.V.*, court file number CV-17-567691, as further appears from the Notice of motion (certification) communicated herewith as **Exhibit R-7** (the “**Ontario Action**”). Siskinds LLP has now advised counsel for FCA that the consolidated statement of claim will be revised to include counsel from the Devine action.
13. Plaintiffs Shane Witham and Robert Balog (the “**Ontario Plaintiffs**”) seek to represent the following putative class:
- “all persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the Vehicles, or such other definition that the court finds favourable”;

14. The Vehicles referred to in the proposed putative class are the following vehicles equipped with EcoDiesel engines:

MODEL	MODEL YEARS (INCLUSIVE)
Dodge RAM 1500	2014 - 2016
Jeep Grand Cherokee	2014 - 2016

15. Aside from the fact that the Ontario and BC Plaintiffs seek to represent a national class, the definition of the putative class proposed in these actions is almost identical to the definition of the class proposed in the Quebec Action.
16. The essential facts in support of the class actions are the same, the objectives sought are identical and the questions raised are the same or substantially similar.
17. Indeed, the central allegation raised by the Plaintiffs in each of the Ontario Action, the BC Action and the Quebec Action is that FCA engaged in (i) the design, manufacture, distribution and sale of vehicles Dodge RAM 1500 and Jeep Grand Cherokee that emit illegal levels of pollutants under ordinary driving conditions; (ii) the concealing of the existence of alleged Defeat Devices that bypass the vehicles' emission systems controls; and (iii) the promotion of vehicles falsely marketed as fuel-efficient and "emissions compliant".
18. The Applicants in the Quebec Action plainly admit that "*a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgement on issues of fact and law that are similar or related to all members of the Class*", as appears from the Court record.

III. THE PROGRESS OF THE CLASS ACTIONS

a) The Quebec Action

19. Since the filing of the Application to Authorize the Bringing of a Class Action on January 25, 2017, no procedural steps have been taken before this Court.

b) The Ontario Action

20. The Ontario Action was commenced in January 2017. An initial case management conference with the Honourable Mr. Justice Belobaba, who has been assigned as the case managing judge for these proceedings, was held on March 23, 2017. At that initial case conference, the various plaintiffs' counsel advised FCA and Belobaba, J. that they were in the process of finalizing arrangements to form a consortium and issue a consolidated action.
21. Since then, the Ontario Plaintiffs represented by the Consortium have finalized their agreement to work jointly as the Consortium, prepared the consolidated statement of claim, and served upon FCA a certification motion record.

22. The consolidated motion record is approximately 1200 pages and includes, among other things: (i) approximately 1000 pages of documentary evidence that the Ontario Plaintiffs will seek to rely upon at the hearing of the certification motion in the consolidated action in Ontario; (ii) a report from Dr. David Checkel, whom the Ontario Consortium proffers as an engineering expert, which discusses points relating to the emissions control systems in the Subject Vehicles; and (iii) an affidavit from Shane J.J. Whitham, one of the representative plaintiffs in the consolidated action. FCA is in the process of preparing its responding motion record in the Ontario consolidated action.
23. Siskinds LLP has recently told counsel for FCA that the Consortium intends to schedule a case management conference with Belobaba, J for the purpose of scheduling a timetable leading to the hearing of the certification motion.
24. Although the date of the Ontario certification motion has not yet been set, at the initial case management conference on March, 23 2017, Belobaba, J. reminded counsel of his general practice of seeking to schedule the certification motion no later than one year following the date of a proposed class action.

c) **The BC Action**

25. Since the filing of the Statement of Claim on January 19, 2017, the BC Action has been dormant. Counsel for the BC Plaintiffs has not communicated with FCA's counsel at all about their intentions, if any, respecting the conduct of the BC Action.

IV. LIS PENDENS AND STAY OF PROCEEDINGS

26. The Quebec Action filed by Applicants herein, along with the Ontario Action and the BC Action, create a situation of *lis pendens*, as they are based on the same facts and have the same object.
27. As stated, the basic facts in support of all these proceedings (i.e. the "cause") are the same, namely the alleged concealing by FCA of the existence of an alleged defeat device which bypasses the vehicles' emission control systems, and alleged misrepresentations about fuel efficiency and emissions levels.
28. The object of these proceedings is the same, namely the payment of damages to class members for the alleged losses and damages suffered as a result of the alleged misrepresentation referenced above.
29. There is also juridical identity of the parties by representation. The class membership in the Ontario Action includes the class members in the Quebec Action, whereas the Quebec Action proposes a provincial class composed of Quebec residents only.
30. It is in the interests of justice and of the parties to avoid a multiplicity of Court proceedings and the possibility of contradictory judgments. Indeed, as noted by

the Applicants' own admission: "*a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgement on issues of fact and law that are similar or related to all members of the Class*", as appears from the Court record.

31. Such multiplicity of class proceedings would also run contrary to the "spirit of mutual comity that is required between the courts of different provinces in the Canadian legal space" (cf. *Canada Post Corp. v. Lépine*, [2009] 1 S.C.R. 549, at par. 57).
32. Requiring FCA to conduct multiple duplicative or overlapping legal proceedings in various jurisdictions would unfairly impose a substantial additional cost burden upon FCA for no reasonable, or proportionate, counter-balancing gain to any party.
33. It is in the interests of justice to proceed in an orderly fashion, and FCA submits that the present case should be stayed pending final judgment in the Ontario Action.

V. THE RIGHTS AND INTERESTS OF THE QUEBEC CLASS MEMBERS IN THE CONTEXT OF A STAY

34. The stay of the Quebec Action in favour of national class action proceeding in Ontario would serve the rights and interests of Quebec residents since the Ontario Court would protect the rights and interests of Quebec residents.
35. The causes of action asserted in the Ontario Action duplicate the causes of action asserted in the Quebec Action, such that a determination of the rights of the proposed national class members in the other actions will significantly impact the rights of class members resident in Quebec.
36. The Ontario Courts will protect the rights and interests of Quebec residents who do not opt out of the Ontario action in the same fashion as would a Quebec Court. They will not suffer any prejudice if the Quebec Action is stayed.

VI. CONCLUSION

37. FCA therefore seeks a stay of the Quebec Action.
38. During the stay ordered by this Court, FCA undertakes to advise the Court of the status of the Ontario Action and of the procedural steps that have been taken to move the litigation forward.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the Application to Stay the Quebec Action;

STAY the present file until a final judgment is rendered in Shane Witham and Robert Balog v. FCA Canada Inc., FCA US LLC and Fiat Chrysler Automobiles N.V., court file number CV-17-567691;

THE WHOLE, with costs.

Montréal, this May 31st, 2017.

A handwritten signature in blue ink, appearing to read "Fasken Martineau DuMoulin", is written over a horizontal line.

Me Martin Sheehan, Me Noah Boudreau and
Me Peter Pliszka, attorneys for FCA Canada
Inc. and FCA US LLC, Inc.

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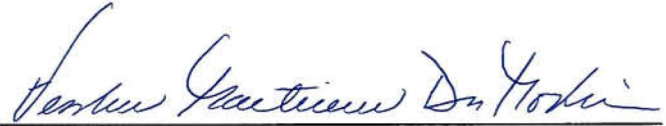
Defendants

LIST OF EXHIBITS

- EXHIBIT R-1:** Statement of Claim filed on January 19, 2017 by Plaintiff Hugo Castaneda in British Columbia;
- EXHIBIT R-2:** Statement of claim filed in Ontario in January 2017: *Victor Mendham v. Fiat Chrysler Automobiles N.V., FCA US LLC and FCA Canada Inc.*, in court file number CV-17-567693;
- EXHIBIT R-3:** Statement of claim filed in Ontario in January 2017: *Damen MacGillivray v. Fiat Chrysler Automobiles N.V., FCA US LLC and FCA Canada Inc.*, in court file number CV-17-568086;
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- EXHIBIT R-6:** Statement of claim filed in Ontario in January 2017: *Jack Rombouts v. FCA Canada inc., Fiat Chrysler Automobiles N.V. and FCA US LLC*, in court file number CV-17-567773;

EXHIBIT R-7: Notice of motion (certification) -- *Shane Witham and Robert Balog v. FCA Canada Inc., FCA US LLC and Fiat Chrysler Automobiles N.V.*, court file number CV-17-567691, served by Consortium to FCA's counsel on April 28, 2017;

Montréal, this May 31st, 2017.



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Me Peter Pliszka, attorneys for FCA Canada
Inc. and FCA US LLC, Inc.

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EXHIBITS AND EXHIBITS R-1 TO R-7

ORIGINAL

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