



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ALLAN MARSHALL

PLAINTIFF

AND:

FORD MOTOR COMPANY and FORD MOTOR COMPANY OF CANADA LIMITED

DEFENDANTS

Brought under the *Class Proceedings Act*

**NOTICE OF CIVIL CLAIM**

(Name and address of each plaintiff)

Allan Marshall  
P.O. Box 47001  
Victoria, B.C. V9B 5T2

(Name and address of each defendant)

Ford Motor Company World Headquarters,  
1 American Road,  
Dearborn, Michigan, U.S.A.

Ford Motor Company of Canada Limited  
Head Office:

Mailing Address: 1 The Canadian Road Oakville, Ontario L6J 5E4	Delivery Address: 1 The Canadian Road Oakville, Ontario L6J 5E4
British Columbia Address:	
Attorney: Ian Giroday	
Mailing Address: Hobbs, Giroday 908 – 938 Howe Street Vancouver, B.C.	Delivery Address: Hobbs, Giroday 908 – 938 Howe Street Vancouver, B.C.

Canada V6Z 1N9

Canada V6Z 1N9

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFF(S)**

**Part 1: STATEMENT OF FACTS**

1. The Plaintiff is an Emergency Management Officer and resides in the City of Victoria, in the Province of British Columbia.
2. The Defendant Ford Motor Company is a company duly incorporated pursuant to the laws of the State of Michigan, and has its head office at Ford Motor Company

World Headquarters, 1 American Road, in the City of Dearborn, in the State of Michigan, in the United States of America.

3. The Defendant Ford Motor Company of Canada Limited, a subsidiary of Ford Motor Company, is an extra-provincial company duly registered in the Province of British Columbia under number A0058695, has its head office at 1, The Canadian Road in the town of Oakville in the province of Ontario and has an attorney in British Columbia located at #908-938 Howe Street, in the City of Vancouver, in the Province of British Columbia.
4. The Defendant Ford Motor Company, both directly and through various subsidiaries, designs, manufactures, distributes, markets and sells motor vehicles in numerous jurisdictions including Canada and the United States of America. In Canada, those functions are carried out by Ford Motor Company of Canada, a subsidiary of Ford Motor Company.
5. The Defendants, Ford Motor Company and Ford Motor Company of Canada, are hereinafter referred to as the "Defendants".
6. Commencing in 2003, and continuing at the present time, the Defendants have, and continue to manufacture, sell and distribute motor vehicles that utilize a 6.0 litre Power Stroke diesel engine (the "Power Stroke Engine").
7. Since its introduction, the Defendants have become aware of numerous quality, design, manufacturing and reliability defects with the Power Stroke Engine including, but not limited to, loss of power, Engine Gas Recirculation (EGR) cooler failure, oil cooler failure, blown head gaskets, warped head bolts, and coolant entering the engine ventilation system.
8. In or about February, 2005, the Plaintiff purchased a new 2005 Ford F350 Diesel 4x4 Lariat pick-up truck from the Advantage Ford dealership in Calgary, Alberta, that was designed and manufactured by the Defendants (the "Plaintiff's Vehicle").

9. From the time that the Plaintiff's Vehicle was purchased, the Plaintiff had it serviced approximately every 5000 to 6000 kilometres, a rate much more frequent than required by the warranty, and only at Ford dealerships.
10. On or about March 14, 2011, while driving his Vehicle in Virginia, USA, the Plaintiff noticed that the "wrench" light had illuminated on the dashboard, and immediately pulled over to consult the owner's manual. He then drove directly to the nearest Ford dealership, approximately ten kilometres away in Harrisonburg, Virginia.
11. Upon inspection by the Harrisonburg Virginia Ford dealership, it was determined that the cause of the problem were "blown" head gaskets, which had in turn damaged the EGR cooler and the oil cooler. The Plaintiff paid \$5415.28 US dollars for the necessary repairs.
12. The Defendants have since refused to fully reimburse the Plaintiff for the cost of repairing the Plaintiff vehicle.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff claims on his own behalf and on behalf of all putative class members, the following:
  - (a) general damages;
  - (b) punitive damages
  - (c) costs; and
  - (d) such further and other relief as to this Honourable Court may seem just.

### **Part 3: LEGAL BASIS**

#### **Putative Class Action**

1. This is a proposed class proceeding on behalf of the Plaintiff and a putative class of people in British Columbia who purchased a Ford vehicle equipped with the Power Stroke Engine during the model years 2003 to the present.

#### **Negligence**

2. The aforesaid loss suffered by the Plaintiff was caused by the negligence of the Defendants, particulars of which include, but are not limited to, the following:
  - a. In failing to properly design the Power Stroke Engine;
  - b. In failing to properly manufacture the Power Stroke Engine;
  - c. In failing to test the Power Stroke Engine;
  - d. In failing to adequately warn the Plaintiff and other owners of vehicles equipped with the Power Stroke Engine of its defective nature;
  - e. In failing to make the proper repairs or replace said defective engines; and
  - f. In continuing to sell Ford vehicles equipped with the Power Stroke Engine when they knew or ought to have known of the defective nature and other associated problems with said engine.

#### **Breach of Implied Conditions as to Quality and Fitness**

3. The Plaintiff is a “buyer” within the meaning of that term as defined in s. 1 of the Sale of Goods Act, RSBC 1996, c. 410 (the “SGA”).

4. The Ford Motor Company of Canada is a “seller” within the meaning of that term as defined in s. 1 of the SGA.
5. In or about February 2005, the Plaintiff entered into a “contract of sale” with the Defendants (the “Contract”) as defined in s. 1 of the SGA.
6. Pursuant to section 18 of the SGA, the Contract contained the following implied conditions:
  - a. that the vehicle was reasonably fit for the particular purpose for which it was required;
  - b. that the vehicle was of a merchantable quality; and
  - c. that the vehicle would be durable for a reasonable period of time having regard to the use to which it would normally be put and to all the surrounding circumstances.
7. The defects in the Power Stroke Engine alleged herein constitute a breach of implied conditions in the contract of sale between the Plaintiff and the Defendant Ford Motor Company of Canada.
8. As a result of the Defendant's breach of contract, the Plaintiff has suffered, and will continue to suffer damages, including loss of use of the Plaintiff vehicle, repair and replacement costs, and substantial diminution of fair market value.

#### **Business Practices and Consumer Protection Act**

9. At all times material to this action, the Plaintiff was a “consumer” within the meaning of that term as defined in s. 1 of the Business Practices and Consumer Protection Act, SBC 2004, c. 2 (“BPCPA”).

10. At all times material to this action, the Defendant was a "supplier" within the meaning of that term as defined in s. 1 of the BPCPA.
11. The transaction by which the Plaintiff purchased a 2005 Ford F350 Diesel 4x4 Lariat pick-up truck from the Ford Defendants, as described in paragraph 9 of Part 1 herein, was a "consumer transaction" within the meaning of that term as defined in s. 1 of the BPCPA.
12. The Representations constitute a "deceptive act or practice" within the meaning of s. 4 of the BPCPA in that they had the capability, tendency or effect of deceiving or misleading the Plaintiff by:
- (a) representing that the Power Stroke Engine had performance characteristics which it did not have; and
- (b) representing that the Power Stroke Engine was of a superior standard and quality, which it was not.

Plaintiff's address for service: James M. Poyner  
 Poyner Baxter LLP  
 Barristers and Solicitors  
 408 – 145 Chadwick Court  
 North Vancouver, BC V7M 3K1


Fax number for service (if any): 604-988-3632

E-mail address for service (if any): info@poynerbaxter.com

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street  
 Vancouver, BC V6Z 2E1

Date: October 11, 2011

  
 Signature of  
 filing party  lawyer for filing party  
 James M. Poyner

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleadings period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect]*

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is an action for damages arising from the Defendants negligence and breach of contract in regards to the manufacture and sale of a defective automobile in or about February 2005.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES**

*[Check one box below for the case type that best describes this case.]*

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

I do not know

**Part 3:**

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

The Plaintiff(s) rely on the following enactments:

1. *Class Proceedings Act*, RSBC 1996, c. 50; and
2. *Sale of Goods Act*, RSBC 1996, c. 410