CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001241-237

(Class Action)
SUPERIOR COURT

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**L. PALLANTE**
and
**E. PERREAULT**

*Applicants*

-vs.-

**ARC AUTOMOTIVE, INC.**, legal person duly incorporated, having its head office located at 1729 Midpark Road, Suite 100, Knoxville, Tennessee, 37921-5978, USA

and

**JOYSON SAFETY SYSTEMS, formerly known as KEY SAFETY SYSTEMS, INC.**, legal person duly incorporated, having its head office located at 2025 Harmon Road, Auburn Hills, Michigan, 48326-1776, USA

and

**TOYODA GOSEI NORTH AMERICA CORPORATION**, legal person duly incorporated, having its head office located at 1400 Stephenson Highway, Troy, Michigan, 48083, USA

and

**GENERAL MOTORS OF CANADA COMPANY**, legal person duly incorporated, having its head office located at 500 Wentworth Street West, Oshawa, Ontario, L1J 0C5

and

**FORD MOTOR COMPANY OF CANADA, LIMITED**, legal person duly incorporated, having its head office located at 1 The Canadian Road, Oakville, Ontario, L6J 5E4

and

**VOLKSWAGEN GROUP CANADA INC.**, legal person duly incorporated, having its head office located at 777 Bayly Street West, Ajax, Ontario L1S 7G7

and

**AUDI CANADA INC.**, legal person duly incorporated, having its head office located at 777 Bayly Street West, Ajax, Ontario L1S 7G7

and

**BMW CANADA INC.**, legal person duly incorporated, having its head office located at 50 Ultimate Drive, Richmond Hill, Ontario, L4S 0C8

and

**PORSCHE CARS CANADA, LTD.**, legal person duly incorporated, having its head office located at 165 Yorkland Boulevard, Suite 150, Toronto, Ontario M2J 4R2

and

**HYUNDAI MOTOR AMERICA**, legal person duly incorporated, having its head office located at 10550 Talbert Avenue, Fountain Valley, California, 92728-0850, USA

and

**KIA CANADA INC.**, legal person duly incorporated, having its head office located at 180 Foster Crescent, Mississauga, Ontario, L5R 4J5

and

**FCA CANADA INC.**, legal person duly incorporated, having its head office located at 1 Riverside Drive West, Windsor, Ontario, N9A 5K3

*Defendants*

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO APPOINT THE APPLICANTS AS REPRESENTATIVE PLAINTIFFS (Art. 574 C.C.P and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANTS STATE AS FOLLOWS:

## I. GENERAL PRESENTATION

### A) The Action

1. Applicants wish to institute a class action on behalf of the following group, of which they are both members, namely:

    - all persons or entities resident in Quebec, who owned, purchased and/or leased a Subject Vehicle equipped with a frontal and/or passenger airbag containing a toroidal stored gas hybrid inflator designed and manufactured by ARC, or any other group to be determined by the Court;

2. "Subject Vehicles" means all vehicles purchased or leased in Canada equipped with a defective airbag manufactured with a defective inflator manufactured by ARC Automotive, Inc. (the "Defective Airbags"), including, but not limited to, the following vehicles known at present to be:

    - Audi A3, 2015-2017
    - Audi A3 E-Tron, 2016
    - Audi R8 Coupe, 2016-2017
    - Audi S3 Sedan, 2016
    - Audi TT Roadster, 2016-2017
    - Audi TT Coupe, 2016-2017
    - BMW 1 Series, 2012-2014
    - BMW 3 Series, 2008-2013
    - BMW i3, 2014-2017
    - BMW X1, 2012-2014, 2016-2017
    - BMW X5, 2007-2017
    - BMW X6, 2008-2017
    - Buick Enclave, 2008-2017
    - Buick LaCrosse, 2005
    - Buick LeSabre, 2002-2005
    - Buick Rendezvous, 2003-2005
    - Cadillac CTS, 2003-2005
    - Cadillac DeVille, 2003-2005
    - Cadillac Escalade, 2010-2014
    - Cadillac Escalade ESV, 2010-2014
    - Cadillac Escalade EXT, 2010-2013

- Cadillac STS, 2005
- Cadillac XLR, 2004-2005
- Chevrolet Avalanche, 2010-2013
- Chevrolet Cavalier, 2000-2005
- Chevrolet Corvette, 2005
- Chevrolet Equinox, 2005
- Chevrolet Express 1500, 2003-2005
- Chevrolet Express 2500, 2002-2005
- Chevrolet Express 3500, 2002-2005
- Chevrolet Malibu, 2004-2005, 2010-2011
- Chevrolet Silverado, 2010-2013
- Chevrolet Silverado HD, 2010-2014
- Chevrolet SSR, 2003-2005
- Chevrolet Suburban, 2010-2014
- Chevrolet Tahoe, 2010-2014
- Chevrolet Traverse, 2013-2017
- Chevrolet Venture, 2004-2005
- Chrysler Town & Country, 2001-2007
- Chrysler PT Cruiser, 2001-2002
- Dodge Caravan, 2001-2007
- Dodge Grand Caravan, 2001-2007
- Ford F-150, 2017
- Ford Edge, 2007-2010
- Ford Fusion, 2006-2012
- Ford GT, 2005-2006
- Ford Mustang, 2005-2014, 2017
- Ford Ranger, 2007-2011
- GMC Acadia, 2014-2017
- GMC Savana 1500, 2003-2005
- GMC Savana 2500, 2002-2005
- GMC Savana 3500, 2002-2005
- GMC Sierra, 2010-2013
- GMC Sierrra HD, 2010-2014
- GMC Yukon, 2010-2014
- GMC Yukon XL, 2010-2014
- Hyundai Elantra, 2009
- Hyundai Tiburon, 2003-2005
- Hyundai Tucson, 2005
- Hyundai XG350, 2002-2005
- Kia Optima, 2001-2005
- Kia Sportage, 2005
- Lincoln MKX, 2006-2010
- Lincoln MKZ, 2007-2012
- Lincoln Zephyr, 2006
- Mercury Milan, 2006-2011

- Mini Cooper, 2014-2017
- Pontiac Bonneville, 2003-2005
- Pontiac G6, 2005
- Pontiac Montana, 2003-2005
- Pontiac Sunfire, 2001-2005
- Porsche Macan, 2015-2017
- Porsche Panamera, 2017
- Saturn Vue, 2002-2005
- Volkswagen CC, 2015-2017
- Volkswagen E Golf, 2016
- Volkswagen EOS, 2015
- Volkswagen Golf A7, 2015-2017
- Volkswagen Golf Sportwagen, 2015-2017
- Volkswagen Golf R, 2015-2017
- Volkswagen GTI, 2016
- Volkswagen Passat, 2015

3. Should further investigation reveal that additional vehicles contain the same defective inflators and assemblies, then the models identified as Subject Vehicles may be amended. At present, ARC has named the following vehicle manufacturers in addition to the Vehicle Manufacturer Defendants named herein;

4. This class action concerns defective toroidal stored gas hybrid airbag inflators manufactured by the Defendant ARC Automotive, Inc., that uses ammonium nitrate in its propellant. These inflators are installed in millions of airbag assembly modules, which have been installed in (at least) the above Subject Vehicles, either as driver or passenger side airbags;

5. Ammonium nitrate or phase-stabilized ammonium nitrate ("PSAN") is a volatile and unstable chemical and unsuitable to be used as the propellant in an airbag, especially in the airbags at issue since, in addition to the use of this dangerous chemical, the inflators did not contain pressure relief valves and used friction welding to secure the inflator halves without ensuring that all metal flash would be removed, (the "Inflator Defect");

6. There have been seven reported ruptures of ARC's stored gas hybrid inflators in vehicles – two of these ruptures resulted in driver fatalities, one in Newfoundland and Labrador (on July 8, 2016) and one in Michigan (on August 15, 2021);

7. Currently, there is a dispute between the U.S. National Highway Traffic Safety Administration (NHTSA) and ARC whereby NHTSA is demanding that ARC issue 67 million recalls of its inflators in the United States with ARC refusing to do so;

8. The Vehicle Manufacturer Defendants manufactured, distributed, sold and/or leased the Subject Vehicles with defective airbags, which were plagued by serious, pervasive, and dangerous design and manufacturing defects, which place vehicle occupants at risk of serious injury and/or death;

9. By reason of this unlawful conduct, the Applicants and members of the Class:

   (a) Purchased and/or leased Subject Vehicles that contained the Defective Airbags,

   (b) Have overpaid at the point-of-sale,

   (c) Have suffered a diminished value of their Subject Vehicles,

   (d) Have suffered the loss of use of the Subject Vehicles and expenditures for rental vehicles,

   (e) Have suffered out-of-pocket loss including, cost of attempted repairs,

   (f) Higher interest charges, increased sales tax, and higher insurance premiums, and

   (g) Have suffered pain, suffering, trouble, and inconvenience;

**B) <u>The Defendants</u>**

**(i) <u>The ARC Defendant</u>**

10. Defendant ARC Automotive, Inc. (hereinafter "ARC") is an American corporation with its head office in Knoxville, Tennessee. It is a global manufacturer of inflators for automotive airbags;

11. ARC is the registrant and current owner of the trademark ARCAIR (TMA984263), which was filed on April 11, 2016, the whole as appears more fully from a copy of the trademark from the CIPO database, produced herein as **Exhibit R-1**;

12. ARC is also the applicant and owner of the patents for EUTECTIC MIXTURES OF AMMONIUM NITRATE AND AMINO GUANIDINE NITRATE (CA 2264519) and NONAZIDE AMMONIUM NITRATE BASED GAS GENERANT COMPOSITIONS THAT BURN AT AMBIENT PRESSURE (CA 2356899), the whole as appears more fully from copies of the patents from the CIPO database, produced herein *en liasse* as **Exhibit R-2**;

13. ARC holds itself out to be the "leader in propellant and inflator technology" and it states that its core values are "safety, people, commitment, integrity and communication", the whole as appears more fully from copies of extracts from the ARC website as <u>www.arcautomotive.com</u>, produced herein *en liasse* as **Exhibit R-3**;

14. ARC has been producing the Defective Inflators since 2001;

15. ARC is the manufacturer of all the faulty inflators that were used in the Defective Airbags that were installed in the Subject Vehicles;

16. ARC is classified as a Tier 2 supplier because it supplies automotive components to Tier 1 suppliers which then supplies automotive parts to vehicle manufacturers. ARC manufactures the inflators, which it supplies to airbag system manufacturers (the

"Airbag Module Defendants") who assemble the airbag module that includes the ARC inflator;

**(ii) <u>The Airbag Module Defendants</u>**

17. Defendant Joyson Safety Systems, formerly known as, Key Safety Systems, Inc. ("Joyson") is an American corporation with its head office in Michigan that develops and manufactures automotive safety systems and components. Joyson was formerly known as Key Safety Systems and resulted from Key Safety Systems' purchase of the infamous Japanese airbag company Takata Corporation in April 2018, the whole as appears more fully from a copy of the USA Today entitled "Japanese air bag-maker Takata acquired by Key Safety Systems as president resigns" dated April 12, 2018, produced herein as **Exhibit R-4**;

18. Joyson is a major global supplier of mobility safety systems including airbags and including the Defective Airbags, which it sold as airbag assembly modules to certain Vehicle Manufacturer Defendants, including BMW, Ford, Volkswagen, and Porsche;

19. Defendant Toyoda Gosei North America Corporation ("Toyoda") is a leading global manufacturer of *inter alia* rubber and plastic automotive components and safety systems. Toyoda has sold its airbag assembly modules containing ARC Inflators to the Vehicle Manufacturer Defendants, including to General Motors;

20. Defendants Joyson and Toyoda – collectively, the Airbag Module Defendants, either directly or through a wholly-owned subsidiary, agent or affiliate, designed, engineered, manufactured, tested, validated, marketed, distributed, supplied, and/or sold all the Defective Airbag Modules, which may have been recalled by the NHTSA and/or by Transport Canada and that are the subject of the present application for installation in the Subject Vehicles throughout Canada, including within the province of Quebec;

**(iii) <u>The Vehicle Manufacturer Defendants</u>**

21. Defendant General Motors of Canada Company (hereinafter "General Motors") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec. It is an automotive manufacturer of *inter alia* Buick, Cadillac, Chevrolet, GMC, Oldsmobile, Pontiac, Saab and Saturn vehicles, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-5**;

22. Defendant Ford Motor Company of Canada, Limited (hereinafter "Ford") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec. It is the parent company of Defendant Audi Canada Inc., the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-6**;

23. Defendant Volkswagen Group Canada Inc. (hereinafter "Volkswagen") is a Canadian corporation with its head office in Ontario that does business throughout Canada,

including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-7**;

24. Defendant Audi Canada Inc. ("Audi") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec. It tis a wholly-owned subsidiary of Defendant Volkswagen, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-8**;

25. Defendant BMW Canada Inc. (hereinafter "BMW") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec. It is an automotive manufacturer of *inter alia* BMW and Mini Cooper vehicles, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-9**;

26. Defendant Porsche Cars Canada, Ltd. ("Porsche") is a Canadian corporation with its head office in Ontario. Porsche Canada is the exclusive importer and distributor of Porsche vehicles in Canada, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-10**;

27. Defendant Hyundai Auto Canada Corp. (hereinafter "Hyundai") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-11**;

28. Defendant Kia Canada Inc. (hereinafter "Kia") is a Canadian corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-12**;

29. Defendant FCA Canada Inc. (hereinafter "FCA") is a Canadian Corporation with its head office in Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-13**;

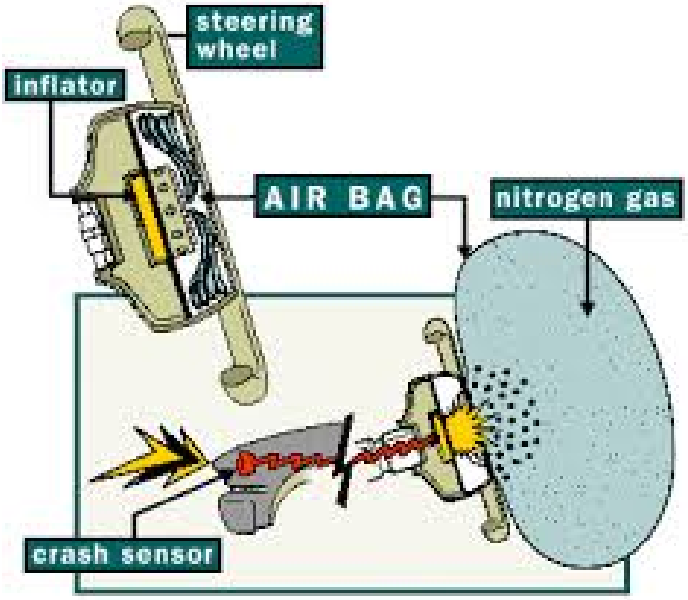
30. During the Class Period, the Vehicle Manufacturer Defendants, either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured, sold, and warranted the Subject Vehicles in Canada, including in Quebec and designed, manufactured, and installed (or had installed) the Defective Airbags in the Subject Vehicles;

## C) <u>The Situation</u>

### (i) <u>Airbags and Airbag Inflators in General</u>

31. An airbag is a vehicle occupant-restraint system or safety device using a bag designed to inflate extremely quickly, then quickly deflate during a collision. It consists of the airbag cushion, a flexible fabric bag, an inflation module, and an impact sensor;

32. Driver-side airbags are built into steering wheels (as is depicted below), dashboards, and into the sides of some vehicles. It consists of a flexible fabric envelope or cushion designed to inflate or "launch" rapidly with nitrogen gas when there is very fast deceleration, such as in the event of an accident. Its purpose is to cushion occupants during a crash and to provide protection to their bodies from collusion with objects inside the vehicle, such as the steering wheel or windshield;




33. Airbags are a critical safety component in virtually every motor vehicle. Drivers and passengers reasonably expect that airbags will properly deploy if their vehicles are involved in an accident. When functioning properly, an airbag can mean the difference between life and death;

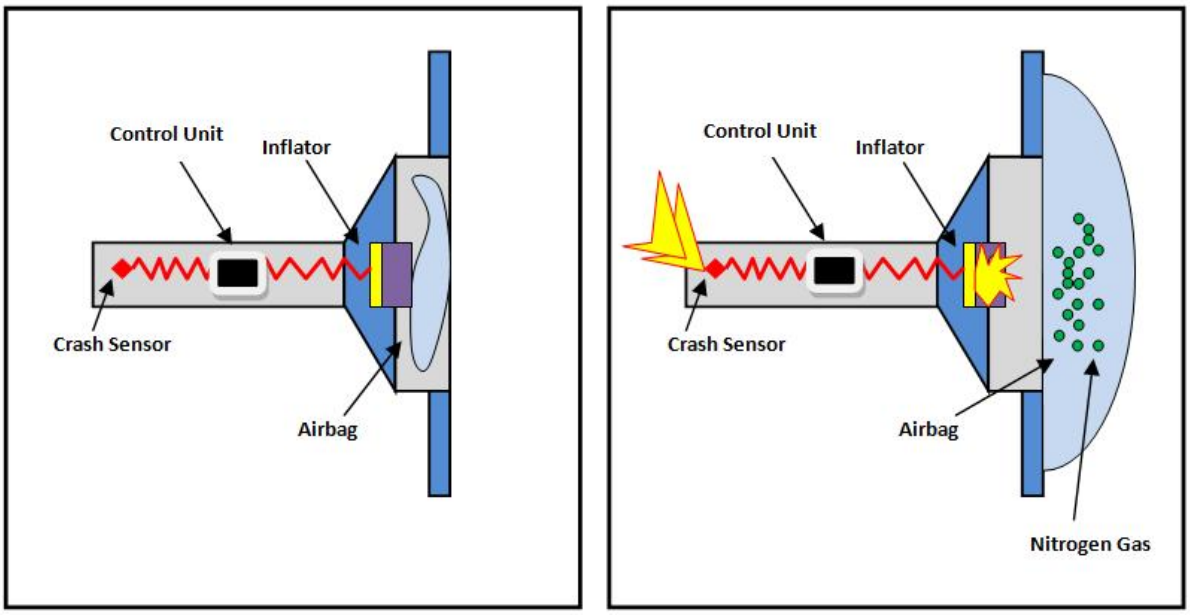
34. Airbags are not intended to explode or to eject shrapnel onto vehicle occupants, which can cause injury or death – the very opposite of what airbags are meant for;

35. Most airbags are inflated through pyrotechnic[1] means and can only be operated once;

36. While the first airbag designs were introduced to passenger vehicles during the 1970s with only limited success, they became mainstream in the late 1980s and early 1990s with cars containing a driver airbag and, in some cars, a front passenger airbag. Many modern vehicles now include four or more airbags, and consumers and passengers have come to trust and rely on airbags and their manufacturers to ensure occupant safety;

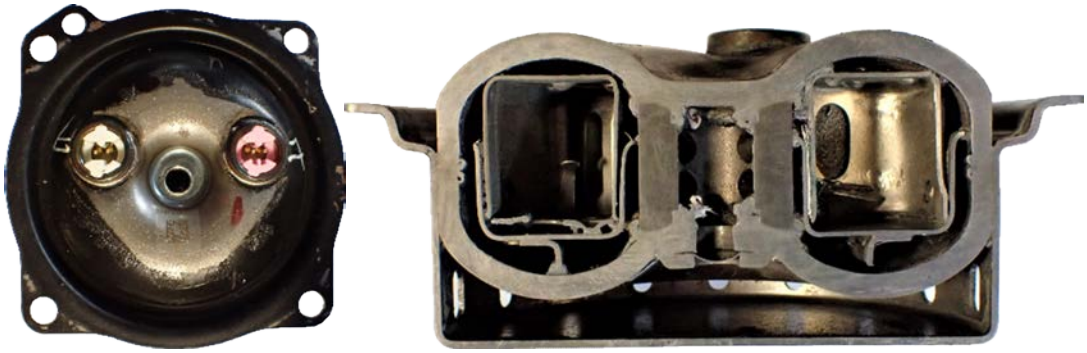
37. An airbag inflator is a metal cannister that produces the gas that fills an attached airbag cushion:

[1] Pyrotechnics is the science of using materials capable of undergoing self-contained and self-sustained exothermic chemical reactions for the production of heat, light, gas, smoke and/or sound. For our purposes, the materials are producing gas.




38. Here, the defective inflators are a hybrid technology that uses both a propellant explosive fuel (ammonium nitrate-based propellant) and stored compressed gases (oxidizers) to rapidly inflate the airbag. They are toroidal in shape (i.e. donut-shaped);

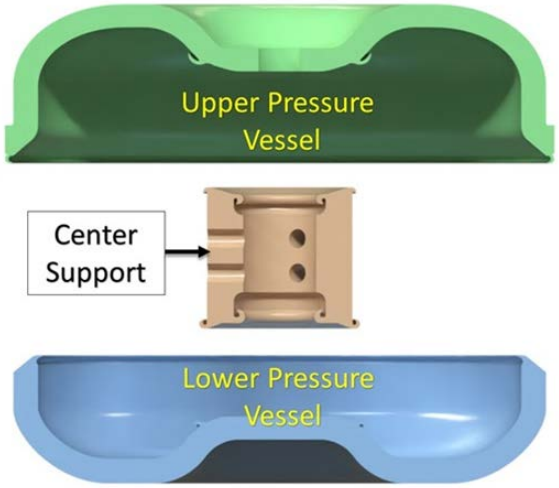
39. The ARC hybrid design inflator relies on two sources of energy. The inflator fills the airbag cushion by releasing an inert gas stored in the inflator at high pressure. This gas mixture is augmented by the ammonium nitrate-based propellant. The ARC hybrid inflators are manufactured in both single stage and dual stage designs



Top-down view of an ARC hybrid toroidal inflator

Cross-sectional view of an ARC hybrid toroidal inflator.

40. All ARC hybrid inflators utilize friction welding to join three inflator housing components together. The housing components of the ARC hybrid inflators consist of (i) an upper pressure vessel, (ii) a lower pressure vessel and (iii) a centre support:




**(ii) <u>Ammonium Nitrate and PSAN</u>**

41. Despite the availability of alternative propellants, ARC has used ammonium nitrate in its secondary propellant since at least 2001. Secondary propellant ignites after the initial ignition, which in the ARC inflators is the release of the stored gas;

42. Ammonium nitrate is volatile and must be precisely phase-stabilized to mitigate its explosive characteristics, thus "phase-stabilized ammonium nitrate – PSAN"; however even PSAN is considered to be overly risky when used as an airbag propellant;

43. PSAN has a faster dynamic burning rate than other chemicals, which means that an airbag inflator can rupture if the vents are inadequate or obstructed – such as is the case at hand – if the ARC welding process incorporated into the design of the inflators allows weld flash, or pieces of weld debris, to block exhaust ports, the PSAN can exacerbate the over-pressurization and lead to an explosive rupture;

44. Ammonium nitrate is about 30% cheaper than other chemicals that can be used in propellant. In the late 1990's Autoliv Inc. (another airbag inflator manufacturer) tested PSAN-based inflators and determined that PSAN can generate gas so fast that it, "blows the inflator to bits", the whole as appears more fully from a copy of The New York Times article entitled "A Cheaper Airbag, and Takata's Road to a Deadly Crisis" dated August 26, 2016, produced herein as **Exhibit R-14**;

45. The Material Safety Data Sheet ("MSDS") for Ammonium Nitrate prepared by Agrium Inc. a major retail supplier of agricultural products and services in North America, indicates an NFPA[2] reactivity or instability of 3, which is indicated as "serious" and that "in confinement and in the presence of a strong detonation source, the material can explode when subject to sudden shock, pressure, or high temperature" and that the "material supports combustion", the whole as appears more fully from a copy of

[2] NFPA is the National Fire Protection Association.

the MSDS for Ammonium Nitrate dated August 31, 2013 and from a copy of the Wikipedia page entitled “NFPA 704”, produced herein *en liasse* as **Exhibit R-15**;

46. ARC has acknowledged the dangers of using ammonium nitrate in propellants. In a patent filed on August 29, 1996 for “Eutectic Mixtures of Ammonium nitrate and Amino Guanidine Nitrate”, ARC acknowledged that while ammonium nitrate is the most commonly used oxidizer, “The main objection to ammonium nitrate is that it undergoes certain phase changes during temperature variations causing cracks and voids if any associated binder is not sufficiently strong and flexible to hold the composition together” (Exhibit R-2);

47. In another patent filed in December 1999 and abandoned, titled “Nonazide Ammonium Nitrate Based Gas Generant Compositions that Burn at Ambient Pressure,” ARC described previous patents stating that PSAN “is a problem since many gas generant compositions containing this oxidizer have unacceptably low melting points and are thermally unstable.” ARC proposed a new chemical compound using PSAN, high bulk density nitroguanidine, high nitrogen fuels, and copper phthalocyanine. ARC posited this combination would increase the thermal stability more than other compounds containing PSAN and allow for “self-sustained burning at ambient pressure and temperature” (Exhibit R-2);

48. Despite industry knowledge that PSAN breaks down under heat stress (thermal instability), excessively reactive to humidity ((hygroscopic), and unable to withstand temperature cycling, ARC continued to use PSAN in its secondary propellant in its inflators;

49. In a patent application filed in the U.S. in 2019, ARC acknowledged that the use of ammonium nitrate as a propellant was unacceptable:

> “With ammonium nitrate based generants becoming unacceptable for usage in automotive airbag inflator applications regardless whether they are used in pyrotechnic or hybrid type inflators, alternate or non-ammonium nitrate containing generants are highly desirable. Even in a hybrid inflator where the generant is stored in a high-pressure inert gas atmosphere making moisture intrusion nearly impossible, ammonium nitrate based generants are still considered unacceptable.

The whole as appears more fully from a copy of the U.S. patent application for “Non-Ammonium Nitrate Based Generants” (2019/0218155 A1) filed January 17, 2019, produced herein as **Exhibit R-16**;

50. In another patent application filed in the U.S. in 2013, ARC had designed an inflator that incorporated a pressure relief valve to allow it to increase the size of the exit orifice when the internal has pressure is rising (i.e. high pressure), the whole as appears more fully from a copy of the U.S. patent application for “Variable Orifice Construction” (8,770,621 B1) filed February 26, 2013, produced herein as **Exhibit R-17**;

### (iii) The NHTSA Investigation

51. On July 13, 2015, the Office of Defect Investigation (ODI) of NHTSA opened a preliminary investigation to investigate certain airbag inflators designed by ARC under PE15-027, the whole as appears more fully from a copy of the CTV News article entitled “Second company probed for potential air bag inflator malfunctions” dated July 14, 2015, produced herein as **Exhibit R-18**;

52. NHTSA had opened its defect investigation after learning of two driver airbag inflator field ruptures involving ARC-designed inflators:

    1. On January 29, 2009, a driver side airbag inflator ruptured in a 2002 Chrysler Town and Country minivan in Ohio. The airbag module was produced by Key Safety Systems (now Joyson) and used a dual stage ARC inflator. The driver was severely injured during the incident (Exhibit R-18)

    2. On April 8, 2014, a driver-side airbag inflator ruptured in a 2004 Kia Optima in New Mexico. The airbag module was manufactured by Delphi and had a single stage ARC inflator. The driver sustained injuries to her face and legs,

    The whole as appears more fully from a copy of the NHTSA letter undated, produced herein as **Exhibit R-19**;

53. As part of its ongoing investigation into rupturing airbag inflators, on July 27, 2015, NHTSA issued two general orders, requiring that certain motor vehicle manufacturers (including BMW, Ford, General Motors, Hyundai, Kia, Porsche, and Volkswagen) and requiring certain air bag manufacturers, including ARC, file certain reports concerning inflator rupture incidents within 24 hours of receiving notice of an incident of an airbag inflator rupture, the whole as appears more fully from a copy of the Standing General Order 2015-01 Directed to Motor Vehicle Manufacturers in *In re: EA15-005 (Takata) Air Bag Inflator Rupture and PE15-027 (ARC) Air Bag Inflator Rupture* and from a copy of the Standing General Order 2015-02 Directed to Air Bag Inflator Manufacturers in *In re: EA15-005 (Takata) Air Bag Inflator Rupture and PE15-027 (ARC) Air Bag Inflator Rupture* dated July 27, 2015, produced herein *en liasse* as **Exhibit R-20**;

54. On August 17, 2015, NHTSA issued certain amendments and clarifications to its Standing General Order Directed to Air Bag Inflator Manufacturers, the whole as appears more fully from a copy of the Standing General Order 2015-02A Directed to Motor Vehicle Manufacturers in *In re: EA15-005 (Takata) Air Bag Inflator Rupture and PE15-027 (ARC) Air Bag Inflator Rupture* dated August 17, 2015, produced herein as **Exhibit R-21**;

55. On August 25, 2015, General Motors LLC wrote to NHTSA in response to NHTSA’s Preliminary Evaluation (PE15-027) letter, which set out which of its vehicles are equipped with the ARC Defective Airbags, the whole as appears more fully from a copy of the letter dated August 25, 2015, produced herein as **Exhibit R-22**;

56. On July 8, 2016, a driver was killed in Newfoundland and Labrador after metal shrapnel from the driver-side airbag exploded in the 2009 Hyundai Elantra, the whole as appears more fully from a copy of the CBC News article entitled “1st recorded Canadian fatality from airbag inflator rupture under investigation” dated August 4, 2016, produced herein as **Exhibit R-23**;

57. On August 4, 2016, the ODI of NHTSA upgraded its preliminary evaluation stating:

> “The Office of Defects Investigation (ODI) is upgrading its Preliminary Evaluation of ARC Automotive Inc. (ARC) air bag inflators to an Engineering Analysis. ODI opened PE15-027 in July 2015 based on two injury incidents involving a driver air bag inflator rupture. One incident involved a 2002 Chrysler Town & Country that utilized a dual-stage air bag inflator. The other involved a 2004 Kia Optima that utilized a single-stage inflator. Both driver air bag inflators were manufactured by ARC, a tier-two supplier of automotive air bag systems, at their manufacturing facility in Knoxville Tennessee. All ARC driver air bag inflators are a hybrid design that fills the air bag by releasing an inert gas mixture stored in the inflator at high pressure. The gas mixture is augmented by an ammonium nitrate based propellant. The pressurized gas mixture and propellant are contained entirely within a hermetically sealed steel housing isolated from external atmospheric conditions.
>
> During the course of PE15-027, ODI requested information from ARC about which air bag module manufacturers used the subject ARC inflators. Based on the information received from ARC, ODI requested information from the identified air bag module manufacturers about which vehicle manufacturers used modules with the subject ARC inflators. That process identified two additional affected vehicle manufacturers, General Motors and Hyundai.
>
> …
>
> In July 2016, ODI was informed by Transport Canada of a fatal incident involving a driver air bag rupture in a 2009 Hyundai Elantra. It was determined that incident inflator was manufactured by ARC and had ruptured in substantially the same manner as the two previous incidents known to ODI. The driver air bag module in the subject 2009 Hyundai Elantra utilized a single-stage inflator manufactured at ARC's facility in China. ARC confirmed that the inflator in the 2009 Hyundai Elantra was substantially the same design as the single-stage inflator in the 2004 Kia Optima and was assembled using substantially the same manufacturing process.”

The whole as appears more fully from a copy of the ODI Resume dated August 4, 2016 for investigation EA 16-003 with the subject “Air Bag Inflator Rupture”, produced herein as **Exhibit R-24**;

58. On August 9, 2016, NHTSA informed ARC that it had upgraded its preliminary investigation (PE15-027) to an Engineering Analysis (EA16-003) to “further investigate

allegations of air bag inflator ruptures involving driver air bag inflators manufactured by ARC Automotive, lnc. (ARC)" and requested information from ARC with a due date of September 8, 2016, the whole as appears more fully from a copy of the letter dated August 9, 2016, produced herein as **Exhibit R-25**;

59. On October 4, 2016, NHTSA wrote to ARC to express certain concerns about ARC not being forthcoming or cooperative in its investigation and ARC not responding to its information request sufficiently, the whole as appears more fully from a copy of the letter dated October 4, 2016, produced herein as **Exhibit R-26**;

60. On October 5, 2015, NHTSA issued a general order directed to ARC, requiring that it file certain reports concerning inflator rupture incidents within 24 hours of receiving notice of an incident of an airbag inflator rupture, the whole as appears more fully from a copy of the Standing General Order 2016-01 Directed to ARC AUTOMOTIVE, INC. in *In re: EA16-003 (ARC) Air Bag Inflator Rupture* dated October 5, 2015, produced herein as **Exhibit R-27**;

61. On September 22, 2017, a driver-side airbag inflator ruptured in a 2010 Chevrolet Malibu in Pennsylvania. The airbag module was produced by ZF-TRW and used a dual stage ARC inflator. The inflator was manufactured in Xian, China. The driver sustained facial and head injuries (Exhibit R-19);

62. On August 15, 2021, a driver side airbag inflator in a 2015 Chevrolet Traverse ruptured in Michigan. The airbag module was produced by Toyoda Gosei and used a dual stage ARC inflator. The inflator was manufactured in Reynosa, Mexico. The airbag module was a replacement module. The vehicle had been in a prior frontal collision and the original air bag module deployed with no issue. The original airbag module was, also, produced by Toyoda Gosei and used a dual stage ARC inflator. The driver sustained fatal injuries (Exhibit R-19);

63. On October 20, 2021, a driver side airbag inflator in a 2015 Chevrolet Traverse ruptured in Kentucky. The air bag module was produced by Toyoda Gosei and used a dual stage ARC inflator. The inflator was manufactured in Reynosa, Mexico. The driver sustained facial injuries (Exhibit R-19);

64. On December 18, 2021, a passenger side air bag inflator ruptured in a 2016 Audi A3 e-Tron in California. The airbag module was produced by Joyson Safety Systems and used a dual stage ARC inflator. The inflator was manufactured in Reynosa, Mexico. The driver and passenger were injured (Exhibit R-19);

65. On March 22, 2023, a driver side air bag inflator in a 2017 Chevrolet Traverse ruptured in Michigan. The airbag module was produced by Toyoda Gosei and used a dual stage ARC inflator. The inflator was manufactured in Reynosa, Mexico. The driver sustained facial injuries (Exhibit R-19);

66. On May 11, 2023, ARC responded to NHTSA, the whole as appears more fully from a copy of the letter dated May 11, 2023, produced herein as **Exhibit R-28**;

**(iv) <u>The Succession of Recalls</u>**

**(a) United States**

67. On March 21, 2017, BMW of North America, LLC recalled 36 2017 X5 sDrive35i, X5 xDrive35i, X5 xDrive50i, X5 xDrive35d, and X5 xDrive40e vehicles stating:

> "Description of the Defect: 36 vehicles were equipped with an ARC DPH-7 inflator whereby gas flow could be impaired during inflator deployment of the passenger front air bag.
> …
> Description of the Safety Risk: Depending on the circumstances, impaired gas flow could create excessive internal pressure, which could result in the body of the inflator rupturing upon deployment. Metal fragments could pass through the air bag cushion material, which may result in injury or death to vehicle occupants.
>
> Description of the Cause: The root cause has not yet been determined and is still under investigation."

The whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 17V189000:

- Part 573 Safety Recall Report 17V-189 dated March 21, 2017

- The NHTSA Recall Acknowledgement dated March 23, 2017

- The Manufacturer Notices dated March 14, 2017 with the Subject: Stop & Recall 17V-XXX: ARC Passenger Front Air Bag

- Remedy Instructions and Technical Service Bulletin released March 2017

produced herein *en liasse* as **Exhibit R-29**;

68. On August 28, 2017, Ford Motor Company recalled 650 2017 F-150 and Mustang vehicles stating:

> "Description of the Defect: The passenger front airbag may not completely inflate or the inflator could rupture if the vehicle is involved in a crash where the supplemental front airbags are designed to deploy. If the inflator ruptures during deployment, inflator fragments may not be contained within the housing.
> …
> Description of the Safety Risk: A passenger front airbag that does not completely inflate, or an inflator that ruptures in a crash where the supplemental front airbags are designed to deploy, increases the risk of occupant injury.

> Description of the Cause: Preliminary analysis indicates excessive weld flash from the inflator canister welding process may obstruct the gas exit port, potentially causing the inflator to over-pressurize.

The whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 17V529000:

- Part 573 Safety Recall Report 17V-529 dated August 28, 2017
- Part 573 Safety Recall Report 17V-529 dated August 31, 2017
- The NHTSA Recall Acknowledgement dated September 14, 2017
- The Manufacturer Notices dated August 30, 2017 with the Subject: New Vehicle Demonstration / Delivery Hold – Advance Notice Safety Recall 17S26
- The Media Correspondence dated August 31, 2017 entitled “Ford Issues Two Safety Recalls and Two Safety Compliance Recalls in North America”

produced herein *en liasse* as **Exhibit R-30**;

69. On January 16, 2019, General Motors LLC recalled 1,145 Chevrolet Malibu vehicles for the model years 2010 to 2011 stating:

> “Description of the Defect: General Motors has decided that a defect which relates to motor vehicle safety exists in certain 2010 - 2011 model year Chevrolet Malibu vehicles. These vehicles were equipped with an ARC front-driver airbag inflator that could overpressurize during airbag deployment and rupture.
> …
> Description of the Safety Risk: If the front-driver airbag inflator ruptures during deployment, the airbag may not fully inflate, and the release of high-pressured gas may propel pieces of the inflator and airbag module into the occupant compartment, causing or increasing the risk of injury to occupant(s) in a crash.”

The whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 19V019000:

- Part 573 Safety Recall Report 19V-019 dated January 31, 2019
- The NHTSA Recall Acknowledgement dated February 13, 2019
- The Manufacturer Notices dated January 16, 2019 with the Subject: Upcoming Safety Recall N182206630 Airbag Inflator Rupture Population Expansion
- Part 573 Safety Recall Report 19V-019 dated February 7, 2019
- The GM Safety Bulletin released February 2019

- The Frequently Asked Questions (FAQs)

produced herein *en liasse* as **Exhibit R-31**;

70. On October 7, 2021, General Motors, LLC recalled 555 2008-2017 Buick Enclave and 2013-2017 Chevrolet Traverse vehicles stating:

> "Description of the Defect: General Motors has decided that a defect which relates to motor vehicle safety exists in certain 2008–2017 model year Buick Enclave and 2013-2017 model year Chevrolet Traverse vehicles. In these vehicles, the front-driver airbag inflator, which may have been installed either as original equipment or as part of a replacement driver-airbag module during a service event, may contain a supplier manufacturing defect that may result in inflator rupture during deployment.
>
> Description of the Safety Risk: An inflator rupture may cause metal fragments to pass through the airbag and into the vehicle interior, which may result in injury or death to vehicle occupants."

The whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 21V782000:

- Part 573 Safety Recall Report 21V-782 dated October 7, 2021
- The NHTSA Recall Acknowledgement dated October 12, 2021
- Part 573 Safety Recall Report 21V-782 dated October 21, 2021
- Part 573 Safety Recall Report 21V-782 dated October 28, 2021
- Safety Bulletin release date December 2021
- Part 573 Safety Recall Report 21V-782 dated February 25, 2022
- Safety Bulletin release date February 2022

produced herein *en liasse* as **Exhibit R-32**;

71. On April 14, 2022, General Motors, LLC recalled 2,687 2015 Buick Enclave, Chevrolet Traverse and GMC Acadia vehicles stating:

> "Description of the Defect: General Motors has decided that a defect which relates to motor vehicle safety exists in certain 2015 model year Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles. In these vehicles, the front-driver airbag inflator may contain a supplier manufacturing defect that may result in inflator rupture during deployment.
> …

> Description of the Safety Risk: An inflator rupture may cause metal fragments to pass through the airbag and into the vehicle interior, which may result in injury or death to vehicle occupants."

the whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 22V246000:

- Part 573 Safety Recall Report 22V-246 dated April 14, 2022
- The NHTSA Recall Acknowledgement dated April 20, 2022
- The Manufacturer Notices dated April 14, 2022 with the Subject: Upcoming Safety Recall N222366190 Driver Front Airbag Inflator May Rupture
- Part 573 Safety Recall Report 22V-246 dated April 28, 2022
- Part 573 Safety Recall Report 22V-246 dated October 25, 2022
- Part 573 Safety Recall Report 22V-246 dated January 5, 2023
- Remedy Instructions and Technical Service Bulletin released February 2023

produced herein *en liasse* as **Exhibit R-33**;

72. On July 27, 2022, Volkswagen Group of America, Inc. recalled 1,216 2016 Audi TT Roadster, TT Coupe, S3 Sedan, R8 Coupe, A3 Sedan, A3 Etron, A3 Cabriolet, 2016 Golf Sportwagen, Golf R, Golf GTI, Golf A7, and E Golf vehicles stating:

> "Description of the Defect: The airbag inflator of one Audi A3 involved in an accident bursted when deployed.
> …
> Description of the Safety Risk: In the event of a crash, the airbag inflator may burst when deployed and can eject sharp metal fragments, causing possible injury to the occupants. The restraint performance of the airbag may not work as designed, increasing the risk of injury.
>
> Description of the Cause: The root cause is currently unknown, because a detailed analysis was not yet possible, since plaintiff's counsel in ongoing litigation consented only to a visual inspection."

the whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 22V543000:

- Part 573 Safety Recall Report 22V-246 dated July 27, 2022
- The NHTSA Recall Acknowledgement dated August 3, 2022
- Remedy Instructions and Technical Service Bulletin released December 13, 2022

produced herein *en liasse* as **Exhibit R-34**;

73. On May 10, 2023, General Motors, LLC recalled 994,763 2014-2017 Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles stating:

> "Description of the Defect: General Motors has decided that a defect which relates to motor vehicle safety exists in certain 2014-2017 model year Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles. In these vehicles, the front-driver airbag inflator may contain a supplier manufacturing defect that may result in inflator rupture during deployment.
> ..
> Description of the Safety Risk: An inflator rupture may cause metal fragments to pass through the airbag and into the vehicle interior, which may result in injury or death to vehicle occupants."

The whole as appears more fully from a copy of the following documents associated with NHTSA Campaign Number: 23V334000:

- 3 Part 573 Safety Recall Reports 23V-334 dated May 10, 2023

- The NHTSA Recall Acknowledgement dated May 12, 2023

produced herein *en liasse* as **Exhibit R-35**;

74. As of May 23, 2023, the following vehicles have been recalled in the U.S.:

| MY | Vehicles | Recall # | Date |
|---|---|---|---|
| 2017 | BMW X5 sDrive35i<br>BMW X5 xDrive35i<br>BMW X5 xDrive50i<br>BMW X5 xDrive35d<br>BMW X5 xDrive40e | 17V-189 | March 21, 2017 |
| 2017 | Ford F-150<br>Ford Mustang | 17V-529 | August 28, 2017 |
| 2010-2011 | Chevrolet Malibu | 19V-019 | January 16, 2019 |
| 2008-2017 | Buick Enclave | 21V-782 | October 7, 2021 |
| 2013-2017 | Chevrolet Traverse | 21V-782 | October 7, 2021 |
| 2015 | Buick Enclave<br>Chevrolet Traverse<br>GMC Acadia | 22V-246 | April 14, 2022 |
| 2016 | Audi TT Roadster<br>Audi TT Coupe<br>Audi S3 Sedan<br>Audi R8 Coupe<br>Audi A3 Sedan<br>Audi A3 Etron<br>Audi A3 Cabriolet<br>Volkswagen Golf Sportwagen | 22V-246 | July 27, 2022 |

| | | | |
|---|---|---|---|
| | Volkswagen Golf R<br>Volkswagen Golf GTI<br>Volkswagen Golf A7<br>Volkswagen E Golf | | |
| 2014-2017 | Buick Enclave<br>Chevrolet Traverse<br>GMC Acadia | 23V-334 | May 10, 2023 |

**(b) Canada**

75. On December 21, 2018, General Motors issued a recall of 45 Chevrolet Malibu vehicles for the model years 2010 and 2011, stating the following:

> "On certain vehicles, the driver-front airbag inflator could produce excessive internal pressure during an airbag deployment. If the driver-front airbag inflator ruptures during deployment, the airbag may not fully inflate, and the release of high-pressured gas may propel pieces of the inflator and airbag module into the occupant compartment. This could create or increase the risk of injury to occupant(s) in a crash. Correction: Dealers will replace the driver-front airbag module."

The whole as appears more fully from a copy of the Transport Canada Recall #2018-738, produced herein as **Exhibit R-36**;

76. On January 3, 2019, Volkswagen issued a recall of 9,527 vehicles including both Audi and Volkswagen models from the years 2015 to 2017, respectively, stating the following:

> "Issue:
>
> On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the driver-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.
>
> Safety Risk:
>
> If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury."

The whole as appears more fully from a copy of the Transport Canada Recall #2019-002, produced herein as **Exhibit R-37**;

77. On January 8, 2019, Ford issued a recall of 300,898 Ford, Lincoln and Mercury vehicles for the model years 2005 to 2014, respectively, stating the following:

"Issue:

On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the driver-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.

Safety Risk:

If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury."

The whole as appears more fully from a copy of the Transport Canada Recall #2019-005, produced herein as **Exhibit R-38**;

78. On January 15, 2019, BMW issued a recall of 20,532 BMW X5 and X6 vehicles for the model years 2007 to 2013, respectively, stating the same as the above, the whole as appears more fully from a copy of the Transport Canada Recall #2019-018, produced herein as **Exhibit R-39**;

79. On January 15, 2019, BMW issued a recall of 411 BMW X1 vehicles for the model years 2012 to 2014, stating the same as the above, the whole as appears more fully from a copy of the Transport Canada Recall #2019-019, produced herein as **Exhibit R-40**;

80. On January 15, 2020, BMW issued a recall of 47 BMW 1 Series, 3 Series, X1, X3, X5, and X6 vehicles for the model years 2008 to 2014, respectively, stating the same as the above, but adding:

"Issue:

This recall is for certain vehicles that had an airbag inflator replaced as a part of an earlier recall campaign. This recall provides a final repair."

The whole as appears more fully from a copy of the Transport Canada Recall #2020-008, produced herein as **Exhibit R-41**;

81. On January 15, 2020, BMW issued a recall of 11 BMW X5 and X6 vehicles for the model years 2007 to 2012, respectively, stating the same as the above, the whole as appears more fully from a copy of the Transport Canada Recall #2020-010, produced herein as **Exhibit R-42**;

82. On April 14, 2020, Hyundai issued a recall of 292 Hyundai Elantra vehicles for the model year 2009, stating:

"Issue:

> On certain vehicles, the driver-front airbag inflator could rupture when the airbag deploys in a crash. If this happens, the airbag may not fully inflate and fragments could be propelled toward vehicle occupants.
>
> Safety Risk:
>
> An airbag inflator that ruptures can create a risk of injury or death."

The whole as appears more fully from a copy of the Transport Canada Recall #2020-159, produced herein as **Exhibit R-43**;

83. On January 27, 2021, Ford issued a recall of 274,737 Ford, Lincoln, and Mercury vehicles for model years ranging between 2006 and 2012, stating:

> "Issue:
>
> On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the driver-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.
>
> Safety Risk:
>
> If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury."

The whole as appears more fully from a copy of the Transport Canada Recall #2021-029, produced herein as **Exhibit R-44**;

84. On February 5, 2021, General Motors issued a recall of 295,974 Cadillac, Chevrolet, and GMC vehicles for the model years 2010 to 2014, respectively, stating:

> "Issue:
>
> On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the driver-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.
>
> Safety Risk:
>
> If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury."

The whole as appears more fully from a copy of the Transport Canada Recall #2021-028, produced herein as **Exhibit R-45**;

85. On October 7, 2021, General Motors issued a recall of 8 Buick Enclave and Chevrolet Traverse vehicles for the model years 2012 to 2016 and 2016 to 2017, respectively, stating:

> "Issue:
>
> On certain vehicles, the driver-front airbag inflator could rupture when the airbag deploys in a crash. If this happens, the airbag may not properly inflate and fragments could be propelled toward vehicle occupants.
>
> Note: This recall only affects certain driver-front airbag inflators with a lot number identified from a suspect lot.
>
> Safety Risk:
>
> An airbag inflator that ruptures can create a risk of injury or death."

The whole as appears more fully from a copy of the Transport Canada Recall #2021-619, produced herein as **Exhibit R-46**;

86. On April 14, 2022, General Motors issued a recall of 242 Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles for the model year 2015, stating:

> "Issue:
>
> On certain vehicles, the driver-front airbag inflator could rupture when the airbag deploys in a crash. If this happens, the airbag may not properly inflate and fragments could be propelled toward vehicle occupants.
>
> Safety Risk:
>
> An airbag inflator that ruptures can create a risk of injury or death."

The whole as appears more fully from a copy of the Transport Canada Recall #2022-189, produced herein as **Exhibit R-47**;

87. On July 27, 2022, Volkswagen issued a recall of 202 Audi and Volkswagen vehicles for the model year 2016, stating the above, the whole as appears more fully from a copy of the Transport Canada Recall #2022-403, produced herein as **Exhibit R-48**;

88. On May 10, 2023, General Motors issued a recall of 42,140 Buick Enclave, Chevrolet Traverse, and GMC Acadia vehicles for the model years 2014 to 2017, stating:

> "Issue:

On certain vehicles, the driver-front airbag inflator could rupture when the airbag deploys in a crash. If this happens, the airbag may not properly inflate and fragments could be propelled toward vehicle occupants.

Safety Risk:

An airbag inflator that ruptures can create a risk of injury or death."

The whole as appears more fully from a copy of the Transport Canada Recall #2023-277, produced herein as **Exhibit R-49**;

89. As of May 23, 2023, the following vehicles have been recalled in Canada:

| MY | Vehicles | Recall # | Date |
|---|---|---|---|
| 2010-2011 | Chevrolet Malibu | #2018-738 | December 21, 2018 |
| 2017 | Audi R8 | #2019-002 | January 3, 2019 |
| 2016-2017 | Audi TT | | |
| 2015-2017 | Volkswagen CC | | |
| 2015 | Volkswagen EOS<br>Volkswagen Passat | | |
| 2007-2010 | Ford Edge | #2019-005 | January 8, 2019 |
| 2006-2012 | Ford Fusion | | |
| 2005-2006 | Ford GT | | |
| 2005-2014 | Ford Mustang | | |
| 2007-2011 | Ford Ranger | | |
| 2006-2010 | Lincoln MKX | | |
| 2007-2012 | Lincoln MKZ | | |
| 2006 | Lincoln Zephyr | | |
| 2006-2011 | Mercury Milan | | |
| 2007-2013 | BMW X5 | #2019-018 | January 15, 2019 |
| 2008-2014 | BMW X6 | | |
| 2012-2014 | BMW X1 | #2019-019 | January 15, 2019 |
| 2012-2013 | BMW 1 Series | #2020-008 | January 15, 2020 |
| 2008-2013 | BMW 3 Series | | |
| 2013-2014 | BMW X1 | | |
| 2008-2010 | BMW X3 | | |
| 2007-2013 | BMW X5 | | |
| 2013-2014 | BMW X6 | | |
| 2007-2012 | BMW X5 | #2020-010 | January 15, 2020 |
| 2011 | BMW X6 | | |
| 2009 | Hyundai Elantra | #2020-159 | April 14, 2020 |
| 2010-2014 | Cadillac Escalade<br>Cadillac Escalade ESV | #2021-028 | February 5, 2021 |
| 2010-2013 | Cadillac Escalade EXT | | |
| 2010-2013 | Chevrolet Avalanche<br>Chevrolet Silverado | | |

| | | | |
|---|---|---|---|
| 2010-2014 | Chevrolet Silverado HD<br>Chevrolet Suburban<br>Chevrolet Tahoe | | |
| 2010-2013 | GMC Sierra | | |
| 2010-2014 | GMC Sierrra HD<br>GMC Yukon<br>GMC Yukon XL | | |
| 2012,<br>2015-2016 | Buick Enclave | #2021-619 | October 7, 2021 |
| 2015 | Buick Enclave<br>Chevrolet Traverse<br>GMC Acadia | #2022-189 | April 14, 2022 |
| 2016 | Audi A3<br>Audi A3 E-Tron<br>Audi S3<br>Audi TT<br>Volkswagen Golf<br>Volkswagen Golf R<br>Volkswagen Golf Wagon<br>Volkswagen GTI | #2022-403 | July 27, 2022 |
| 2014-2017 | Buick Enclave<br>Chevrolet Traverse<br>GMC Acadia | #2023-277 | May 10, 2023 |

**(c) <u>The Subject Vehicles Containing the Defective Airbags Were Sold as "Safe" and "Reliable"</u>**

90. The Vehicle Manufacturer Defendants sell and lease vehicles, in part, via communications that they authorized their dealerships to make about their vehicles, including the Subject Vehicles described herein. This includes authorizing their dealers to distribute brochures and other marketing and promotional materials. The Vehicle Manufacturer Defendants, through *inter alia* their authorized dealers, have and had the opportunity to disclose all material facts relating to the Subject Vehicles;

91. In advertisements and promotional materials, the Vehicle Manufacturer Defendants maintained that their vehicles were safe and reliable;

92. For example, General Motors touts its safety and reliability in its advertising and marketing, knowing that customers will purchase or lease their vehicles because they believe them to be safe and reliable;

93. On the website <u>www.gm.ca</u>, there is a section entitled "Vehicle Safety" in which GM writes, *inter alia*:

> "Safety engineered through a human lens means developing initiatives to support safe driving and technologies that can help mitigate crashes.

> We are committed to safety in everything we do.
>
> At General Motors, Safety is in Our DNA
>
> We pour our hearts into safety because nothing matters more than the ones we love. At GM, we look at safety holistically.

The whole as appears more fully from a copy of an extract from the GM website at www.gm.ca, produced herein as **Exhibit R-50**;

94. Hyundai also touts the safety and reliability of its Hyundai vehicles in its advertising and marketing, knowing that customers will buy or lease their vehicles because they believe them to be safe and reliable;

95. For example, on the website www.hyundaicanada.com, there is a section entitled "Vehicle Recalls", in which Hyundai writes, *inter alia*:

> "Hyundai Canada is committed to your safety and security on the road."

The whole as appears more fully from a copy of an extract from the Hyundai website at www.hyundaicanada.com, produced herein as **Exhibit R-51**;

96. Kia also markets the safety and reliability of its Kia vehicles in its advertising and marketing, knowing that customers will buy or lease their vehicles because they believe them to be safe and reliable;

97. For example, on the website www.kia.ca, there is a section entitled "Maintenance and Service", in which Kia writes, *inter alia*:

> "The safety of you and your vehicle is our top priority – that's our Kia Service Promise to Care."

The whole as appears more fully from a copy of an extract from the Kia website at www.kia.ca, produced herein as **Exhibit R-52**;

98. The Vehicle Manufacturer Defendants also sold and leased the Subject Vehicles with written express warranties:

- For GM Subject Vehicles, GM offers for Chevrolet, Buick, and GMC a written express basic warranty of three years or 60,000 kms. GM also offers a six-year or 120,000 kms restraint system warranty, which covers the air bags;

- For GM Subject Vehicles, GM offers for Cadillac a written express basic warranty of four years or 80,000 kms. GM also offers a six-year or 120,000 kms restraint system warranty, which covers the air bags;

- For Ford Subject Vehicles, GM offers a written express basic warranty of three years or 60,000 kms. Ford also offers a five-year or 100,000 kms safety restraint system warranty, which covers the air bags;

- For Volkswagen Subject Vehicles, Volkswagen offers a written express basic warranty of four years or 80,000 kms;

- For Audi Subject Vehicles, Audi offers a written express basic warranty of five years or 100,000 kms;

- For BMW Subject Vehicles, BMW offers a written express basic warranty of four years or 80,000 kms;

- For Porsche Subject Vehicles, Porsche offers a written express basic warranty of four years or 80,000 kms;

- For Hyundai Subject Vehicles, Hyundai offers a written express basic warranty of five years or 100,000 kms;

- For Kia Subject Vehicles, Hyundai offers a written express basic warranty of five years or 100,000 kms;

99. However, as detailed above, hundreds of thousands of vehicles that contained defective ARC-manufactured inflators were sold by the Vehicle Manufacturer Defendants and other automakers;

100. Vehicles with defective inflator systems are not “safe” and “reliable” as the Subject Vehicles were advertised and promoted to be;

**(d) <u>The U.S. Litigation</u>**

101. At least 9 class actions related to the Defective Inflators were filed in the U.S. in several states, the whole as appears more fully from a copy of said Class Action Complaints, produced herein *en liasse* as **Exhibit R-53**;

102. The class actions were all consolidated into one Multidistrict Litigation (MDL) centralized in the Northern District of Georgia and entitled *In Re: ARC Airbag Inflators Products Liability Litigation*, the whole as appears more fully from a copy of the United States Judicial Panel on Multidistrict Litigation Transfer Order dated December 15, 2022, produced herein as **Exhibit R-54**;

## II. <u>FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT</u>

**(a) <u>Applicant Pallante</u>**

103. Applicant Pallante purchased a 2011 Lincoln MKZ (VIN 3LNHL2GC0BR752673) in or around 2014 from Pharand Autos & Trucks in Vaudreuil-Dorion for approximately $18,000;

104. At the time of purchase, she had every reason to believe that the vehicle's airbags were free from any dangerous safety defect; had she known that the vehicle's airbags could rupture and that metal shrapnel would then fly out, potentially injuring herself as well as other vehicle occupants, she would never have purchased the vehicle;

105. On or about January 8, 2019, Transport Canada Recall # 2019-005 (Exhibit R-37) was issued, which affected the passenger-side airbag, stating:

> "Issue:
>
> On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the passenger-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.
>
> Safety Risk:
>
> If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury.
>
> Corrective Actions:
>
> Owners will be notified by mail and instructed to take their vehicle to a dealer to have the passenger-front airbag inflator replaced."

106. By letter dated March 18, 2019, Applicant Pallante's spouse (who had previously owned the vehicle) received a letter regarding this recall, which stated:

> "What is the issue?
>
> The passenger airbag inflator in your vehicle may explode in the event of a crash that caused deployment of the passenger airbag. If an inflator explodes, sharp metal fragments could strike the passenger or other occupants causing serious injury or death.
> …
> Parts are available to repair your vehicle."

the whole as appears more fully from a copy of said letter, produced herein as **Exhibit R-55**;

107. Presumably, it took Defendant Ford a little over 2 months to procure the parts to effectuate the recall. Applicant Pallante brought her car to the dealership and had the recall performed;

108. On or about January 27, 2021, Transport Canada Recall # 2021-029 (Exhibit R-44) was issued, which affected the driver-side airbag and stated:

> "Issue:
>
> On certain vehicles, long-term exposure to high absolute humidity and temperature, combined with high temperature cycling, may eventually degrade the propellant contained in the driver-front airbag. This could cause the airbag to deploy with more force than normal. If the airbag inflator ruptures, fragments could be propelled toward vehicle occupants or cause damage to the airbag assembly, preventing its proper function.
>
> Safety Risk:
>
> If the vehicle is involved in a crash requiring an airbag deployment, the airbag inflator could rupture and create a risk of injury.
>
> Corrective Action:
>
> Ford will notify owners by mail. The corrective actions for this recall are under development."

109. By letter dated February 15, 2023, Applicant Pallante received a letter of this recall, which stated:

> "Note: You previously had an airbag safety recall repair performed on the passenger side of your vehicle. This recall will address the driver side airbag."
>
> Parts are now available to repair your vehicle.
> …
> What is the issue?
>
> In the event of a crash that causes deployment of the driver airbag, the driver airbag inflator in your vehicle may explode.
>
> What is the risk?
>
> If an airbag inflator exploded, sharp metal fragments could strike the driver or the occupants causing serios injury or death."

the whole as appears more fully from a copy of said letter, produced herein as **Exhibit R-56**;

110. Presumably, it took Defendant Ford a little over 2 years to procure the parts to effectuate the recall. Applicant Pallante has not yet brought her car to the dealership to have the recall performed, as she only located the letter recently, having been out of town for the winter;

111. Applicant Pallante finds the delay of over 2 years to perform the driver-side recall unreasonable and is very stressful that she has been driving around with a car that has a dangerous safety defect;

112. Applicant Pallante has suffered ascertainable loss as a result of the Defendants' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the vehicle itself, lower resale value, pain and suffering, and trouble and inconvenience;

113. Applicant Pallante's damages are a direct and proximate result of the Defendants' conduct;

114. In consequence of the foregoing, Applicant Pallante is justified in claiming damages;

**(b) Applicant Perreault**

115. Applicant Perreault exercised her buyback option to purchase a 2017 Volkswagen Golf (VIN 3VW117AU1HM022624) in or around September 2021 from Volkswagen des Sources in Dorval for approximately $15,000.00;

116. At the time of purchase, she had every reason to believe that the vehicle's airbags were free from any dangerous safety defect; had she known that the vehicle's airbags could rupture and that metal shrapnel would then fly out and injure herself as well as other vehicle occupants, she would never have purchased the vehicle;

117. Applicant Perreault has not received any recall notice, but she has recently learned that her vehicle was manufactured with a defective ARC inflator;

118. Applicant Perreault has suffered ascertainable loss as a result of the Defendants' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the vehicle itself, lower resale value, pain and suffering, and trouble and inconvenience;

119. Applicant Perreault's damages are a direct and proximate result of the Defendants' conduct;

120. In consequence of the foregoing, Applicant Perreault is justified in claiming damages;

## III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH MEMBER OF THE CLASS

121. Every member of the Class has purchased and/or leased a Subject Vehicle containing a Defective Airbag with a Defective Inflator;

122. Each member of the Class is justified in claiming at least one or more of the following as damages:

a. Overpayment of the purchase price and/or lease payments of the Subject Vehicles assessed *ex-ante* at the time that the purchase and/or lease payment was made (i.e. at the point-of-sale),

b. Lower resale value/ diminished value of the Subject Vehicles,

c. Loss of use of the Subject Vehicles and expenditures for rental vehicles,

d. Out-of-pocket loss including the cost of attempted repairs,

e. Higher interest charges, increased sales tax, and higher insurance premiums,

f. Pain and suffering,

g. Trouble and inconvenience, and

h. Punitive and/or exemplary damages;

123. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

## IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class makes it difficult or impractical to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

124. The Applicants are unaware of the specific number of persons who purchased and/or leased the Subject Vehicles; however, it is safe to estimate that it is in the hundreds of thousands based on the recalls;

125. Class Members are numerous and are scattered across the entire province;

126. In addition, 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 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;

127. Also, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;

128. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them in one action;

129. 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;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

130. Individual issues, if any, pale by comparison to the numerous common issues that will advance the litigation significantly;

131. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;

132. The claims of the Class Members raise identical, similar or related issues of fact or law, namely:

a) Are the ARC airbag inflators defective?

b) Did the Airbag Module Defendants install defective airbag inflators in the airbag modules?

c) Did the Vehicle Manufacturer Defendants sell and/or lease the Subject Vehicles with Defective Airbags?

d) Did the Defendants delay, after learning of the defect, in informing Class Members?

e) Did the Defendants delay in repairing the airbags?

f) Did the Defendants make an inadequate and unsatisfactory remedy?

g) Have Class Members suffered compensable damage as a result of:

- repair costs?
- loss of use of their vehicle?
- trouble and inconvenience?

h) Are Class Members entitled to a partial reimbursement of the purchase price or the rental price of their vehicle, in particular because of the Defendants' false representations concerning the airbags?

i) Have Class Members suffered a loss in the resale value of the vehicle they own?

j) Are Class Members entitled to punitive damages?

k) In all cases, what are the damages?

133. The interests of justice favour that this application be granted in accordance with its conclusions;

## V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

134. The action that the Applicants wish to institute on behalf of the members of the Class is an action in damages, injunctive relief, and declaratory judgment;

135. The conclusions that the Applicants wish to introduce by way of an application to institute proceedings are:

GRANT the class action of the Plaintiff and each of the members of the Class;

ORDER the Defendants to recall all Subject Vehicles equipped with ARC-manufactured inflators and to repair and/or replace said defect free of charge;

DECLARE the ARC Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) <u>Applicants request that they be attributed the status of representatives of the Class</u>

136. The Applicants are both members of the Class;

137. The Applicants are ready and available to manage and direct the present action in the interest of the members of the Class that they wish to represent and are determined to lead the present file to a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with their attorneys;

138. The Applicants have the capacity and interest to fairly and properly protect and represent the interest of the members of the Class;

139. The Applicants have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

140. The Applicants, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

141. The Applicants have given instructions to their attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

142. The Applicants are in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;

143. The Applicants understand the nature of the action;

144. The Applicants' interests are not antagonistic to those of other members of the Class;

145. The Applicants are prepared to be examined out-of-court on their allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

146. The Applicants have spent time researching this issue on the internet and meeting with their attorneys to prepare this file. In so doing, they are convinced that the problem is widespread;

147. The Applicant, with the assistance of their attorneys, have created a webpage at www.clg.org wherein other Class Members can enter their coordinates to join the class action and be kept up to date on its development;

B) <u>Applicant suggests that this class action be exercised before the Superior Court of justice in the district of Montreal</u>

148. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

149. The Applicants' attorneys practice their profession in the judicial district of Montreal;

150. The present application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory relief;

**APPOINT** the Applicant as representative of the persons included in the class herein described as:

- all persons or entities resident in Quebec, who owned, purchased and/or leased a Subject Vehicle equipped with a frontal and/or passenger airbag containing a toroidal stored gas hybrid inflator designed and manufactured by ARC, or any other group to be determined by the Court;

**IDENTIFY** the principal issues of fact and law to be treated collectively as the following:

a) Are the ARC airbag inflators defective?

b) Did the Airbag Module Defendants install defective airbag inflators in the airbag modules?

c) Did the Vehicle Manufacturer Defendants sell and/or lease the Subject Vehicles with Defective Airbags?

d) Did the Defendants delay, after learning of the defect, in informing Class Members?

e) Did the Defendants delay in repairing the airbags?

f) Did the Defendants make an inadequate and unsatisfactory remedy?

g) Have Class Members suffered compensable damage as a result of:

- repair costs?
- loss of use of their vehicle?
- trouble and inconvenience?

h) Are Class Members entitled to a partial reimbursement of the purchase price or the rental price of their vehicle, in particular because of the Defendants' false representations concerning the airbags?

i) Have Class Members suffered a loss in the resale value of the vehicle they own?

j) Are Class Members entitled to punitive damages?

k) In all cases, what are the damages?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Plaintiffs and each of the members of the Class;

ORDER the Defendants to recall the vehicles equipped with a frontal driver and/or passenger airbags which contain toroidal stored gas hybrid inflators designed and manufactured by ARC and to repair and/or replace said defect free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiffs and each of the members of the Class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in The Montreal Gazette and La Presse;

**ORDER** that said notice be available on the Defendants' websites, Facebook pages, and Twitter accounts with a link stating "Notice to Vehicle Owners/Lessees";

**ORDER** that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Defendants' customer lists;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**THE WHOLE** with costs, including all publication and dissemination fees.

Montreal, May 23, 2023

(S) Jeff Orenstein

_____
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Per: Me Jeff Orenstein
Attorneys for the Applicants

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