Court File No. 15-63387

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

R&A TRANS CORP.

Plaintiff

- and -

NAVISTAR CANADA, INC., **NAVISTAR, INC.**, AND **NAVISTAR INTERNATIONAL CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 17, 2015

Issued by _____

Local Registrar

Address of court office: 161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: **Navistar Canada, Inc.**
5500 North Service Road, Suite 401
Burlington, Ontario
L7R 6W6

Tel: 1 (905) 332-3323
Fax: 1 (905) 332-2965

AND TO: **Navistar, Inc.**
2701 Navistar Drive
Lisle, Illinois
60532, USA

Tel: 1 (331) 332-5000

AND TO: **Navistar International Corporation**
2601 Navistar Drive
Lisle, Illinois
60532, US

Tel: 1 (331) 332-5000

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "**MaxxForce Engines**" or "**Engines**" means the model years 2008 through 2013 **Navistar** 11, 13, and 15 litre MaxxForce Advanced EGR diesel engine and MaxxForce 7, MaxxForce DT, MaxxForce 9, and MaxxForce 10 mid-range diesel engines;

(b) "**Vehicles**" means the trucks, buses, tractors, and other heavy duty vehicles that contain the **Engines**;

(c) "**MaxxForce Advanced EGR emission control system**", "**MaxxForce Advanced EGR**" or "**Advanced EGR**" means the defective exhaust emissions and regeneration system in the MaxxForce Engines, designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted by **Defendants** intended to reduce air pollutants to bring its engines into compliance with the **EPA Emission Standard**;

(d) "**Exhaust Emissions Reduction Technology**" or "**Emissions Reduction Technology**" means the technology designed to bring engines in compliance with the **EPA Emission Standard** through reducing harmful emissions from diesel engines into the environment;

(e) "**EGR**" means the Exhaust Gas Recirculation system for reduction of **Harmful Emissions**, including NOx;

(f) "**SCR**" means selective catalytic reduction, which is the injection of diesel exhaust fluid to break down NOx in the exhaust of a vehicle;

(g) "**EPA**" means the United States Environmental Protection Agency;

(h) "**Final Rule**" or "**EPA Emission Standard**" means the national control program that regulates heavy-duty highway engines and vehicles, including the **Engines** and the **Vehicles** which was promulgated in 2001 by the **EPA** to reduce **Harmful Emissions**;

(i) "**Harmful Emissions**" means the substances emitted into the atmosphere from vehicle engines, including the **Engines**, and including oxides of Nitrogen ("NOx"), Non-Methane Hydrocarbons ("NMHC"), Non-Methane Hydrocarbon Equivalent, Carbon Monoxide, and Particulate Matter ;

(j) "**Onboard computer diagnostic control system**" or "**OBD**" means the electronic control system that monitors all of the systems of the **Engine**, including the exhaust emissions controls;

(k) "**Design Defect**" or "**System Defect**" means the serious and pervasive design and manufacturing defects that render the **Engines** and the **Vehicles** containing the **Engines** unmerchantable and unsuitable for use including, but not limited to: operator warning, engine **derating**, and shutdown, as well as other failures that prevented the engines from properly functioning and/or rendering them inoperable such as the build-up of soot in **Engine** filters, **Engine** overheating, leaking fuel pumps and fuel injectors, air-conditioner blower and air compressor failures, bearing and belt failures, clogging of the diesel

particulate filter, clogging and failure of the hose/connector, cooling system failures, issues with the **EGR** cooler, the **EGR** valve, the **EGR** sensor, the **EGR** system, damage to the recalculating valve, damage to the fan hub, broken sensors, and broken valves;

(l) "**Derate**" or "**Derating**" means one of the **OBD**'s responses (along with operator warning and shutdown) to operating conditions including reducing horsepower in order to get the driver's attention so the driver can take action in order to avoid engine damage;

(m) "**Class**" or **"Class Members**" means all persons, entities or organizations resident in Canada who purchased and/or leased the **Vehicles** containing the **Engines** designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted by **Defendants**;

(n) "***CEPA***" means the *Canadian Environmental Protection Act*, S.C. 1999, c. 33;

(o) "**Canadian Emission Regulations**" means the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2;

(p) "***Class Proceedings Act***" means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;

(q) "***Sale of Goods Act***" means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;

(r) "***Consumer Protection Act***" means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;

(s) "***Competition Act***" means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;

(t) "**Consumer Protection Legislation**" means:

(i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;

(ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;

(iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;

(iv) *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;

(v) *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219 & 272;

(vi) *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;

(vii) *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;

(viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and

(ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;

(u) "**Defendants**" or "**Navistar**" means Navistar Canada, Inc., Navistar, Inc., and Navistar International Corporation;

(v) "**Plaintiff**" means R&A Trans Corp.; and

(w) "**Representation(s)**" means the **Defendants'** false, misleading or deceptive representations that their Engines (a) have performance characteristics, benefits and/or qualities which they do not have, (b) are of a particular standard or quality which they are not; and (c) their use of exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the **Design Defect** as such use or failure deceives or tends to deceive.

THE CLAIM

2. The proposed Representative Plaintiff, R&A Trans Corp., claims on its own behalf and on behalf of the members of the Class of persons as defined in paragraph 6 below (the "Class") as against Navistar Canada, Inc., Navistar, Inc., and Navistar International Corporation (the "Defendants"):

    (a) An order pursuant to the Class Proceedings Act certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;

    (b) A declaration that the Defendants breached their express contractual warranty to properly repair the defectives Engines in Class Members' Vehicles within the warranty period;

    (c) A declaration that the Defendants breached their implied warranty of fitness for a particular purpose;

    (d) A declaration that the Defendants breached their implied warranty of merchantability;

    (e) A declaration that the Defendants breached their duty to warn the Plaintiff and Class Members of the defective nature of the MaxxForce Engines;

(f) A declaration that the Defendants were negligent in the design, manufacture, testing, distribution, delivery, supply, inspection, marketing, lease and/or sale and warrant of the MaxxForce Engine;

(g) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;

(h) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on its own behalf and on behalf of "person similarly situated" and is sufficient to give notice to the Defendants on behalf of all Class Members;

(i) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;

(j) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, pain, suffering, stress, trouble and inconvenience;

(k) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the overpayment for the purchase price or lease payments of the Vehicles, the out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were

not covered, out-of-pocket costs associated with towing, including future costs of towing, lost earnings, and the diminished value of their Vehicles;

(l) Punitive, aggravated, and exemplary damages in an amount that this Honourable Court deems appropriate;

(m) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;

(n) An order that Class Members are entitled to a refund of the purchase price of their Vehicles, including, but not limited to sales taxes, license and registration fees based *inter alia* on revocation of acceptance and rescission or, in the alternative, the diminished value of the Vehicles;

(o) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of their Engines as a result of the Representation to the Plaintiff and to the Class Members;

(p) A declaration that any funds received by the Defendants through the sale of their Engines as a result of the Representation are held in trust for the benefit of the Plaintiff and Class Members;

(q) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Engines to members of the Class on the basis of unjust enrichment;

(r) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Engines to members of the Class on the basis of *quantum meruit*;

(s) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;

(t) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the Consumer Protection Legislation, the *Sale of Goods Act*, the *Consumer Protection Act* and the *Competition Act*;

(u) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;

(v) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;

(w) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and

(x) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, R&A Trans Corp., is a company domiciled in the city of Seaforth, in the province of Ontario.

4. On November 22, 2011, the Plaintiff leased a 2012 International ProStar+ truck with a 13 litre MaxxForce Engine through GE Capital and from Altruck International Truck Centres at 33910 Airport Road, in Goderich, Ontario for a total cost of $121,646.50 plus taxes payable in monthly installments of $2,373.66 plus taxes.

5. On March 6, 2012, the Plaintiff leased a second 2012 International ProStar+ truck with a 13 litre MaxxForce Engine through GE Capital and from Altruck International Truck Centres for a total cost of $127,346.50 plus taxes payable in monthly installments of $2,474.23 plus taxes.

The Class

6. The Plaintiff seeks to represent the following class of which it is a member (the "Proposed Class"):

> All persons, entities or organizations resident in Canada who purchased and/or leased trucks, buses, tractors, and other heavy duty vehicles with a model year 2008 through 2013 Navistar 11, 13 and 15 litre MaxxForce Advanced EGR diesel engine and/or MaxxForce 7, MaxxForce DT, MaxxForce 9 and MaxxForce 10 mid-range diesel engines (collectively "MaxxForce Engines" or "Engines").

The Defendants

7. The Defendant Navistar Canada, Inc. (hereinafter "Navistar Canada") is a Canadian corporation with its principle place of business in Burlington, Ontario. It is a wholly-owned subsidiary of Navistar, Inc. which does business throughout Canada, including within the province of Ontario.

8. The Defendant Navistar, Inc. is a Delaware corporation with its principle place of business in Lisle, Illinois. It is the parent company of Navistar Canada.

9. The Defendant Navistar International Corporation is a Delaware holding corporation with its principle place of business in Lisle, Illinois. It is also the registrant of the Canadian trade-marks (design) NAVISTAR (TMA337095) which was filed on October 3, 1985 and (word) NAVISTAR (TMA337494) which was filed on September 11, 1985.

10. The Defendants design, manufacture, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the MaxxForce Engine and, in particular, the exhaust emission control, the Advanced EGR, to be free of defects in material and workmanship.

11. The Defendants are resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

12. The Defendants are jointly and severally liable for the acts and omissions of each other.

THE NATURE OF THE CLAIM

13. These class proceedings concern the numerous quality, design, manufacturing, and reliability defects with the Engines present in the Vehicles that render them unmerchantable and unsuitable for use, which is also contrary to Defendants' representations to this effect, even after repeated emissions repairs and replacements both during and after the warranty period. These repeated repairs and replacements failed to repair or to correct the Engines in any lasting way and the Vehicles could neither function as required nor as represented.

14. The Defendants failed to disclose, despite longstanding knowledge, that the emissions system designed into the MaxxForce Engines is defective and predisposed to constant failure, including, but not limited to operator warning, engine derating, shutdown, broken sensors, and broken valves as well as other failures that prevented the engines from properly functioning (hereinafter the "Design Defect"). Navistar actively concealed the Design Defect and the fact that its existence would diminish both the intrinsic and resale value of the Vehicles.

15. Further, the Defendants represented the Engines as "the only no-hassle, in cylinder solution for 2010 emissions" (described in detail below) and touted the Engines' reliability, durability, and low total owning and operating costs.

16. Contrary to the Defendants' representations, the MaxxForce Advanced EGR emission control system did not reduce exhaust emissions in conformity with the EPA Emission Standard and was defective, causing the MaxxForce Engines to not function as required, and as represented, on a consistent and reliable basis, even after repeated warranty repairs and replacements. These repeated warranty repairs and replacements failed to repair or to correct the

Advanced EGR defects which resulted in damages, including diminished value of the vehicles powered by MaxxForce Engines, the costs to re-power the vehicles with diesel engines that are compliant with the EPA Emission Standards, and out-of-pocket expenses resulting from breakdowns.

17. The Plaintiff, on behalf of the Class Members, seeks an award of damages against Navistar for its intentional, willful, and/or negligent failure to disclose and/or active concealment of the inherently defective and dangerous condition posed by the Maxxforce Engines and its failure to honor its warranty obligation to properly repair the Defect.

I. Background: The Emissions Situation

18. Because of the potential for considerable environmental pollution, the diesel engine market is one characterized by stringent governmental regulations regarding allowable pollutants, including exhaust emissions levels of oxides of Nitrogen ("NOx"), Non-Methane Hydrocarbons ("NMHC"), Non-Methane Hydrocarbon Equivalent, Carbon Monoxide and Particulate Matter (hereinafter the "Harmful Emissions").

19. In Canada, emissions from motor vehicles are regulated by Environment Canada under the *Canadian Environmental Protection Act, 1999* ("CEPA"), which applies to new vehicles imported into Canada or to vehicles shipped inter-provincially, as well as to used vehicles imported into Canada.

20. Increasingly, the general approach to setting vehicle emissions standards in Canada is to harmonize them with United States federal Environmental Protection Agency ("EPA") standards

as much as possible. On January 1, 2004, Environment Canada enacted the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 (hereinafter the "Canadian On-Road Vehicle and Engine Emission Regulations"), the purpose of which was to reduce emissions and to "establish emission standards and test procedures for on-road vehicles that are aligned with those of the EPA" for "vehicles and engines that are manufactured in Canada, or imported into Canada, on or after January 1, 2004"[1]. Every model of vehicle or engine that is certified by the EPA and that is sold concurrently in Canada and in the United States is required to meet the same emission standards in Canada as in the United States.

21. On January 18, 2001, the EPA issued its *Final Rule-Control of Air Pollution from Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements*, effective March 19, 2001 (hereinafter the "Final Rule" or the "EPA Emission Standard") which states:

> "We are establishing a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As a part of this program, new emission standards will begin to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. These standards are based upon the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are also reducing the level of sulfur in highway diesel fuel significantly by mid-2006."

22. The EPA promulgated these standards (hereinafter the "EPA Emission Standard") in 2001 so as to "provide engine manufacturers with the lead time needed to effectively phase-in the exhaust emissions control technology that will be used to achieve the emission benefits of the new standards".

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[1] Canadian On-Road Vehicle and Engine Emission Regulations; ss. 2 & 3.

23. The EPA Emission Standard regulated both diesel vehicle/engine emissions standards and diesel fuel standards simultaneously, as a single system:

> "These options will ensure that there is widespread availability and supply of low sulfur diesel fuel from the very beginning of the program, and will provide engine manufacturers with the lead time needed to efficiently phase-in the exhaust emissions technology that will be used to achieve the emissions benefits of the new standards".

24. The EPA Emission Standard sets not-to-exceed standards for Harmful Emissions and the Canadian On-Road Vehicle and Engine Emission Regulations mirror these standards.

25. The Final Rule contemplated exhaust emission control necessary for compliance with the emission standards to be a "complete emission control system" integrated with on-board diagnostics:

> "The Complete System: We expect that the technologies described above would be integrated into a complete emission control system as described in the final RIA. The engine-out emissions will be balanced with the exhaust emission control package in such a way that the results are the most beneficial from a cost, fuel, economy, emissions standpoint."
> …
> "The manufacturers are expected to take a system approach to the problem of optimizing the engine and exhaust control systems to realize the best overall performance possible."

26. "Reliability" of the exhaust emission control system is defined in the Final Rule as "the expectation that emission control technologies must continue to function as required under all operating conditions for the life of the vehicle".

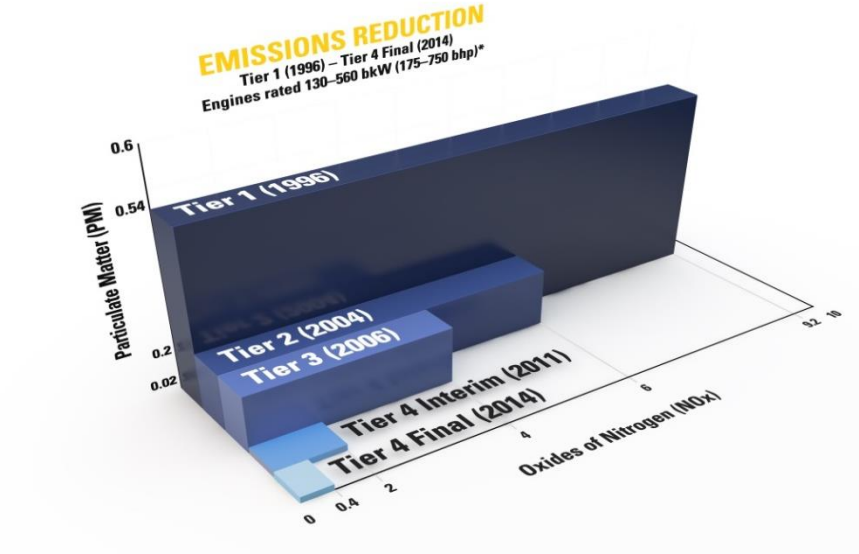
27. Reliability and durability criteria for the emissions controls under the EPA Standard required that "[t]o ensure that no manufacturer underdesigns their absorbers or traps (compared to the level of durability that is achievable), we are requiring that these technologies be designed

to last for the full useful life or the engine. More specifically the final regulations state that scheduled replacement of the PM filter element, NOx absorber, or other catalyst module bed is not allowed during the useful life, unless the manufacturer can show that the replacement will in fact occur and pays for the replacement. Otherwise only cleaning and adjustment will be allowed as scheduled maintenance".

28. The EPA Emissions Standard set the not-to-exceed limits for NOx at 0.20 grams per brake-horsepower hour (g/bhp-hr). The not to exceed NOx standard of 0.20g/bhp-hr was to be phased in between January 1, 2007 and December 31, 2009: "The NOx and NMHC standards will be phased in together between 2007 and 2010. The phase in will be on a percentage of sales basis: 50 percent from 2007 to 2010 and 100 percent in 2010".

			Phase-In by Model Year			
		Standard (g/bhp-hr)	2007	2008	2009	2010
Diesel	NOx	0.20	50%	50%	50%	100%
	NMHC	0.14				
	PM	0.01	100%	100%	100%	100%

29. As is depicted below, the EPA organized a four-tiered system with exhaust emission requirements becoming progressively stricter. By the end of 2014, the Tier 4 Final was to take effect, drastically reducing allowable exhaust emissions.



30. With the issuance of the Final Rule and the publication of the EPA Emission Standard, it was becoming clear to engine makers, including the Defendants, that tougher emissions regulations were inevitably coming into effect. As a result, all engine makers, except the Defendants, developed a new and innovative engine technology called Selective Catalytic Reduction ("SCR") to recycle exhaust back through the engine to reduce emissions in compliance with these regulations.

31. On the other hand, Navistar made the unilateral business decision to utilize an exhaust gas recirculation system in the MaxxForce Engines branded as MaxxForce Advanced EGR, which ultimately proved unable to meet the 2010 EPA Emissions Standard.

32. Instead of developing compliant technology in the nine (9) year lead time provided by the EPA when it issued the Final Rule in 2001, the Defendants chose instead to:

- First challenge the feasibility of the standard,

- Amass NOx emissions credits to delay compliance,
- Sue EPA and ARB[2], challenging certification of SCR (eight different lawsuits filed by Navistar), and
- Heavily promote and sell nonconforming, lower cost EGR systems while denigrating SCR in the marketplace.

33. Navistar continued to sell its noncompliant Engines after the 2010 Emission Standard took effect through banked emission credits and in October of 2011 Navistar informed the EPA that it would run out of these credits in 2012, which would effectively force it to stop manufacturing the Engines.

34. On January 31, 2012, the EPA promulgated an "Interim Final Rule" ("IFR") to permit "technological[ly] laggard" manufacturers of heavy-duty diesel engines to pay nonconformance penalties in exchange for the right to sell noncompliant engines.

35. On June 12, 2012, the United States Court of Appeals for the District of Columbia Circuit vacated the EPA's IFR and the nonconformance penalties based on the lack of a good cause for the EPA's failure to provide formal notice or an opportunity to comment (the "USDA Decision").

36. The following are noteworthy excerpts from the USCA Decision:

> "… the only purpose of the IFR is, as Petitioners put it, "to rescue a lone manufacturer from the folly of its own choices".[3]
> …

[2] ARB is the United States Air Resources Board.
[3] *Mack Trucks, Inc. and Volvo Group North America, LLC v. Environmental Protection Agency*, 2012, case #12-1077, at page 11.

> …it is a consequence brought about by Navistar's own choice to continue to pursue a technology which, so far, is noncompliant[4].
> …
> NCPs[5] are not designed to bail out manufacturers that voluntarily choose, for whatever reason, not to adopt an existing, compliant technology...NCPs have always been intended for manufacturers that cannot meet an emission standard for technological reasons rather than manufacturers choosing not to comply… (…NCPs are inappropriate "if many manufacturers' vehicles/engines were already meeting the revised standard or could do so with relatively minor calibration changes or modifications"). Based solely on what EPA has offered in the IFR, it at least appears to us that NCPs are likely inappropriate in this case.[6]"

37. On July 6, 2012, Navistar announced that it would switch to the SCR technology to meet the NOx standards.

38. The EPA revised its Final Rule on Nonconformance Penalties August 30, 2012 based on the USCA Decision and almost doubled the nonconformance penalties applicable to the Respondents' noncompliant Engines.

39. On December 11, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the EPA's Amended Final Rule and the nonconformance penalties based again on the EPA's failure to provide adequate notice or an opportunity to comment.

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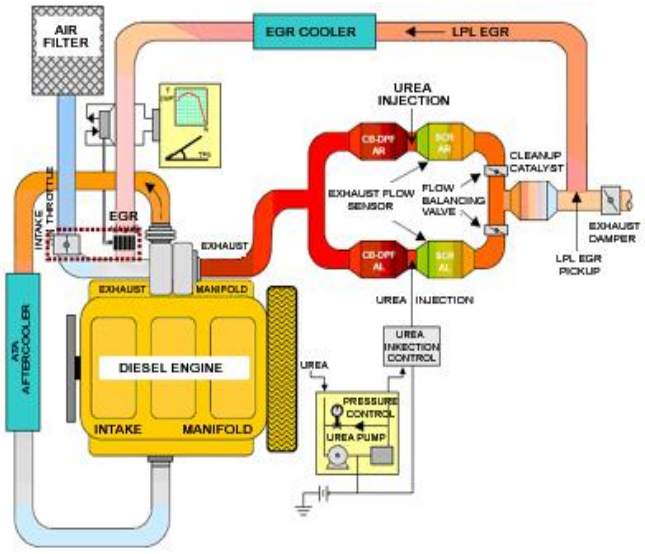
[4] *Id.*
[5] NCPs means noncompliance penalties.
[6] *Supra*. note 2 at page 15.

II. Navistar's Advanced EGR Emission Control System

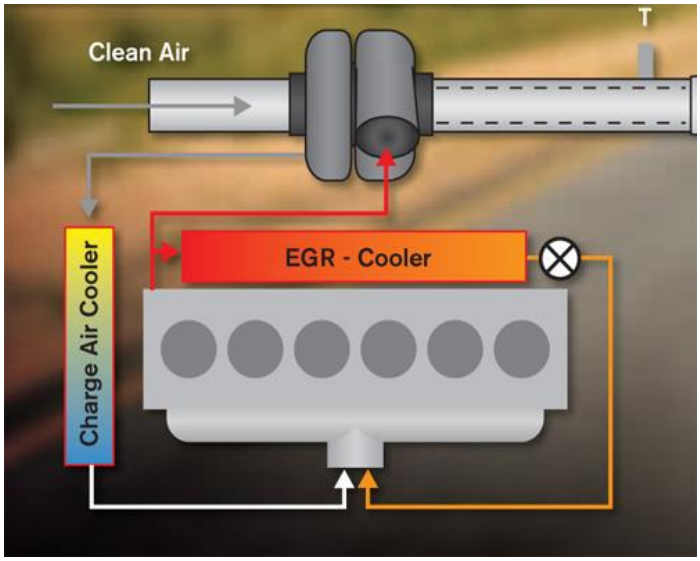
40. Navistar made the business decision to design, manufacture, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the MaxxForce Engines with MaxxForce Advanced EGR as an emissions solution for the North American trucking, bus, construction and mining industries, and it represented the Engines as being capable of reducing air pollutants in order to meet the 2010 phased-in EPA Emission Standard, which predominantly targeted NOx emissions.

41. In order to meet the 2010 phased-in standard, Navistar elected to use greater amounts of exhaust-gas recirculation; i.e., Advanced EGR, which sends higher amounts of exhaust gases to engine cylinders, and uses enhanced electronic controls, even-higher-pressure fuel injection, multiple coolers, and double turbocharging. Every other engine manufacturer chose to inject diesel exhaust fluid to break down NOx in the exhaust; i.e. SCR



42. Navistar MaxxForce Engines implemented the Advanced EGR system for NOx reduction and a Diesel Oxidation Catalyst ("DOC") Diesel Particulate Filter ("DPF") for reduction of Particular Matter.

43. The MaxxForce Advanced EGR system was calculated to be an "in-cylinder solution" to reduce NOx by diverting a portion of the exhaust gas into the "EGR cooler" which fed the cooled exhaust back through the engine's air intake system. The purpose of exhaust gas recirculation is to reduce combustion temperature and thereby the level of NOx entering the exhaust stream[7].



44. Some of the known trade-offs of employing an EGR system to reduce NOx emissions are increased fuel consumption, increased emissions of particulate matter ("PM"), increased emission of carbon dioxide ("CO2"), and increased emissions of hydrocarbons ("HC").

[7] Navistar represented the Advanced EGR as comprised of "advanced fuel injection"; "improved air intake management"; "improved electronic calibration"; and "proprietary combustion technology".

45. Navistar represented that "[l]ow combustion temperatures are one of the keys to Navistar's Advanced MaxxForce EGR system for meeting EPA 2010 clean-air standards without burdening commercial truck operators with liquid urea based selective catalytic reduction (SCR) after-treatment" and that "Navistar customers benefit with high performance, high efficiency and low diesel emissions".

46. The Advanced EGR recirculates a high percentage of exhaust gas (up to 50%) to the engine intake subjecting the MaxxForce Engine to high operating temperatures and significant heat stress.

47. In designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting the MaxxForce Engine, Navistar knew, or should have known that the Advanced EGR system would not meet the 2010 NOx standard of 0.20 gm/bhp-hr, its representations to the contrary notwithstanding.

48. As it has been eloquently put, Navistar's "decision to break with the rest of the industry to pursue a diesel emissions technology that ultimately failed to obtain EPA certification, was a gamble akin to choosing Betamax over VHS".

49. Navistar represented the MaxxForce Engines to be free of defects in material and workmanship.

50. In spite of these representations, shortly after purchasing their MaxxForce Engine equipped Vehicles, the Plaintiff and the Class began to experience numerous breakdowns

involving the Advanced EGR system, EGR coolers, EGR valves and other emissions controls and related equipment.

51. Navistar's Advanced EGR system produced more heat and pressure than the system was able to cope with, leading to repeated breakdowns of the EGR system, including broken sensors, valves, and other system and Engine components.

52. These breakdowns of the EGR System cause the onboard computer diagnostic control ("OBD") system to send error messages to the operator, leading to a reduction in engine performance and eventual engine shutdown. The OBD controls issued operator warning, derating and shutdown requiring authorized repair and part replacements of the Engines.

53. In spite of numerous authorized repairs and equipment replacements, neither Navistar's authorized agents nor Navistar corrected the defects in any lasting way.

54. After each repair, it was represented to the Plaintiff and to the Class that the defects were remedied and that the Engines would thereafter be free of defects. These representations were false and were known to be false by Navistar and its authorized agents.

55. In May 2013, Navistar was forced to recall some of the 2012 model year Engines as they could not be certified by the EPA due to exceeding the established limits for NOx emissions.

56. Navistar abandoned its Advanced EGR technology for model years 2014 and thereafter.

57. Navistar's MaxxForce Engines are defective in that the EGR system fails to reliably function as intended, does not reduce NOx emissions to the EPA Standard, causes repeated and

frequent Engine malfunctions triggering OBD failure diagnosis, warning, derate, and shutdown requiring remediation during which time the vehicles are unavailable for transportation.

58. The MaxxForce Engines are defective in that Advanced EGR recirculates exhaust gas back into the engine intake reducing engine efficiency, replaces combustible air with non-combustible exhaust, produces increased engine operating temperature, and produces excessive particulate matter and soot inside the Engine reducing performance, durability, reliability and fuel economy, and causing premature failure of Engine components and emission controls.

59. The Engines repeatedly experience Advanced EGR system failures that have not been corrected by the emission warranty work performed, both inside and outside the warranty period. These repeated and frequent failures cause the Vehicles to be unreliable and which, in spite of numerous attempts, the failures have not and cannot be remedied. The numerous and frequent faults causing warning, derate, and shutdown necessitate costly and time-consuming emissions repairs because the Engines do not and cannot effectively and dependably remove exhaust emission pollutants as required by the 2010 EPA Emission Standard and by the Canadian Emission Regulations on a consistent and reliable basis.

60. It is clear that the Maxxforce Advanced EGR System is quite a complicated mechanical system; however, all that is necessary to comprehend for our purposes is that this system was afflicted with serious and pervasive design and manufacturing defects that rendered the Engines and thus, the Vehicles containing the Engines, unmerchantable and unsuitable for use and further, these defects were actively concealed by the Defendants despite longstanding knowledge.

III. Navistar's Representations

61. Navistar represents to the Plaintiff and to the Class that it's Engines are "built for performance, reliability, durability and fuel economy", that they are "rock-solid" and "time-tested", that the "engine, which retains the platform's legendary reliability and durability, ensure [] trucks and [] business will be "Always Performing"", and that "[t]he resulting durability and performance, providing low cost of ownership and high residual value".

62. The Defendants represent that the Engines offer a "solution" with "high structural strength" and "durable block and head designs" and that they are "reliable", "durable" with a superior "resale value" and are "serviceable".

63. Navistar marketed the Maxxforce Advanced EGR System as a superior alternative to the systems installed by other truck engine manufacturers to comply with the 2010 EPA Emission Standard (i.e. selective catalytic reduction or SCR).

64. The Defendants represented to customers that they are selling the "best performing engine backed by the commitment of Navistar Engine Group…" and that "Navistar Customers benefit with high performance, high efficiency and low diesel emissions".

65. Navistar represented to the Plaintiff and to the Class:

a) That the MaxxForce Engines meet the 2010 EPA Emissions Standards for NOx;

b) That the MaxxForce Engines were free of defects in material and workmanship;

c) That following repair by an authorized service centre, the MaxxForce Engines would be free of defects in material and workmanship;

d) That Navistar had an extensive network of authorized service centers that would promptly provide parts and trained technicians needed to fix any problems with the MaxxForce Engines;

e) That the MaxxForce Engines would pass without exception in the market and were fit for the purposes of transporting goods, on the highway;

f) That the MaxxForce Advanced EGR used "proven technologies" including advanced fuel injection, air management, electronic calibrations controls and proprietary combustion technologies to meet the 2010 EPA Emissions Standard for on-highway diesel engines;

g) That Navistar had "logged millions of miles of real-world experience before the launch of these engines";

h) That they "are on track with our strategy of 2010 emissions compliance through the use of our EGR-only solution" providing customers with a "simple and straightforward solution that places the responsibility of emissions compliance on us, the manufacturer, not the customer";

i) That "[l]ow combustion temperatures are one of the keys to Navistar's Advanced MaxxForce EGR system for meeting EPA 2010 clean-air standards without burdening commercial truck operators with liquid urea based selective catalytic reduction (SCR) after-treatment";

j) That "MaxxForce Advanced EGR is the only no-hassle, in cylinder solution for 2010 emissions. MaxxForce engines eliminate the hassle of SCR training, additional maintenance and the handling of liquid urea. MaxxForce Engines deliver: Reliability, Durability, Power, Performance [and] Fuel Economy";

k) That the Advanced EGR provides long-term system performance;

l) That Advanced EGR has "lower operating costs" due to less unscheduled downtime; and

m) That "MaxxForce Advanced EGR Engines offer a customer-friendly alternative to SCR that will also deliver lower total operating costs for customers".

66. Navistar made these representations with the intention that they be relied upon by customers and they were material to the customers' decisions to purchase the MaxxForce Engines and/or the Vehicles.

67. Navistar was aware of, but failed to disclose to the Plaintiff and Class Members, the following material facts and circumstances:

a) That the MaxxForce Advanced EGR engines would not meet the 2010 EPA Standards, and could not be repaired to do so;

b) That its Advanced EGR technology was defective, would not reach the 2010 EPA standards, was plagued with numerous engine and emission component failures due to the excessive heat stress caused by the Advanced EGR which could not be corrected;

c) That Navistar had been declared a "technological laggard[8]" by the EPA and had sought relief from the EPA for the non-compliance of the MaxxForce Engine;

d) That the Navistar MaxxForce Engines were experiencing higher than anticipated warranty repairs;

[8] A technological laggard is defined by the EPA as "a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace".

e) That the warranty repairs of the Advanced EGR engines was neither curing nor correcting the defects in the MaxxForce Engines;

f) That the MaxxForce Engines were not reliable or durable, and would not operate reliably for the useful life of the engine;

g) That the MaxxForce Engines were not durable and would not operate for the useful life of the engine without repeated and frequent repairs;

h) That the MaxxForce Engines were consuming as much as 50% of the combustion intake air with recirculated exhaust gas;

i) That the MaxxForce Engines were not able to properly manage the increased heat and heat stress generated by the Advanced EGR technology;

j) That Navistar had requested delay and exemption from the 2010 Emission standard because its Advanced EGR system would not meet the 2010 NOx standard of 0.20 gm/bhp-hr; and

k) That customer engine failures were caused by the Advanced EGR system technology and that such failure could not be remediated, cured or corrected.

IV. The Warranty and the Band-Aid Approach

68. The powertrain and emissions systems in the MaxxForce Engines are covered by a standard five (5) year or 100,000 mile warranty, whichever comes first. Navistar's warranty provides:

> All emission control system parts proven defective during normal use will be repaired or replaced during the warranty period. Warranty repairs and service will be done by any authorized International dealer with no charge for parts, labor, and diagnostics.

69. The Defendants have been aware for several years of the true nature and cause of the Design Defect in the Engines. In particular, Navistar authorized dealers around the country have seen sharp increases in repair work since the introduction the MaxxForce EGR system. Further, numerous complaints on the internet and elsewhere discuss the problem, including accounts from Class Members who have complained about this very issue to the Defendants. Notwithstanding its knowledge, Defendants have intentionally withheld from, actively concealed and/or misrepresented to the Plaintiff and to the Class Members this material information. Instead, the Defendants made numerous affirmative representations about the high quality and reliability of the Engines.

70. Most owners and lessees of vehicles containing the Engines have had to repair or replace their emission and regeneration systems multiple times, thereby incurring costly repairs and replacements. Moreover, given the nature of the Engines, owners and lessees have incurred significant costs associated with the towing of the Vehicles.

71. Additionally, the Design Defect causes the Engines to stop the Vehicles containing the Engines from proceeding, forcing the Vehicle to pull to the side of the road and be towed. This

creates a serious safety concern to the drivers of the Vehicles, to the occupants of other vehicles, and to the public.

72. As a result of the Defendants' unfair, deceptive and fraudulent business practices, as set forth herein, the Engines and the Vehicles that house the Engines have a lower market value and are inherently worth less than they would be in the absence of the Design Defect.

73. For customers with Vehicles within the standard 100,000 mile warranty period for the emission and regeneration system, as discussed above, Navistar has done no more than to temporarily repair the emission and regeneration system or to replace it with another equally defective and inherently failure-prone system, but has not remedied the Design Defect. Further, Navistar has refused to take any action to correct this concealed Design Defect when it occurs in Vehicles outside the warranty period. Since the Design Defect surfaces well within the warranty period for the Engines, and continues unabated even after the expiration of the warranty, even where Navistar has replaced the system several times – and given the Defendants' knowledge of this concealed Design Defect – any attempt by Navistar to limit its warranty with respect to the Design Defect is unconscionable.

V. Summative Remarks

74. Plaintiff and the Class Members that it seeks to represent suffered economic damages by purchasing and/or leasing Defendants' products; they did not receive the benefit of the bargain, suffered out-of-pocket loss, lost income and are therefore entitled to damages.

75. The Defendants placed their Engines into the stream of commerce in Ontario and elsewhere with the intention and expectation that customers, such as the Plaintiff and Class Members, would purchase and/or lease the Vehicles containing them based on their representations.

76. The Defendants knew or ought to have known that purchasers and/or lessees of Vehicles equipped with their Engines would not be reasonably able to protect their interests, that such purchasers and/or lessees would be unable to receive a substantial benefit from the Engines and that customers would be relying on the Defendants' representations to their detriment.

THE REPRESENTATIVE PLAINTIFF

77. On November 22, 2011, the Plaintiff leased a 2012 International ProStar+ truck with a 13 litre MaxxForce Engine through GE Capital and from Altruck International Truck Centres at 33910 Airport Road, in Goderich, Ontario for a total cost of $121,646.50 plus taxes payable in monthly installments of $2,373.66 plus taxes ("Truck 1").

78. On March 6, 2012, the Plaintiff leased a second 2012 International ProStar+ truck with a 13 litre MaxxForce Engine through GE Capital and from Altruck International Truck Centres for a total cost of $127,346.50 plus taxes payable in monthly installments of $2,474.23 plus taxes ("Truck 2").

79. These two (2) trucks contained Engines designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted by the Defendants.

80. At the time of sale, the Plaintiff was under the impression that it was purchasing a Vehicle that was free of any design defects; unbeknownst to it, it overpaid for the purchase price as the Vehicle was in fact suffering from the Design Defect.

81. The Plaintiff was further deceived by the Defendants' misrepresentations regarding the Engine's reliability, durability, total owning or operating costs and dealer support. The Plaintiff did not receive the benefit of the bargain and/or suffered loss as a result of the Defendants' misrepresentations and was damaged.

82. With regard to Truck 1, the Plaintiff began experiencing substantial, continuous and identical problems with the MaxxForce Advanced EGR system beginning in July of 2012 and continuing at present. Some of the necessary repairs and replacements were covered by the original manufacturers limited warranty, while others were not (requiring payment in full).

83. For example and, to mark the largest out-of-pocket expenditures of the Plaintiff on Truck 1, on May 6, 2013 repairs were completed totalling $1,301.53, February 12, 2014 totalled $2,981.87 and March 21, 2014 totalled $3,442.59 taxes included. The total out-of pocket expenditures of the Plaintiff for the Design Defect of Truck 1 was approximately $10,097.52 taxes included when the repairs and/or replacements were not covered by the original manufacturer's limited warranty.

84. With regard to Truck 2, the Plaintiff began experiencing substantial, continuous and identical problems with the MaxxForce Advanced EGR system beginning in January of 2013 and continuing at present. Some of the necessary repairs and replacements were covered by the original manufacturers limited warranty, while others were not (requiring payment in full).

85. For example and, to mark the largest out-of-pocket expenditures of the Plaintiff on Truck 2, on May 6, 2014 repairs were completed totalling $1,634.22, June 3, 2014 totalled $1,265.24, August 12, 2014 totalled $1,240.04 and January 13, 2015 totalled $3,024.61 taxes included. The total out-of pocket expenditures of the Plaintiff for the Design Defect of Truck 2 was approximately $9,577.78 taxes included when the repairs and/or replacements were not covered by the original manufacturer's limited warranty.

86. The Petitioner experienced numerous issues with the Engines in both trucks, specifically with the emissions system. The Engines in the Vehicles experienced repeated problems, clogging and failures relating to the EGR cooler, the EGR valve, the EGR sensor, the EGR system, the fuel injectors, the air-conditioner blower and air compressor, the Diesel Particulate Filter, the bearing and belt, the hose/connector, the cooling system failures as well as instances of check engine lights illuminating, engine derating, exhaust leaks, as well as other issues resulting from the Design Defect that prevent the Engines from working properly.

87. These problems were further exacerbated because they required the trucks to be brought in for lengthy repairs and the Plaintiff was unable to use its Vehicle for the purposes for which it was purchased for significant amounts of time. Specifically, the Vehicles were in the garage and therefore unavailable for work for a total of approximately three (3) months, totalling approximately $75,000 in lost revenue. In addition, the Plaintiff lost business due to its inability to reliably provide services to its customers who elected to do business elsewhere.

88. In addition, the Plaintiff has spent approximately $900 in expenditures relating to towing.

89. Neither the Defendants, nor any of their authorized dealers or other representatives related the existence of the Design Defect to the Plaintiff and it was thus unaware of its existence. To the contrary, the Plaintiff was told by the Defendants' representatives that the trucks were a good purchase.

90. The Plaintiff has recently discovered that the Engines are plagued by a serious and pervasive Design Defect and that the Defendants have been engaging in widespread deception and misrepresentations with regard thereto and that several class actions have been instituted in Canada and in the United States due to this same issue.

91. At present, the Plaintiff still owns both trucks and it has thus far been unable to sell them as the Engines are notoriously defective within the industry and nobody wants to purchase a Vehicle that is suffering from a Design Defect. The Plaintiff contacted Navistar and Altruck International Truck Centres in an attempt to trade them in on December 29, 2014; however, due to the "stigma that has become attached to them and trucks like them" their worth has plummeted in value to a mere approximated $27,000.

92. The internet is replete with references to the common and profound problems that customers have experienced with the Engines as a result of the Design Defect. The problem with the Engines is both significant and widespread.

93. The Plaintiff has suffered damages as a result of purchasing the Vehicles. In addition to the damages as outlined above it has also endured pain, suffering, damage and inconvenience.

CAUSES OF ACTION

A. Strict Liability

94. The Defendants are strictly liable to the Plaintiff and Class Members for the reasons that follow:

(a) The Defendants designed, manufactured, tested, distributed, delivered, supplied, inspected, marketed, leased and/or sold and warranted the Engines in the Vehicles;

(b) The Engines suffer from serious manufacturing and design defects and unfit for their intended use, while other engines do perform their function properly;

(c) The Engines could have been made without the Design Defect but-for the Defendants' business decisions;

(d) Class Members were entitled to expect that the Engines were not plagued by serious and pervasive manufacturing and design defects;

(e) Class Members had no opportunity or expertise to inspect the Engines in their Vehicles;

(f) The defects inherent in the design of the Engines, for example, the decision to utilize the EGR system instead of SCR, outweigh any possible benefits of their

design and such defects were material contributing causes of the injuries and losses of Class Members; and

(g) At the time of the injury and loss to Class Members, the Vehicles were being used for the purpose and manner for which they were intended and Class Members were not aware of the Design Defect and could not, through the exercise of reasonable care and diligence, have discovered such defects.

B. Breach of Express Contractual Warranty

95. According to the terms of its warranty, the Defendants must, within the warranty period, or extended warranty period if applicable, properly repair the defective Engines in the Plaintiff's and the Class Members' Vehicles.

96. Navistar further breached these express warranties because it replaced the defective Engines with the same defective Advanced EGR system during purported repairs.

97. Under this warranty, the Defendants expressly warranted to all owners and lessees of its Engines that all emissions related parts and components were designed, built, and equipped so as to conform to the 2010 EPA Emission Standard and to the Canadian Emission Regulations.

98. Navistar expressly warranted to Plaintiff and to Class Members that the exhaust emissions controls of its Engines were free from defects in material and workmanship and in the event that a defect manifested, the Defendants were obligated to correct the defect. This express representation becomes a basis of the bargain, implicating the Defendants' joint and several liability in the event of breach.

99. Plaintiff and the Class Members did rely on the express warranties of the Defendants herein.

100. The Defendants knew or should have known that, in fact, said representations and warranties were false, misleading and untrue.

101. The Design Defect at issue in this Statement of Claim was present at the time of sale and/or lease to Plaintiff and members of the Class.

102. Defendants breached their express warranties (and continue to breach these express warranties) because they did not (and do not) cover the expenses associated with replacing the defective Engines in Plaintiff's and Class Members' Vehicles with a non-defective engine. Defendants further breached these express warranties because the same defective Engines with the same MaxxForce Advanced EGR system were placed in Vehicles during purported repairs.

103. Pursuant to the express warranties, Defendants were obligated to pay for or reimburse the Plaintiff and the Class Members for costs incurred in replacing the defective Engines.

104. Pursuant to the express warranties, Defendants were also obligated to repair the Design Defect.

105. Contrary to this warranty representation, the exhaust emission control systems were defective in that they repeatedly and frequently failed to function properly in reducing emission pollutants on a reliable and dependable basis, resulting in repeated fault detection, and failures of the Onboard computer diagnostic control system covered by the Emissions Warranty. The faults

resulted in warning, derating, and shutdown, requiring expensive maintenance, which defects the Defendants were unable to correct in spite of repeated and numerous attempts.

106. Defendants knew, or should have known, that the MaxxForce Advanced EGR system employed by the Engines was defective and that its defects could not be corrected.

107. By virtue of repeated and frequent presentation of the Class Members' Vehicles at repair facilities, Defendants were notified of the defects in the exhaust emission controls and failed to correct them.

108. By failing to provide an exhaust emission control capable of meeting the 2010 EPA Emission Standard on a reliable basis, the Defendants' behaviour has caused a failure of the essential purpose of the emission warranty to provide a reliable emission technology capable of functioning as required under all operating conditions for the reasonably expected life of the Vehicle.

109. As a direct and proximate result foregoing acts and/or omissions, the Plaintiff and the Class members have suffered damages entitling them to compensatory damages, punitive damages and, in the alternative, equitable and declaratory relief as elaborated further below.

C. Breach of Implied Warranty of Fitness for a Particular Purpose

110. Defendants manufactured diesel engines and not the vehicles in which they are installed. Defendants directly sold and marketed its Engines to Vehicle manufacturers, like those from whom Plaintiff and Class Members purchased and/or leased their Vehicles, for the intended purpose of installing those engines in the Vehicles, owned and/or leased by Plaintiff and the

Class Members. The Defendants knew that the Engines would and did pass unchanged from the vehicle manufacturer to the Plaintiff and Class Members.

111. The Plaintiff and the members of the Class relied on the Defendants' representations which induced the Plaintiff and Class Members to purchase and/or lease the Vehicles containing the Engines.

112. When purchasing their Vehicles, the Plaintiff and the Class Members, either expressly made it known or it was impliedly obvious from the character of the Navistar Advanced EGR Vehicles, the particular purpose for which the Plaintiff and Class Members required the Vehicles, namely for transportation.

113. There are express or implied conditions that the Vehicles would be safe and durable for a reasonable period of time having regard to the uses to which the Vehicles would be put, uses that were clearly known to Navistar.

114. The Defendants were notified of the defects of the Engine exhaust emission controls, particularly so through the receipt of numerous warranty claims relating to the Design Defect, but have failed to correct them to date.

115. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for particular purpose, the Plaintiff and the Class Members have suffered financial loss and other damages.

D. Breach of Implied Warranty of Merchantability

116. At all times relevant hereto, applicable law imposed a duty that requires that the Engines be fit for the ordinary purposes for which Engines are used.

117. The Engines were defective at the time they left the possession of Navistar, as set forth above. Navistar knew of this Design Defect at the time these transactions occurred. Thus, the Engines, when sold and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

118. Navistar had actual knowledge of, and received timely notice regarding, the Design Defect at issue in this Statement of Claim and, notwithstanding such notice, failed and refused to offer an effective remedy.

119. In addition, Navistar has received thousands of complaints and other notices from customers advising of the Design Defect associated with the Engines.

120. Defendants knew, or should have known, that its EGR system was inferior to the other system employed by other engine manufacturers, particularly so due to its knowledge of the Design Defect.

121. The Advanced EGR exhaust emission controls rendered the Engines, and therefore the Vehicles powered by those engines, unfit, inherently unsound for use, that they would not pass without objection in the trade; that they were not fit for the ordinary purpose for which they were used; that they would not operate on a reliable basis for the reasonable life of the engine; and were unmerchantable.

122. Consequently, the Defendants breached the implied warranty of merchantability, to wit: it failed to use reliable exhaust emissions controls that would reduce exhaust emissions to the EPA Standard for the anticipated life of the Vehicles.

123. Defendants impliedly warranted that the repairs and component replacements to the exhaust emission controls would correct the defect in a good and workmanlike manner; however, Engine exhaust emission controls have failed to be corrected because the MaxxForce Advanced EGR system is incapable of reliable functioning.

124. Defendants were notified of the defects of the Engines' systems, but have failed to correct them. Defendants have received thousands of complaints and other notices from customers advising of the Design Defect associated with the Engines.

125. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have suffered financial loss and other damages, including the diminished value of their Vehicles.

E. Tort of Fraud by Concealment

126. The Defendants made material omissions as well as affirmative misrepresentations regarding the Engines and the Vehicles.

127. The Defendants knew that the representations were false at the time that they were made.

128. The Defendants concealed and/or suppressed material facts concerning the Engines and the Vehicles.

129. The Vehicles that were purchased and/or leased by Class Members were, in fact, defective and unreliable as the Engines were suffering from the Design Defect.

130. The Defendants had a duty to disclose that the Vehicles, and the Engines therein, were defective and unreliable particularly so due to their extensive promotional and advertising campaign focusing on the superior quality, reliability, durability, fuel economy, lower operating costs and dealer support.

131. The Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendants who have superior knowledge and access to the facts and the Defendants knew they were not known to or reasonably discoverable by the Plaintiff and Class Members. These omitted facts were material because they directly impact the quality, reliability, durability, fuel economy, lower operating costs and dealer support of the Vehicles. The Defendants possessed exclusive knowledge of the defects rendering the Vehicles unreliable, non-durable and rendering the operating costs higher than similar vehicles.

132. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Plaintiff and Class Members to purchase and/or lease the Vehicles at a higher price, which did not match the Vehicles' true value.

133. The Plaintiff and Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Plaintiff's and Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Engine defects and such facts were not known to the public or to the Class Members.

134. In addition, Class Members relied on the Defendants' Representation in relation to the Engines and Vehicles that they were purchasing and/or leasing and they purchased and/or leased such Defective Vehicles. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to determine the truth on their own and could only rely on the Defendants' statements and representations.

135. As a result of the concealment and/or suppression of facts, the Plaintiff and Class Members have sustained and will continue to sustain damages arising from the difference between the price that the Plaintiff and the Classes paid and the actual value that they received.

136. As a result of their reliance, the Plaintiff and Class Members have been injured in an amount to be proven at trial.

F. Tort of Civil Negligence

137. The Defendants had a positive legal duty to use reasonable care to perform its legal obligations to the Plaintiff and Class Members, including, but not limited to designing, manufacturing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting safe and durable Engines, free from the Design Defects.

138. The Defendants breached their duty of care to the Plaintiff and to the Class Members by negligently designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting the Engines and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Design Defects.

The aforesaid loss suffered by the Plaintiff and Class Members was caused by this negligence, particulars of which include, but are not limited to, the following:

a) The Defendants failed to properly design the Engines such that, under normal conditions, Class Members experienced serious problems including, but not limited to, engine derating, shutdown, as well as other failures that prevented the engines from properly functioning;

b) The Defendants failed to properly manufacture the Engines such that, under normal conditions, Class Members experienced serious problems including, but not limited to, operator warning, engine derating, and shutdown, as well as other failures that prevented the engines from properly functioning and/or inoperable such as the build-up of soot in Engine filters, Engine overheating, leaking fuel pumps, damage to the recalculating valve, damage to the fan hub, broken sensors, and broken valves;

c) The Defendants failed to properly market the Engines such that Navistar failed to reveal the deficiencies with the Engines and the associated serious consequences;

d) The Defendants failed to adequately test the Engines to ensure a proper design and to ensure proper and timely modifications to the engine to eliminate the foreseeable risks;

e) The Defendants failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Engines;

f) The Defendants failed to conform with good manufacturing and distribution practices;

g) The Defendants failed to disclose to and/or to warn Class Members that the Engines were defective when knowledge of the defects became known to them;

h) The Defendants failed to recall and to carry out the proper repairs or to replace said defective Engines;

i) The Defendants continued to sell the Engines when they knew or ought to have known of the defective nature and other associated problems with said engine;

j) The Defendants consciously accepted the risk of the Design Defect;

k) The Defendants failed to establish any adequate procedures to educate their distributors, dealerships or the ultimate users;

l) The Defendants failed to identify, implement and verify that procedures were in place to address the Engine defects;

m) The Defendants failed to change their design, manufacturing, marketing and testing process with respect to the Engines in a reasonable and timely manner;

n) The Defendants failed to engage in adequate pre-market and production testing of the Engines; and

o) The Defendants continue to fail to fulfill their ongoing obligations.

139. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage and posed a real and substantial risk to the safety of the Plaintiff and of the Class Members.

140. The loss, damages and injuries were foreseeable.

141. The Defendants' negligence proximately caused the loss, damage, injury and damages to the Plaintiff and to the other Class Members.

142. By reason of the foregoing, the Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

G. Tort of Negligent Misrepresentation

143. The tort of negligent misrepresentation can be made out as:

(a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Plaintiff and to the Class;

(b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;

(c) The Defendants acted negligently in making the Representation;

(d) The Representation were relied upon by the Plaintiff and by the Class reasonably; and

(e) The Plaintiff and the Class sustained damages as a result of their reliance.

144. The Defendants represented to the Plaintiff and the Class Members that the Defective Vehicles were of a superior quality, reliability, durability, fuel economy, and would have lower operating costs and excellent dealer support – this Representation was untrue as set forth herein.

145. At the time that the Defendants made the misrepresentations herein alleged, they had no reasonable grounds for believing the Representation to be true, as there was ample evidence to the contrary set forth in detail above.

146. The Defendants made the Representation herein alleged with the intention of inducing Plaintiff and the Class Members to purchase and/or lease its Vehicles.

147. The Plaintiff and the Class Members relied upon the Representation and, in reliance upon it, purchased and/or leased the Vehicles. Said reliance was reasonable.

148. Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendants.

149. Had Plaintiff and the Class Members known the true facts, they would either not have purchased or leased the Vehicles or would not have paid such a high price.

150. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

H. Breach of Implied Covenant of Good Faith and Fair Dealing

151. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

152. The Plaintiff and the Class Members entered into agreements to purchase and/or to lease Vehicles containing the Engines, or otherwise were in contractual privity with Defendants as a result of the express warranties described herein.

153. The contracts and warranties were subject to the implied covenant that the Defendants would conduct business with the Plaintiff and the Class Members in good faith and would deal fairly with them.

154. The Defendants breached those implied covenants by selling and/or leasing to the Plaintiff and the Class Members Engines with the Design Defect, when they knew, or should have known, that the contracts and/or warranties were unconscionable and by abusing its discretion in the performance of the contract or by intentionally subjecting Plaintiff and the Class Members to a risk beyond that which they would have contemplated at the time of purchase and/or lease as well as by exiting the market and failing to provide for proper parts and service of the Engines it sold.

155. Defendants also breached the implied covenants by not placing terms in the contracts and/or warranties that conspicuously disclosed to the Plaintiff and the Class Members that the Engines and the MaxxForce Advanced EGR systems were defective as described herein.

156. As a direct and proximate result of Defendants' breach of its implied covenants, the Plaintiff and the Class Members have been damaged in an amount to be determined at trial.

CAUSATION

157. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

158. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

A. Compensatory Damages (Economic Losses)

159. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include:

(a) Overpayment for the purchase price or lease payments of the Vehicles,

(b) Out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,

(c) The fair replacement value of the of the defective parts and/or the costs of rectifying the defects;

(d) Out-of-pocket costs associated with towing, including future costs of towing,

(e) The diminished value of their Vehicles,

(f) Lost profits from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Defendants' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects);

(g) The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines;

(h) Pain and suffering, stress, trouble and inconvenience; and

(i) Other damages as described herein.

B. Punitive, Exemplary and Aggravated Damages

160. The Defendants have taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

161. In addition, it should be noted since the Defendants are parts of a highly-revered, multi-billion dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other

businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

162. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

STATUTORY REMEDIES

163. The Defendants are in breach of the *Sale of Goods Act*, the *Consumer Protection Act*[9], and the *Competition Act* and/or other similar/equivalent legislation.

164. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and upon consumer protection legislation and the equivalent/similar legislation and common law in the other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices, which includes the Defendants being in breach of applicable Consumer Protection laws.

A. Breach of the *Sale of Goods Act*

[9] While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

165. At all times relevant to this Claim, the Plaintiff and Class Members were "buyer[s]" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

166. At all times relevant to this action, the Defendants were "seller[s]" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

167. There were implied conditions as to merchantable quality or fitness pursuant to s. 16 of the *Sale of Goods Act* as well as an implied condition as regards defects as the Design Defect could not have been revealed upon examination.

168. The Defendants were aware that the customers purchased and/or leased the Engines based on its representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will perform as presented.

169. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 16 of the *Sale of Goods Act*, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

B. Breach of the *Consumer Protection Act*

170. At all times relevant to this action, many of the Class Members were "consumer[s]" within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

171. At all times relevant to this action, the Defendants were "supplier[s]" within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

172. The transactions by which many of the Class Members purchased or leased the Vehicles containing Defendants' defective Engines were "consumer transaction[s]" within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

173. The Defendants have engaged in an unfair practice by making a Represetnation to Class Members which was and is "false, misleading or deceptive" and/or "unconscionable" within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

(a) Representing that the Engines has performance characteristics, benefits and/or qualities, which they do not have;

(b) Representing that the Engines are of a particular standard or quality which they are not; and

(c) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Design Defect as such use or failure deceives or tends to deceive.

174. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are likely to rely, to their detriment, on Defendants' misleading statements as to reliability and durability of the Engines.

175. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Plaintiff and the Class to purchase and/or lease the Vehicles containing the Engines as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

176. The Plaintiff and the Class Members relied on the Representation.

177. The reliance upon the Representation by the Plaintiff and Class Members is established by his or her purchase and/or lease of the Vehicles. Had the Plaintiff and Class Members known that the Representation was false and misleading they would either not have purchased and/or leased the Vehicles, or would not have paid such a high price.

C. Breach of the *Competition Act*

178. At all times relevant to this action, the Defendants' designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting business was a "business" and the Engines were "product(s)" within the meaning of that term as defined in s.2 of the *Competition Act*.

179. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

180. The Defendants made the Representation to the public and in so doing breached s.52 of the *Competition Act* because the Representation:

(a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;

(b) Was made knowingly or recklessly;

(c) Was made to the public;

(d) Was false and misleading in a material respect; and

(e) Stated a level of engine performance and quality that was false and not based on adequate and proper testing.

181. The Plaintiff and Class Members relied upon the Representation by buying and/or leasing the Vehicles containing the Engines and suffered damages and loss.

182. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

183. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

184. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

185. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act*, or the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

186. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the Engines as a result of the Defendants' Unfair Practices and false representations which resulted in revenues and profit for the Defendants.

187. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the Engines and as such, *inter alia*, that:

(a) The Defendants have obtained an enrichment through:

i. Revenues and profits from the sale of the Engines;

ii. The saving of costs of recalling the Engines;

iii. The saving of costs of replacing the Engines with properly designed and manufactured engines;

iv. The saving of costs of redesigning the Engines to overcome the Design Defect; and

v. The saving of costs of repair by recommending repairs that simply covered up the root cause defects in the Engines to postpone recurrence of the malfunctions until the warranty expired.

(b) The Plaintiff and other Class Members have suffered a corresponding deprivation; and

(c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

188. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

(a) The Defendants were unjustly enriched by receipt of the monies paid for the Engines;

(b) The Class Members suffered a corresponding deprivation by purchasing and/or leasing the Vehicles containing the Engines;

(c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;

(d) Equity, justice and good conscience require the imposition of a constructive trust;

(e) The integrity of the market would be undermined if the court did not impose a constructive trust; and

(f) There are no factors that would render the imposition of a constructive trust unjust.

189. Further, or in the alternative, the Plaintiff claim an accounting and disgorgement of the benefits which accrued to the Defendants.

COMMON ISSUES

190. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

(a) Are the Engines defective, non-merchantable, and/or subject to premature failure in the course of their normal use?

(b) Did the Defendants negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the Engines and to train technicians to repair, diagnose, and service the Engines?

(c) Are the Defendants strictly liable for the damages suffered by Class Members?

(d) Did the Defendants breach their express and/or implied warranty by not providing proper repairs and/or replacement of the Engines during the warranty period?

(e) Did the Defendants impliedly warrant the Engines for fitness for a particular purpose?

(f) Did the Defendants impliedly warrant the Engines for merchantability?

(g) Did the Defendants commit the tort of fraud by concealment when they concealed and/or suppressed material facts concerning the reliability, durability, total ownership costs and dealer support of the Vehicles?

(h) Did the Defendants misrepresent or fail to adequately disclose to customers the true defective nature of the Engines?

(i) Do the Defendants owe the Class members as duty to use reasonable care?

(j) Did the Defendants act negligently in failing to use reasonable care to perform its legal obligations?

(k) Did the Defendants intend or foresee that the Plaintiff or other Class Members would purchase the Vehicles containing the Engines based on their representations?

(l) Did the Defendants' negligence proximately cause loss or injury and damages?

(m) Did the Defendants breach their implied covenant of good faith and fair dealing?

(n) Did the Defendants engage in unfair, false, misleading, and/or deceptive acts or practices in their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting of the Engines?

(o) Are the Defendants responsible for all related costs (including, but not limited to, diminished value of the Vehicles in terms of an overpayment for the purchase price or lease payments, the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, towing costs for the Vehicles, including the cost of future towing, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, the lower resale value of the Vehicles, lost profits from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Defendants' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects), the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, and pain and suffering, stress, trouble and inconvenience to class members as a result of the problems associated with the Vehicles?

(p) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act* and/or other similar/equivalent legislation?

(q) Were the Defendants unjustly enriched?

(r) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?

(s) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair practices?

(t) Are the Defendants responsible to pay punitive, aggravated, and/or exemplary damages to Class Members and in what amount?

EFFICACY OF CLASS PROCEEDINGS

191. The members of the proposed Class potentially number in the hundreds of thousands if not millions. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

192. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group. These actions include *Andes Transport Inc. v. Navistar Canada, Inc. et alii.*, an action commenced before the Court of Queen's Bench of Alberta in Edmonton (November 10, 2014, File No. 1403 16425) and *4037308 Canada Inc. v Navistar Canada, Inc. et alii.*, an action commenced before the Superior Court of Quebec in Montreal (November 28, 2014, File No. 500-06-000720-140).

193. 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. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

194. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the class.

195. 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.

196. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to its counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

197. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act* and other Consumer Protection Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

198. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

(a) Defendant Navistar Canada Inc. has its head office in Ontario;

(b) The Defendants engage in business with residents of Ontario;

(c) The Defendants derive substantial revenue from carrying on business in Ontario; and

(d) The damages of Class Members were sustained in Ontario.

199. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

THE DEFENDANTS' JOINT AND SEVERAL LIABILITY

200. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to itself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

(a) Each was the agent of the other;

(b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;

(c) Each company entered into a common advertising and business plan to manufacture, market and sell the Engines;

(d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the Engines; and

(e) The Defendants intended that their businesses be run as one global business organization.

SERVICE OUTSIDE ONTARIO

201. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

(a) In respect of personal property situated in Ontario (rule 17.02(a));

(b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));

(c) In respect of a tort committed in Ontario (rule 17.02(g));

(d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));

(e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and

(f) Against a person carrying on business in Ontario (rule 17. 02(p)).

Date: February 17, 2015

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Court File No. 15-63387

R&A TRANS CORP.
Plaintiff

NAVISTAR CANADA, INC. *et alli.*
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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