

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE M.Z. CHARBONNEAU) WEDNESDAY, THE 26TH
) DAY OF OCTOBER, 2016

B E T W E E N:

NELSON MCHENRY

Plaintiff

- and -

**FORD MOTOR COMPANY OF CANADA, LTD. AND
FORD MOTOR COMPANY**

Defendants

Proceeding under the *Class Proceedings Act, 1992*
S.O. 1992, c. 6, as amended

O R D E R

THIS MOTION, made by the Plaintiff, for an order to certify this action as a class proceeding for settlement purposes and approving the settlement of this proceeding in accordance with a Settlement Agreement and Release dated February 9, 2016 attached to this Order as Appendix "A" (the "Agreement"), and for an Order approving the Settlement Agreement, was heard this day at the Courthouse, 59 Court Street, L'Orignal, Ontario, K0B 1K0.

UPON READING the materials filed, including the Settlement Agreement and on hearing the submissions of Class Counsel and Counsel for the Defendants.

THIS COURT ORDERS AND DECLARES THAT:

1. For the purposes of this Order, the definitions set out in the Agreement apply to and are incorporated into this Order.

2. This action is hereby certified as a class proceeding for settlement purposes only, on behalf of the following Class:

All Persons resident in Canada, excluding those Persons resident in the Province of Quebec, who currently own or lease (or who in the past owned or leased) a model year 2003-2007 Ford vehicle sold or leased in Canada and equipped with a 6.0L Engine.

Excluded from the Class are:

- (a) all Persons resident in Canada who elect to exclude themselves from the Class by effectively opting out in accordance with the terms of the Agreement;
- (b) all Persons who have previously executed and delivered to Ford Motor Company and/or Ford Motor Company of Canada, Limited a release or releases of all of their claims; and
- (c) all Persons who, prior to the commencement of the Settlement Approval Hearings, (i) filed an individual lawsuit (i.e. a lawsuit that does not seek certification or authorization of a class proceeding) in any court asserting causes of action of any nature based upon the 6.0L Engine in a Class Vehicle and (ii) have not voluntarily dismissed or discontinued such lawsuit without prejudice.

3. The following issue is common to the Class:

Did Ford Motor Company of Canada, Limited breach a duty to Class Members by refusing to authorize its dealers to perform adequate warranty repairs to Ford vehicles equipped with Navistar's 6.0L Engines for vehicle model years 2003 through 2007?

4. Nelson McHenry is hereby appointed as the Representative Plaintiff for the Class.

5. Consumer Law Group Professional Corporation is hereby appointed as Class Counsel for the Class.

6. The settlement as set forth in the Agreement is fair, reasonable and in the best interests of the Class Members.

7. The settlement of this action on the terms set forth in the Agreement be and is hereby approved pursuant to section 29 of the *Class Proceedings Act*, 1982, S.O. 1992, c. 6 (the "CPA").

8. The Agreement shall be implemented in accordance with its terms and is valid and binding on the Plaintiff, Class Members and the Defendants.

9. The Agreement in its entirety (including its preambles, recitals and exhibits) forms part of this Order, and has the full force and effect of an order of this Court.

10. This Order constitutes the full and final resolution of all claims made in this action, including, without limitation, all claims and causes of action raised by the Representative Plaintiff or Class Members in the statement of claim herein.

11. Upon the Effective Date of Settlement, the Plaintiff and each Class Member shall be deemed to have, and by operation of this Order shall have, released, waived and discharged Ford Motor Company and Ford Motor Company of Canada, Limited, their past and present directors, officers, employees, partners, principals, agents, heirs, executors, administrators, successors, subsidiaries, divisions, parents, related or affiliated entities, authorized dealers, underwriters, insurers, co-insurers, re-insurers, licensees, divisions, joint ventures, assigns, associates, lawyers and controlling shareholders (the "Released Parties") from any and all claims, demands, actions, causes of action of any nature whatsoever, including but not limited to any claim for violations of federal, provincial or other law (whether in contract, tort, or

otherwise, including statutory and injunctive relief, common law, property and equitable claims), and also including Unknown Claims that were or could have been asserted against the Released Parties in the Proceedings, or in any other action, proceeding or litigation in any other court or forum based on the 6.0-litre diesel engines in the Class Vehicles, except bodily injury.

12. All Class Members are hereby barred, permanently enjoined, and restrained from commencing or prosecuting any action, suit, proceeding, claim, or cause of action in any jurisdiction or court against Ford Motor Company or Ford Motor Company of Canada, Limited or any other entities or persons who are to be released hereunder, based upon, relating to, or arising out of, any of the matters which are released pursuant to this Order.

13. If (a) the Effective Date of Settlement does not occur for any reason whatsoever, or (b) the Settlement Agreement becomes null and void pursuant to its terms, this Order shall be deemed vacated and shall have no force and effect whatsoever.

14. Without affecting the finality of this Order in any way, the Court reserves continuing and exclusive jurisdiction over the Parties (including all members of the Class as defined above), the execution, consummation, administration, and enforcement of the terms of the Settlement Agreement.

15. Each Class Member shall consent to and shall be deemed to have consented to the dismissal of any action that would be barred by the release provided herein.

16. Renkim Corporation is appointed Claims Administrator.

17. The Claims Administrator shall execute its obligations as set out in the Agreement.

18. For purposes of the enforcement of this Order, this Court will retain jurisdiction and the Defendants and all members of the Class certified by this Court attorn to the jurisdiction of this Court for these purposes.

19. The Claims Administrator shall provide to Class Counsel and to counsel for Ford, who shall provide to this Court, a report at the conclusion of the administration of the Claims process, with regard to payments made to Class Members.

20. The form and content of the Short Form and the Long Form Approval Notices, attached as Appendix "B1" and "B2" respectively, are approved.

21. The proposed manner of publishing the Short Form and Long Form Approval Notices as described in Appendix "C" is approved (the "Notice Plan for Approval").

22. The cost and fees for the giving of notice in accordance with this Order shall be paid for by Ford Motor Company of Canada, Limited.

23. Persons who would otherwise be Class Members may exclude themselves from this action by opting out in accordance with the timing requirements and procedures set out in the Opt-Out form.

24. Any Person who opts out will not be bound by the terms of the Settlement and shall not be entitled to payment of any benefits or to receive any consideration under the Settlement or pursuant to this Order. Any such Person shall not be deemed to have released, waived or discharged Ford Motor Company and Ford Motor Company of Canada, Limited, their past and present directors, officers, employees, partners, principals, agents, heirs, executors, administrators, successors, subsidiaries, divisions, parents, related or affiliated entities,

authorized dealers, underwriters, insurers, co-insurers, re-insurers, licensees, divisions, joint ventures, assigns, associates, lawyers and controlling shareholders from any and all claims, demands, actions, causes of action in accordance with the terms of the Agreement and this Order and the Settlement shall be without prejudice and may not be relied upon in any action or other proceeding that any such Person may bring or continue as against any Released Party referred to in paragraph 12 hereof.

25. At the conclusion of the administration of the Claims process and following the presentation of the report of the Claims Administrator with regard to payments made to Class Members and the list of those Persons who have opted-out, this action shall be dismissed without costs and with prejudice.

26. If the Agreement is terminated in accordance with its terms, then this Order shall be set aside and be of no further force and effect and all negotiations, statements and proceedings relating to the Settlement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before the Agreement was executed.

27. Class Counsel fees and disbursements as provided for in the Settlement Agreement are hereby approved.

28. The Representative Plaintiff shall be paid an honorarium of \$5,000 in recognition of his efforts in prosecuting the Proceeding through settlement.

29. Each of the Saskatchewan plaintiffs and the British Columbia plaintiff will likewise be paid an honorarium of \$5,000 in recognition of his efforts.

30. There will be no costs of this motion.

31. A copy of this Order shall be posted on the Settlement Website.



Charbonneau, M.Z.

NELSON MCHENRY
and-
Plaintiff

Court File No. 12-55547CP
FORD MOTOR COMPANY OF CANADA, LTD. AND
FORD MOTOR COMPANY
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA
Proceeding under the *Class Proceedings Act, 1992*

ORDER

CONSUMER LAW GROUP
PROFESSIONAL CORPORATION
251 Laurier Avenue West, Suite 900
Ottawa, Ontario, K1P 5J6

Jeff Orenstein
LSUC# 59631G
jorenstein@clg.org

Andrea Grass
LSUC# 65051R
agrass@clg.org

Tel: (613) 627-4894
Fax: (613) 627-4893

Lawyers for the Plaintiff