

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000872-172

DATE : January 29, 2019

IN THE PRESENCE OF: THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

MARC DESHAIES

Petitioner

v.

FCA CANADA INC.

and

FCA US LLC

and

CUMMINS INC.

and

CUMMINS CANADA ULC

Respondents

JUDGMENT ON DISCONTINUANCE

[1] On July 10, 2017, the Petitioner filed an "AforA", being an Application to Authorize the Bringing of a Class Action and to Appoint the Petitioner as Representative (Art. 574 C.C.P. and following), on behalf of the following class:

"All persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the model year 2013 through 2017 Dodge Ram 2500 and/or 3500 vehicles with a Cummins 6.7-litre diesel engine (collectively, the "Vehicles" and the

“Cummins Engines”), or any other group to be determined by the Court;”

[2] In his Application, the Petitioner alleges *inter alia* that the Vehicles were designed, manufactured, tested, distributed, delivered, supplied, tested, inspected, marketed, leased and/or sold and warranted with a defectively-designed selective catalytic converter (SCR) system (referred to throughout the action as the “Design Defect”).

[4] The AforA also alleges that on April 22, 2016, the Petitioner purchased a 2016 Dodge RAM 2500 with a 6.7L diesel engine (VIN GG148383) from Nicolet Chrysler Dodge Jeep RAM located at 3975 boul. Louis-Fr chette in Nicolet, Qu bec, for a purchase price of \$72,397.46.

[5] On January 21, 2019, the Petitioner filed an Application for Authorization to Discontinue the Present Class Action pursuant to articles 9 al. 2, 19, 213 and 585 C.C.P.

[6] The reasons alleged in the above-mentioned Application to support the discontinuance are:

- (a) The evidence submitted by the Petitioner only supports an alleged design defect with regard to the 2013-2015 vehicle models which (a) the Petitioner did not purchase [he had purchased a 2016 Dodge RAM 2500 (see para 117 of the AforA), which has since been sold] and (b) were manufactured using the repaired SCR technology;
- (b) The evidence submitted by the FCA Respondents indicates that, with regard to the 2013-2015 vehicle models (to which there had been a Design Defect), the problem with the SCR emitting air pollutants which exceed the norms for nitrogen oxide in the United States and Canada was corrected to the satisfaction of the United States EPA and Environment and Climate Change Canada;
- (c) As the issue in question was not a defeat device (see para 8 of the Shaw Affidavit), there is no reason to believe that the reparations to the SCR system led to a reduction in the vehicles’ fuel efficiency;
- (d) The related United States action of *Raymo v. FCA US LLC and Cummins Inc.*, 2:17-cv-12168 United District Court for the Eastern District of Michigan [relating to 2013-2017 vehicles] has not moved forward and is temporarily stayed until such time as the motions to dismiss in the United States action of *Bledsoe v. FCA US LLC and Cummins Inc.*, 2:16-cv-14024 United District Court for the Eastern District of Michigan [2007-2012 vehicles] are decided, at which time the defendants will have 45 days to respond to the Plaintiff’s Amended Complaint;

(e) The Respondents have informed the Court that no similar class action relating to the same Vehicles is pending elsewhere in Canada;

[7] The Respondents represent, quite convincingly, that the discontinuance results from the information disclosed as the result of the judgment of September 11, 2018 allowing them to file evidence deemed relevant.

[8] In view of the foregoing, the Court finds the discontinuance to be in the interest of justice;

[9] **FOR THESE REASONS, THE COURT: POUR CES MOTIFS, LE TRIBUNAL :**

[10] **GRANTS** the present Application; **ACCUEILLE** la présente demande;

[11] **AUTHORIZES** the Petitioner to discontinue his Application to Authorize the Bringing of a Class Action and to Appoint the Petitioner as Representative Plaintiff; **AUTORISE** le demandeur à se désister de sa demande d'autoriser l'institution d'une action collective et de désigner le demandeur pour représenter les membres;

[12] **ALLOWS** the Petitioner to file his discontinuance in the Court record within 30 days following the date of this judgment; **PERMET** au demandeur de produire son désistement au dossier de la Cour dans les 30 jours de la date du présent jugement;

[13] **APPROVES** the text of the public notice to putative members in accordance with Exhibit R-1; **APPROUVE** le texte de l'avis public aux membres putatifs selon le texte reproduit à la pièce R-1;

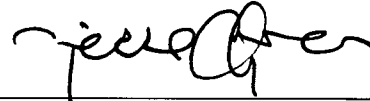
[14] **ORDER** the Petitioner to ensure that said public notice be published in bilingual format; **ORDONNE** au demandeur de veiller à la publication de tel avis public, sous forme bilingue:

(a) On the Quebec Class Actions Registry; a) au Registre des actions collectives du Québec;

(b) On the website www.clg.org for a duration of at least 120 consecutive days; b) sur le site internet www.clr.org durant au moins 120 jours consécutifs;

[15] **ORDER** that copy of said public notice be sent by email to every person, residing in Québec and elsewhere, having expressed an interest in the present class action to Petitioner's counsel; **ORDONNE** que copie de tel avis public soit transmise par courriel à toute personne, résidant au Québec ou ailleurs, ayant manifesté aux avocats du demandeur, son intérêt dans la présente action collective;

[16] **THE WHOLE** without prejudice and **LE TOUT** sans prejudice et sans frais
without legal costs. de justice.



PIERRE-C. GAGNON, j.c.s.

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Date of hearing: January 28, 2019

EXHIBIT R-1

AVIS DE DÉSISTEMENT D'UNE ACTION COLLECTIVE

1. Le 10 juillet 2017, le demandeur a institué une demande d'autorisation d'exercer l'action collective et pour attribuer le statut de représentant (la « Demande pour autorisation ») à la Cour supérieure du Québec, district de Montréal, sous le numéro de dossier 500-06-00072-172, au nom du groupe suivant :

Toutes les personnes, entités ou organisations résidant au Québec ayant acheté et/ou loué un ou plusieurs véhicules Dodge Ram 2500 et/ou 3500 de l'année modèle 2013 à 2017 avec un moteur diesel Cummins de 6,7 litres (collectivement, les « Véhicules » et les « Moteurs Cummins »), ou tout autre groupe à être déterminé par la Cour;

2. Le 29 janvier 2019, la Cour supérieure du Québec a autorisé le demandeur à se désister entièrement de sa procédure judiciaire contre tous les défendeurs, mettant ainsi fin à l'action collective;

SOYEZ AVISÉ que le tribunal ayant maintenant permis le désistement, l'action collective est terminée. Les délais de prescription ne sont plus suspendus. Par conséquent, les membres du groupe ne sont plus représentés par l'action collective et il leur appartient d'instituer une action distincte, s'ils le désirent.

En ce cas, le délai de prescription a possiblement commencé à courir jusqu'au 10 juillet 2017, de sorte que la

NOTICE OF DISCONTINUANCE OF A CLASS ACTION

1. On July 10, 2017, the Plaintiff instituted an Application to Authorize the Bringing of a Class Action and to Appoint the Petitioner as Representative (the "Application for Authorization") in the Superior Court of Quebec, district of Montreal, under file number 500-06-000872-172, on behalf of the following class:

All persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the model year 2013 through 2017 Dodge Ram 2500 and/or 3500 vehicles with a Cummins 6.7-litre diesel engine (collectively, the "Vehicles" and the "Cummins Engines"), or any other group to be determined by the Court;

2. On January 29, 2019, the Superior Court of Quebec authorized the Plaintiff to discontinue the entire legal proceedings against all of the Defendants, thereby putting an end to the class action;

BE AWARE that now that the Court has allowed the discontinuance, the class action is terminated. Limitation periods (i.e. prescription) are no longer suspended. Therefore, class members will no longer be represented by the class action and will be required to pursue their own legal claims, should they so desire.

In this case, the period during which an action is allowed had possibly begun to run until July 10, 2017, and the remaining

période restante est diminuée d'autant.

period is therefore reduced accordingly.

Pour plus d'informations sur l'action collective, vous pouvez consulter <https://www.clg.org/Recours-Collectif/Liste-des-recours-collectifs/2013-2017-Dodge-RAM-2500--3500-moteur-diesel-Cummins-emissions---Action-collective-Quebecoise?>

For more information on the class action, you may visit <https://www.clg.org/Class-Action/List-of-Class-Actions/2013-2017-Dodge-RAM-2500--3500-Cummins-Diesel-Engine-Emissions-Canada-Class-Action>

Sur ce site, vous pourrez télécharger et consulter les documents suivants : a) la Demande pour autorisation; et b) le Jugement autorisant le désistement.

On this website, you can also download and view the following documents: (a) the Application for Authorization; and (b) the Judgment allowing the discontinuance.