

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 FOR AUTHORIZATION TO EXAMINE THE APPLICANTS GARAGE
POIRIER & POIRIER INC. AND ALEX BOUFFARD
AND TO SUBMIT RELEVANT EVIDENCE**
(Article 574 CCP)

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

1. The Defendants FCA Canada Inc. and FCA US LLC, Inc. (collectively hereinafter referred to as "**FCA**") hereby seek the authorization of this Honorable Court to examine the Applicants Garage Poirier & Poirier Inc. and Alex Bouffard (collectively referred to hereinafter as the "**Applicants**") and to submit the transcripts, answers to undertakings and exhibits used during the examination, if any, as relevant evidence pursuant to article 574, *para.* 3 of the *Code of Civil Procedure*, CQLR, c. C-25.01 ("**CCP**").
 1. **The Application to Authorize the Bringing of a Class Action & to Appoint the Applicants as Representatives**
2. On or about January 25, 2017, Applicants Garage Poirier & Poirier Inc. and Alex Bouffard filed an Application to Authorize the Bringing of a Class Action and to Appoint the Applicants as Representatives (the "**Application**") on behalf of the following proposed class:

"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”

3. In the Application, the Applicants claim notably that FCA engaged in the design, manufacturing, marketing, advertising, distribution, lease and sale of vehicles, which were designed to mislead consumers and regulators about their emissions through defeat devices (the “**Defeat Devices**”).
4. The Applicants allege that they (and the class members) purchased their vehicles based on the representations made by FCA regarding emissions and fuel consumption, and that they would not have purchased the vehicles had they known about the Defeat Devices.
5. As a result of the alleged “surreptitious use” of the Defeat Devices and false and/or misleading representations regarding emissions and fuel consumption, Applicants claim that they over-paid for their vehicles, that these same vehicles now have a reduced resale value, that they have overpaid and continue to overpay for fuel and they have suffered other troubles and inconveniences as a result.

II. The Relevance and Scope of the Examination of the Applicants

6. The examination of the Applicants before the hearing of the Application is relevant to provide this Honorable Court with facts relating to:
 - a) The circumstances surrounding the purchase of the vehicles by the Applicants, including, but not limited to, the Applicants’ reasons for purchasing the vehicles in the first place;
 - b) The circumstances regarding the Applicants’ allegations that they noticed that the Subject Vehicles consumed more fuel than expected;
 - c) The allegations that FCA misstated the NOx emissions as well as the gas consumption of the Subject Vehicles significantly and, more specifically, that the Subject Vehicles “appear to meet emissions standards” but actually emit NOx in far greater amounts than the standard allowed under the federal regulations during the normal operations of the road vehicles;
 - d) The Applicants’ allegations that they have suffered ascertainable loss, as a result of the alleged omission or misrepresentation associated with the Defeat Devices, including trouble and inconvenience;
 - e) The facts regarding the Applicants’ ability to properly represent the members of the proposed class, including, but not limited to, the nature of the steps taken by them leading up to and culminating in the filing of the Application, as well as their efforts, if any, to identify other members of the proposed class.

7. The Applicants' examination regarding these subjects will help this Honorable Court in its analysis of the criteria for authorization of the Class Action pursuant to article 575 CCP, more particularly with regard to the appearance of right requirement (article 575 (2) CCP) and the Applicant's ability to properly represent the members of the proposed Class and Subclass members (article 575 (4) CCP).
8. Indeed, the Applicants have specifically stated in paragraph 82 of the Application that they are prepared to be examined out-of-court on their allegations.
9. The undersigned attorneys estimate that the Applicants' examinations should not exceed 3 hours.
10. FCA suggests that these examinations be held out of court, as suggested by the Applicants, and before the hearing of the Application to Authorize the Bringing of a Class Action.
11. It is in the interest of justice and the parties that FCA be authorized to examine the Applicants and to file the transcripts of the examinations, the answers to the undertakings as well as the exhibits used during the examinations.
12. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

AUTHORIZE the Defendants FCA Canada Inc. and FCA US LLC, Inc. to examine the Applicants Garage Poirier & Poirier Inc. and Alex Bouffard out of court before the hearing of the Application to Authorize the Bringing of a Class Action regarding the following subjects:

- a) The circumstances surrounding the purchase of the vehicles by the Applicants, including, but not limited to, the Applicants' reasons for purchasing the vehicles in the first place;
- b) The circumstances regarding the Applicants' allegations that they noticed that the Subject Vehicles consumed more fuel than expected;
- c) The allegations that FCA misstated the NOx emissions as well as the gas consumption of the Subject Vehicles significantly and, more specifically, that the Subject Vehicles "appear to meet emissions standards" but actually emit NOx in far greater amounts than the standard allowed under the federal regulations during the normal operations of the road vehicles.
- d) The Applicants' allegations that they have suffered ascertainable loss, as a result of the alleged omission or misrepresentation associated with the Defeat Devices, including trouble and inconvenience;

- e) The facts regarding the Applicants' ability to properly represent the members of the proposed class, including, but not limited to, the nature of the steps taken by them having led to the filing of the Application as well as their efforts, if any, to identify other members of the proposed class.

AUTHORIZE the Defendants FCA Canada Inc. and FCA US LLC, Inc. to file the transcripts of the examination, the answers to the undertakings as well as the exhibits used during the examination, if any.

THE WHOLE without legal costs, unless the present Application is contested.

Montréal, this May 31st, 2017.



Me Martin Sheehan and Me Noah Boudreau
attorney for FCA Canada Inc. and FCA US
LLC, Inc.

Fasken Martineau DuMoulin LLP

Attorneys for FCA Canada Inc. and FCA US
ULC

Stock Exchange Tower

Room 3700, C.P. 242

800, Square Victoria

Montréal (Québec) H4Z 1E9

Phone: +1 514 397 4395 / +1 514 394 4521

Fax: +1 514 397 7600

Email: msheehan@fasken.com /

nboudreau@fasken.com

N° : 500-06-000837-175

PROVINCE OF QUEBEC
SUPERIOR COURT
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

GARAGE POIRIER & POIRIER INC.
-ET-
ALEX BOUFFARD

Plaintiff

v.

FCA CANADA INC.
-ET-
FCA US LLC

Defendants

10813/227690.00207

BF1339

APPLICATION FOR AUTHORIZATION TO
EXAMINE THE APPLICANTS GARAGE
POIRIER & POIRIER INC. AND ALEX
BOUFFARD AND TO SUBMIT RELEVANT
EVIDENCE (Article 574 CCP)

ORIGINAL

Fasken Martineau DuMoulin LLP
Stock Exchange Tower
800 Victoria Square, Suite 3700
P.O. Box 242
Montréal, Quebec H4Z 1E9

Me Martin Sheehan
msheehan@fasken.com
Tél. +1 514 397 4395
Fax. +1 514 397 7600