

MAY 3 0 2023



S 233984

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

RONALD DYCKS

PLAINTIFF

and

ARC AUTOMOTIVE, INC., FCA US, LLC, FCA CANADA INC., STELLANTIS N.V.,
GENERAL MOTORS COMPANY, GENERAL MOTORS OF CANADA COMPANY,
FORD MOTOR COMPANY, FORD MOTOR COMPANY OF CANADA, LIMITED,
HYUNDAI AUTO CANADA CORPORATION, HYUNDAI MOTOR AMERICA INC.,
HYUNDAI MOTOR COMPANY, KIA CANADA INC., KIA AMERICA INC., KIA
CORPORATION, BMW CANADA INC., BMW OF NORTH AMERICA, LLC,
BAYERISCHE MOTOREN WERKE AG, MERCEDES-BENZ CANADA INC.,
MERCEDES-BENZ USA, LLC, MERCEDES-BENZ GROUP AG, VOLKSWAGEN
GROUP CANADA INC., VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN
AG, AUDI CANADA INC., AUDI OF AMERICA INC., AND AUDI AG

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

(Class Action – Defective Airbag Inflators)

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

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

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

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

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

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

Time for response to civil claim

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

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

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. Airbag modules are critical to preserving human life in the event of a motor vehicle accident. Every year, thousands of Canadians are protected from serious injury or death due to the safe deployment of airbag modules. In 2023, an investigation by a division of the United States' National Highway Traffic Safety Administration and by Transport Canada concluded that millions of airbag modules contained a defective component

designed and manufactured by ARC Automotive, Inc. (“**ARC**”) which renders the airbag modules vulnerable to exploding and propelling shrapnel and debris through the cabin of motor vehicles upon deployment. This defect presents an inherent danger of serious injury or death to vehicle occupants.

2. Despite calls from government agencies and regulators to recall airbag modules with this defect, ARC and many manufacturers of the vehicles containing the defective airbag modules have refused to recall these products. Through this suit, Canadians who own and/or lease vehicles containing these dangerous and defective components and Canadians who have been injured as a result of the Defendants’ conduct seek to hold the Defendants accountable for the unreasonable risk these components pose to vehicle occupants and for the harm these components have actually caused.

The Defendants

3. The Defendant ARC Automotive, Inc. (“**ARC**”) is a corporation incorporated pursuant to the laws of Delaware with an address for service 1209 Orange Street, Wilmington, Delaware, 19801, United States.

4. The Defendant FCA US, LLC is a corporation incorporated pursuant to the laws of Delaware with an address for service 1209 Orange Street, Wilmington, Delaware, 19801, United States.

5. The Defendant FCA Canada Inc. is a corporation incorporated pursuant to the laws of Canada, with an address for service of 1 Riverside Drive West, Windsor, Ontario, N9A 5K3, Canada.

6. The Defendant Stellantis N.V. is a corporation incorporated pursuant to the laws of Netherlands with an address for service Taurusavenue 1, Hoofddorp, 2132LS, Netherlands.

7. Collectively, FCA US, LLC, FCA Canada Inc., and Stellantis N.V. are “**FCA**”.

8. The Defendant General Motors Company is a corporation incorporated pursuant to the laws of Delaware with an address for service 251 Little Falls, Wilmington, Delaware, 19808, United States.

9. The Defendant General Motors of Canada Company is a corporation incorporated pursuant to the laws of Nova Scotia, with an address for service of 1300-1969 Upper Water Street, Halifax, Nova Scotia, B3J 3R7, Canada.

10. Collectively, General Motors Company and General Motors of Canada Company are "**GM**".

11. The Defendant Ford Motor Company is a corporation incorporated pursuant to the laws of Delaware, with an address for service of 1209 Orange Street, Wilmington, Delaware, 19801, United States.

12. The Defendant Ford Motor Company of Canada, Limited is a corporation incorporated pursuant to the laws of Ontario, with an address for service of 1 The Canadian Road, Oakville, Ontario, L6J 5E4, Canada.

13. Collectively, Ford Motor Company and Ford Motor Company of Canada are "**Ford**".

14. The Defendant Hyundai Auto Canada Corporation is a corporation incorporated pursuant to the laws of Canada, with an address for service of 75 Frontenac Drive, Markham, Ontario, L3R 6H2, Canada.

15. The Defendant Hyundai Motor America Inc. is a corporation incorporated pursuant to the laws of California with an address for service of 10550 Talbert Avenue, Fountain Valley, California, 92708, United States of America.

16. The Defendant Hyundai Motor Company is a corporation incorporated pursuant to the laws of South Korea with an address for service of 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

17. Collectively, Hyundai Auto Canada Corporation, Hyundai Motor America Inc., and Hyundai Motor Company are “**Hyundai**”.

18. The Defendant Kia Canada Inc. is a corporation incorporated pursuant to the laws of Canada, with an address for service of 180 Foster Crescent, Mississauga, Ontario, L5R 4J5.

19. The Defendant Kia America Inc. is a corporation incorporated pursuant to the laws of California with an address for service of 111 Peters Canyon Road, Irvine, California, 92606, United States of America.

20. The Defendant Kia Corporation is a corporation incorporated pursuant to the laws of South Korea with an address for service of 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

21. Collectively, Kia Canada Inc., Kia America Inc., and Kia Corporation are “**Kia**”.

22. The Defendant BMW Canada Inc. is a corporation incorporated pursuant to the laws of Canada with an address for service of 50 Ultimate Drive, Richmond Hill, Ontario, L4S 0C8, Canada.

23. The Defendant BMW of North America, LLC is a corporation incorporated pursuant to the laws of Delaware with an address for service of 1209 Orange Street, Wilmington, Delaware, 19801, United States.

24. The Defendant Bayerische Motoren Werke AG is a corporation incorporated pursuant to the laws of Germany, with a registered office in München, Germany.

25. Collectively, BMW Canada Inc., BMW of North America, LLC, and Bayerische Motoren Werke Aktiengesellschaft are “**BMW**”.

26. The Defendant Mercedes-Benz Canada Inc. is a corporation incorporated pursuant to the laws of Canada, with an address for service of 400-2680 Matheson Blvd. East, Mississauga, Ontario, L4W 0A5, Canada.

27. The Defendant Mercedes-Benz USA, LLC is a corporation incorporation pursuant to the laws of Delaware with an address for service of 1209 Orange Street, Wilmington, Delaware, 19801, United States.
28. The Defendant Mercedes-Benz Group AG is a corporation incorporated pursuant to the laws of Germany, with an address for service in Stuttgart, Germany.
29. Collectively, Mercedes-Benz Canada Inc., Mercedes-Benz USA, LLC, and Mercedes-Benz Group AG are “**Mercedes-Benz**”.
30. The Defendant Volkswagen Group Canada Inc. is a corporation incorporated pursuant to the laws of Canada, with an address for service of 777 Bayly Street West, Ajax, Ontario, L1S 7G7, Canada.
31. The Defendant Volkswagen Group of America, Inc. is a corporation incorporation pursuant to the laws of Virginia with an address for service 100 Shockoe Slip Fl 2, Richmond, Virginia, 23219 - 4100, United States.
32. The Defendant Volkswagen AG is a corporation incorporated pursuant to the laws of Germany, with an address for service in Wolfsburg, Germany.
33. Collectively, Volkswagen Canada Inc., Volkswagen Group of America, Inc. and Volkswagen AG are “**Volkswagen**”.
34. The Defendant Audi Canada Inc. is a corporation incorporated pursuant to the laws of Canada, with an address for service of 777 Bayly Street West, Ajax, Ontario, L1S 7G7, Canada.
35. The Defendant Audi of America, Inc. is a corporation incorporation pursuant to the laws of Virginia with an address for service 100 Shockoe Slip Fl 2, Richmond, Virginia, 23219 - 4100, United States.
36. The Defendant Audi AG is a corporation incorporated pursuant to the laws of Germany, with an address for service in Ingolstadt, Germany.

37. Collectively, Audi Canada Inc., Audi of America, Inc., an Audi AG are “**Audi**”.

38. Collectively, FCA, GM, Ford, Hyundai, KIA, BMW, Mercedes-Benz, Volkswagen, and Audi are the “**Vehicle Manufacturer Defendants**”.

39. Motor vehicles manufactured by the Vehicle Manufacturer Defendants, containing one or more of the Airbag Modules, and which have not been subject to a recall due to the Airbag Inflator Defect are set out in Schedule “A” to this Notice of Civil Claim (the “**Vehicles**”).

The Plaintiff and Class Members

40. The Plaintiff is a resident of British Columbia. He purchased a 2005 Chevrolet Silverado, which contains one or more of the Airbag Modules, for personal use.

41. The Plaintiff brings this claim on their own behalf and on behalf of all individuals and legal persons in Canada who belong to one or more of the overlapping subclasses:

- a) all individuals and legal persons in Canada who purchased and/or leased one or more of the Vehicles, as outlined in Schedule A (the “**Purchaser Subclass**” and the “**Purchaser Subclass Members**”);
- b) all individuals and legal persons in Canada who purchased and/or leased one or more of the Vehicles, as outlined in Schedule A, for primarily personal, family or household purposes (the “**Consumer Subclass**” and the “**Consumer Subclass Members**”); and
- c) all individuals, and the estates of deceased individuals, in Canada who claim to have suffered personal injury or death as a result of the Airbag Inflator Defect in the Vehicles (the “**Personal Injury Subclass**” and the “**Personal Injury Subclass Members**”),

from July 1, 2015 until the date that this action is certified as a class proceeding (“**Class**”, the “**Class Members**” and the “**Class Period**”).

The Purchaser Subclass and the Consumer Subclass are collectively the “**Economic Subclass**” and the “**Economic Subclass Members**”.

The Airbags Modules and the Airbag Inflators

42. Airbag modules are a vehicle-occupant restraint system found in nearly all motor vehicles manufactured and/or sold in Canada. Airbag modules in motor vehicles consist of three main components: a bag, a sensor and an inflator.

43. In a motor vehicle collision, sensors in an airbag module receive information from an accelerometer advising that the threshold to fill the airbag has been met. When this threshold is reached, an airbag inflator releases stored gas and ignites a propellant to heat the released gas. This heated gas then travels through a channel to inflate the bag.

The Airbag Inflator Defect

44. ARC’s design of the airbag inflators allows the channel through which heated gas enters and inflates the bag component of the airbag modules to become clogged by undetected debris, causing excessive pressure to build inside and rupture the airbag inflator. This clogging is a result of the friction welding process required to manufacture the airbag inflators. When weld slags become loose, they travel through the channel with the released gas during the deployment process. If enough weld slag debris loosens, it blocks the exit orifice of the channel, leading to over-pressurization of the airbag inflator. This pressure can cause the airbag inflator to rupture, propelling metal shrapnel into the occupant section of the vehicle and striking the vehicle’s occupants (the “**Airbag Inflator Defect**”).

45. The airbag inflators containing the Airbag Inflator Defect are the “**Airbag Inflators**”.

46. The Airbag Inflator Defect creates a substantial likelihood of harm to occupants of the Vehicles.

47. The Airbag Inflator Defect is a reasonably foreseeable consequence of ARC's design plan and specifications of the Airbag Inflators.

48. ARC produces Airbag Inflators for airbag modules installed in thousands of motor vehicles throughout Canada. Transport Canada has identified at least 94 models of motor vehicles produced by seven different manufactures that contain one or more of the Airbag Inflators. The airbag modules containing one or more of the Airbag Inflators are the "**Airbag Modules**".

The Airbag Inflators and the Vehicles

49. ARC manufactures the Airbag Inflators and supplies these components to companies who in turn manufacture the Airbag Modules. The Airbag Modules are then delivered to the Vehicle Manufacturer Defendants who insert the Airbag Modules into the Vehicles. The Airbag Inflator Defect is already present in the Airbag Inflators when ARC delivers the Airbag Inflators to the companies that manufacture the Airbag Modules.

50. In the vehicle manufacturing supply chain, ARC is a Tier 2 Supplier, meaning that it supplies components to the airbag manufacturers (Tier 1 Suppliers). The airbag manufacturers then supply the completed Airbag Modules to the Vehicle Manufacturer Defendants.

51. As part of the assembly of the Vehicles, the Vehicle Manufacturer Defendants insert the Airbag Modules into the Vehicles. The Vehicles containing the Airbag Modules are defective as a result of the inclusion of the Airbag Inflators (which contain the Airbag Inflator Defect) in the Vehicles during the Vehicle Manufacturer Defendants' manufacturing of the Vehicles (the "**Vehicle Defect**").

52. The Vehicle Defect creates a substantial likelihood of harm to occupants of the Vehicles.

53. The Vehicle Defect is a reasonably foreseeable consequence of the Vehicle Manufacturer Defendants' design plan and specifications of the Vehicles.

54. The Vehicle Manufacturer Defendants supplied, sold and/or leased some, or all, of the Vehicles to intermediaries who sold and/or leased some, or all, of the Vehicles to the Plaintiff and Economic Subclass Members. None of the contracts between the Vehicle Manufacturer Defendants, the intermediaries and/or the Plaintiff and Economic Subclass Members for the supply, sale and/or leasing of the Vehicles contained terms permitting the Vehicles to contain the Airbag Inflator Defect and/or the Vehicle Defect.

ARC and the Vehicle Manufacturer Defendants' Knowledge of the Airbag Inflator Defect

Injuries Caused by the Airbag Inflator Defect

55. There have been many documented instances of the Airbag Inflators causing serious injury and death due to the Airbag Inflator Defect, including but not limited to the following:

- a. January 29, 2009: a driver-side Airbag Inflator ruptured in a 2002 Chrysler Town and Country in Ohio, severely injuring the driver;
- b. April 8, 2014: a driver-side Airbag Inflator ruptured in a 2004 Kia Optima in New Mexico, severely injuring the driver;
- c. July 11, 2016: a driver-side Airbag Inflator ruptured in a 2009 Hyundai Elantra in Newfoundland and Labrador, killing the driver;
- d. September 22, 2017: a driver-side Airbag Inflator ruptured in a 2010 Chevrolet Malibu in Pennsylvania, severely injuring the driver;
- e. August 15, 2021: a driver-side Airbag Inflator ruptured in a 2015 Chevrolet Traverse in Michigan, killing the driver;
- f. October 20, 2021: a driver-side Airbag Inflator ruptured in a 2015 Chevrolet Traverse in Kentucky, severely injuring the driver;
- g. December 18, 2021: a passenger-side Airbag Inflator ruptured in a 2016 Audi A3 in California, severely injuring the driver and a passenger; and

- h. March 22, 2023: a driver-side Airbag Inflator ruptured in a 2017 Chevrolet Traverse in Michigan, severely injuring the driver.

The Role of NHTSA and the ODI in Identifying and Remediating Defects in Motor Vehicles

56. The National Highway Traffic Safety Administration is an agency of the United States federal government and part of the United States Department of Transportation (“**NHTSA**”). NHTSA is responsible for, *inter alia*, writing and enforcing Federal Motor Vehicle Safety Standards in the United States.

57. The Office of Defect Investigation is the branch of NHTSA responsible for, *inter alia*, investigating potential defects in motor vehicles, identifying motor vehicles that are unsafe as a result of defects and initiating recalls of motor vehicles with defective components (the “**ODI**”).

58. The ODI generally begins its review into a potential defect by opening a Preliminary Investigation and drafting an Information Request to manufacturers requesting information related to the potentially defective product. If the ODI decides at the conclusion of the Preliminary Investigation that additional information, testing or analysis is needed, the ODI escalates the investigation to an Engineering Analysis. During an Engineering Analysis, the ODI can disseminate additional Information Requests and utilize additional resources, such as the NHTSA’s Vehicle Research and Test Center, to obtain relevant data.

59. If the ODI decides that a recall should be initiated based on information obtained through the Preliminary Investigation and the Engineering Analysis and the manufacturer has not initiated a recall, the ODI may convene a panel of experts and stakeholders to review the information and, if warranted, issue a Recall Request to the manufacturer of the allegedly defective product.

The 2015 NHTSA (ODI) Investigation

60. On July 13, 2015, the ODI began a Preliminary Evaluation of the Airbag Inflators in response to reports of the Airbag Inflators rupturing.

61. On August 4, 2016, upon learning of a fatality in Canada due to an Airbag Inflator rupturing, the ODI upgraded their investigation and opened Engineering Analysis in relation to the Airbag Inflator Defect (“**Engineering Analysis EA-006**”).

62. As a result of its investigation, on April 27, 2023 the ODI issued a Recall Request to ARC demanding that the company immediately issue a Recall Report to address the Airbag Inflator Defect. Such a recall would require ARC to notify all owners of the Vehicles of the Airbag Inflator Defect, the safety risk posed by the Airbag Inflator Defect, the cause of the Airbag Inflator Defect and a remedy program.

63. On May 11, 2023, ARC issued a letter in response to the ODI’s April 27, 2023 Recall Request therein defending ARC’s decision not to issue a recall. As of the date this Notice of Civil Claim was filed, ARC has not issued a recall in relation to the Airbag Inflator Defect.

The Transport Canada Investigations into the Airbag Inflator Defect

64. As a result of the July 11, 2016 fatality in Canada as a result of the Airbag Inflator Defect, Transport Canada initiated an investigation into the ARC Airbag Inflators (“**Investigation 3280-38-10**”).

65. Transport Canada became aware of other instances of the Airbag Inflators rupturing during quality control and in actual crashes during Investigation 3280-38-10. These incidents prompted ARC to update their quality control program related to the manufacturing of the Airbag Inflators in 2018.

66. As Investigation 3280-38-10 continued in 2020, Transport Canada became aware of another fatality due to one of the Airbag Inflators rupturing in a Hyundai Elantra.

67. Transport Canada closed Investigation 3280-38-10 in June 2022 and thereafter opened a separate investigation into the Airbag Inflator Defect alongside the ODI.

The Hyundai Recalls

68. On April 11, 2018, Transport Canada issued a recall of 2009 Hyundai Elantras (Recall #2018-173). Hyundai sent Transport Canada the Airbag Inflators it removed from these vehicles to assist with its investigation into the Airbag Inflator Defect.

69. On April 14, 2020, Transport Canada initiated a further recall of certain 2009 Hyundai Elantras (Recall #2020-159). As part of the recall, Transport Canada advised that the driver-side Airbag Inflator could rupture when deployed in a crash.

The General Motors Recalls

70. On October 7, 2021, Transport Canada recalled the 2016-2017 Chevrolet Traverse and 2012, 2015-2016 Buick Enclave, advising that the driver-side Airbag Inflator could rupture when deployed in a crash. (Recall #2021-619).

71. On April 14, 2022, Transport Canada recalled the 2015 Chevrolet Traverse, the 2015 Buick Enclave, and the 2015 GMC Acadia, advising that the driver-side Airbag Inflator could rupture when deployed in a crash (Recall #2022-189).

72. On May 10, 2023, Transport Canada recalled the 2014-2017 Buick Enclave, the 2014-2017 Chevrolet Traverse and the 2014-2017 GMC Acadia, advising that the driver-side Airbag Inflator could rupture when deployed in a crash (Recall #2023-277).

The Volkswagen and Audi Recall

73. On July 27, 2022, Transport Canada recalled the 2016 Audi A3, A3 E-Tron S3, and TT, and the 2016 Volkswagen Golf, Golf R, Golf Wagon and GTI, advising that the driver-side Airbag Inflator could rupture when deployed in a crash (Recall #2022-403).

The Alternative Airbag Inflator Design

74. Manufacturing specifications and procedures exist alongside design specifications as part of a product's overall design plan. Manufacturing specifications and procedures that minimize the risk of foreseeable harm arising from a product's intended use or

foreseeable misuse when the product is manufactured to those specifications are an essential part of a reasonable product design plan.

75. In January 2018, ARC modified the manufacturing process in its design plan for airbag inflators by requiring that each airbag inflator be inspected with a borescope. Borescopes are optical instruments that allow for visual inspection in hard-to-reach cavities. The borescope detects if the inflator channel of an airbag inflator has excess weld slag debris, allowing the debris to be removed and thereby minimizing the risk the airbag inflators could rupture due to over-pressurization from a blockage (the “**Alternative Airbag Inflator Design**”).

76. The Alternative Airbag Inflator Design eliminates or significantly reduces the likelihood of harm presented by the Airbag Inflators and is therefore safer than the original design of the Airbag Inflators. The Alternative Airbag Inflator Design is an economically feasible method of manufacturing the Airbag Inflators.

77. There are no publicly known reports of airbag inflators manufactured with the Alternative Airbag Inflator Design rupturing. Despite the success of the Alternative Airbag Inflator Design in preventing the Airbag Inflator Defect, ARC has failed to replace the Airbag Inflators with airbag inflators produced after the introduction of the borescope in the manufacturing process.

The Alternative Design of the Vehicles

78. Since ARC introduced the Alternative Airbag Inflator Design, the Vehicle Manufacturer Defendants have produced motor vehicles outfitted with airbag modules manufactured using the Alternative Airbag Inflator Design (the “**Alternative Vehicle Design**”).

79. The Alternative Vehicle Design eliminates or significantly reduces the likelihood of harm presented by the Vehicle Defect and is therefore safer than the original design of the Vehicles. The Alternative Vehicle Design is an economically feasible method of manufacturing the Vehicles.

80. There are no publicly known reports of airbag inflators rupturing in motor vehicles manufactured with the Alternative Vehicle Design. Despite the success of the Alternative Vehicle Design in preventing harm to the occupants of motor vehicles, the Vehicle Manufacturer Defendants have failed to replace, repair or retrofit the Vehicles with airbag inflators manufactured in accordance with the Alternative Vehicle Design.

The Defendants' Misconduct

81. At all material times, it was reasonably foreseeable that the Plaintiff and Class Members would use the Vehicles containing the Airbag Inflators and that the Airbag Inflators would deploy in motor vehicle collisions during the life of the Vehicles.

82. At all material times, ARC designed, manufactured, marketed, sold, and/or distributed the Airbag Inflators. At all material times, ARC placed the Airbag Inflators into the stream of commerce.

83. At all material times, the Airbag Inflators contained a design defect (the Airbag Inflator Defect).

84. At all material times, the Airbag Inflator Defect posed a real and substantial danger to occupants of the Vehicles.

85. At all material times, the Alternative Airbag Inflator Design was a safer and economically feasible way to manufacture the Airbag Inflators.

86. At all material times, ARC failed and/or omitted to represent to, or warn, the Plaintiff and Class Members that:

- a. the Airbag Inflators contained the Airbag Inflator Defect; and/or
- b. the Airbag Inflator Defect posed a real and substantial danger to occupants of the Vehicles.

87. At all material times, ARC's representations were false because:

- a. the Airbag Inflators contained the Airbag Inflator Defect; and

- b. the Airbag Inflators posed a real and substantial danger to occupants of the Vehicles.

88. At all material times, ARC knew or ought reasonably to have known of the Airbag Inflator Defect, the danger posed by the Airbag Inflator Defect, and of the substantial risk of harm to the Plaintiff and Class Members and occupants posed by the Airbag Inflator Defect.

89. In the alternative, ARC failed to address the risk posed by the Airbag Inflator Defect upon discovering this defect and the risk it poses to the occupants of the Vehicles.

90. The Plaintiff and Economic Subclass Members relied on ARC's representations that the Airbag Inflators did not pose a real and substantial danger in their decisions to purchase and/or lease the Vehicles.

91. At all material times, the Vehicle Manufacturer Defendants designed, manufactured, marketed, sold and/or distributed the Vehicles. At all material times, the Vehicle Manufacturer Defendants placed the Vehicles containing the Airbag Inflators into the stream of commerce.

92. At all material times, the Vehicles contained a design defect (the Vehicle Defect).

93. At all material times, the Vehicle Defect posed a real and substantial danger to the occupants of the Vehicles.

94. At all material times, the Alternative Vehicle Design was a safer and economically feasible way to manufacture the Vehicles.

95. At all material times, the Vehicle Manufacturer Defendants represented the Vehicles to be safe.

96. At all material times the Vehicle Manufacturer Defendants failed and/or omitted to represent to, or warn, the Plaintiff and Class Members that:

- a. the Airbag Inflators contained the Airbag Inflator Defect;

- b. the Vehicles contained the Vehicle Defect;
- c. the Airbag Inflator Defect and/or the Vehicle Defect posed a real and substantial danger to occupants of the Vehicles; and
- d. the Vehicles were unsafe as a result of the Airbag Inflator Defect and/or the Vehicle Defect.

97. At all material times, the Vehicle Manufacturer Defendants' representations were false because:

- a. the Airbag Inflators contained the Airbag Inflator Defect;
- b. the Vehicles contained the Vehicle Defect;
- c. the Airbag Inflators and/or the Vehicles posed a real and substantial danger to occupants of the Vehicles; and
- d. the Vehicles were unsafe because of the Airbag Inflator Defect and/or the Vehicle Defect.

98. At all material times, the Vehicle Manufacturer Defendants knew or ought reasonably to have known of the Airbag Inflator Defect, the Vehicle Defect, the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and the substantial risk of harm to the Plaintiff and Class Members and occupants posed by the Airbag Inflator Defect and/or the Vehicle Defect.

99. In the alternative, the Vehicle Manufacturer Defendants failed to address the risk posed by the Airbag Inflator Defect and/or the Vehicle Defect upon discovering the defects and the risk they pose to occupants of the Vehicles.

100. At all material times, the Vehicle Manufacturer Defendants knowingly or recklessly misled consumers as to the safety of the Airbag Inflators and/or the Vehicles.

101. The Plaintiff and Economic Subclass Members relied on the Vehicle Manufacturer Defendants' representations that the Vehicles were safe and would not pose a real and substantial danger in their decisions to purchase and/or lease the Vehicles.

102. The Plaintiff and Economic Subclass Members would not have purchased and/or leased the Vehicles had they been aware of the real and substantial danger posed by the Airbag Inflator Defect and/or the Vehicle Defect.

103. The Vehicle Manufacturer Defendants acquired a portion, or all, of the purchase and/or leasing price paid by the Plaintiff and Consumer Subclass Members for the Vehicles as a result of the Vehicle Manufacturer Defendants' breaches of the *BPCPA* and related provincial consumer protection legislation.

104. The Plaintiff and Consumer Subclass Members in British Columbia were the sources of the money acquired by the Vehicle Manufacturer Defendants, in the form and quantity of some, or all, of the purchase and/or leasing price paid by them for the Vehicles.

105. The Plaintiff and Consumer Subclass Members in British Columbia each have an interest in some, or all, of the funds received from them by the Vehicle Manufacturer Defendants, either directly or indirectly, for the Vehicles.

106. The Plaintiff has sent a letter to each of the Vehicle Manufacturing Defendants advising therein that all Consumer Subclass Members in Ontario seek damages pursuant to the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (the "**Ontario CPA**") due to the Vehicle Manufacturing Defendants' misrepresentations as to the safety of the Vehicles, as particularized in this Notice of Civil Claim. This notice was sent on behalf of all Consumer Subclass Members in Ontario who purchased and/or leased the Vehicles from the date that is one year prior to the notice being delivered onward. In the alternative, the interests of justice warranting dispensing of the notice requirement pursuant to section 18(15) of the *Ontario CPA*.

Harm to the Plaintiff and Class Members

107. As a result of ARC's negligent design of the Airbag Inflators and/or failure to warn, the Plaintiff and Class Members suffered loss and/or damage.

108. As a result of the Vehicle Manufacturer Defendants' negligent design of the Vehicles, failure to warn and breaches of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BPCPA**") and related enactments and the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**"), the Plaintiff and Class Members suffered loss and/or damage.

109. The Defendants' negligence, failure to warn and/or misrepresentations caused the Plaintiff and Economic Subclass Members to acquire less value than they expected to acquire when purchasing and/or leasing the Vehicles. The Plaintiff and Economic Subclass Members have incurred and/or will incur out-of-pocket expenses to retrofit the Vehicles with Airbag Inflators manufactured using the Alternative Airbag Inflator Design. These expenses would not be incurred but for the Defendants' misconduct described above.

110. The Defendants' negligence, failure to warn and/or misrepresentations caused the Personal Injury Subclass Members to suffer loss and/or damage including but not limited to:

- a. death;
- b. concussions;
- c. injuries to the neck, head, shoulders, chest, arm(s) and/or leg(s);
- d. vertigo;
- e. dizziness;
- f. insomnia;
- g. fatigue;
- h. anxiety and depression; and.
- i. other injuries that may develop or become known in the future.

111. The Personal Injury Subclass Members' injuries have and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of past and future earning capacity and loss of past and future housekeeping capacity.

112. The Personal Injury Subclass Members have sustained damages for the cost of medical treatment, including past and future cost of healthcare services provided by the government of British Columbia and the governments of other provinces and territories. The Personal Injury Subclass Members continue to undergo medical care and treatment and continue to sustain damages. As a result of their injuries, the Personal Injury Subclass Members have received and in the future will continue to receive care and services from family members.

Part 2: RELIEF SOUGHT

113. The Plaintiff claims on their own behalf and on behalf of all of the Class Members:

- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50;
- b. general and special damages;
- c. a declaration under section 172(1)(a) of the *BPCPA* that the Vehicle Manufacturer Defendants have breached sections 4-5 of the *BPCPA*;
- d. an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* in the Vehicle Manufacturer Defendants' marketing of the Vehicles by requiring the Vehicle Manufacturer Defendants to represent the risk posed by the Airbag Inflator Defect and/or the Vehicle Defect in their marketing and sale (including leasing) of the Vehicles;
- e. damages pursuant to section 171 of the *BPCPA*, including but not limited to the cost of retrofitting the Vehicles with airbag modules not containing the Airbag Inflators;

- f. in the alternative to damages under section 171, a restoration order under section 172(3)(a) of the *BPCPA* in the amount of some, or all, of the purchase and/or leasing price paid by the Plaintiff and Consumer Subclass Members in British Columbia for the Vehicles;
- g. relief for contraventions of extra-provincial consumer protection legislation, as follows:
 - i. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and/or repayment of the amount by which the payments made by the Consumer Subclass Members in Alberta to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect, or in the alternative restitution of some, or all, of the amounts received by the Vehicle Manufacturer Defendants from the Consumer Subclass Members in Alberta through the sale (including leasing) of the Vehicles pursuant to sections 7(1), 7(3), 13(2) and/or 142.1(2) of the Alberta *Consumer Protection Act*, RSA 2000, c. C-26.3;
 - ii. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect, or in the alternative restitution of some, or all, of the amounts received by the Vehicle Manufacturer Defendants from the Consumer Subclass Members in Saskatchewan through the sale (including leasing) of the Vehicles pursuant to section 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2;
 - iii. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect, or in the alternative repayment of some, or all, of the purchase and/or leasing price paid by the Consumer Subclass Members in Manitoba

for the Vehicles pursuant to section 23(2) of the Manitoba *Business Practices Act*, CCSM, c. B120;

- iv. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and/or repayment of the amount by which the payments made by the Consumer Subclass Members in Ontario to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect pursuant to section 18(2) of the Ontario *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch. A;
- v. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and/or repayment of the amount by which the payments made by the Consumer Subclass Members in Prince Edward Island to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect pursuant to section 4(1) of the Prince Edward Island *Business Practices Act*, RSPEI 1988, c. B-7;
- vi. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect, or in the alternative repayment of some, or all, of the purchase and/or leasing price paid by the Consumer Subclass Members in Newfoundland and Labrador to the Vehicle Manufacturer Defendants for the Vehicles pursuant to section 10 of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1;
- vii. reduction in some, or all, of the purchase and/or leasing price paid by the Consumer Subclass Members in Quebec for the Vehicles, and damages equaling the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section

272 of the Québec *Consumer Protection Act*, CQLR c P-40.1 (the “**Québec CPA**”);

- viii. damages for breach one or more implied warranties including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;
 - ix. damages for breach of an implied condition and/or express warranty including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to the *Consumer Protection Act*, RSNS 1989, c 92;
 - x. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition pursuant to the *Consumers Protection Act*, RSY 2002, c 40;
 - xi. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition pursuant to *Consumer Protection Act*, RSNWT 1988, c C-17; and
 - xii. damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition pursuant to *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
- h. past and future “in trust” for services provided by family members of the Personal Injury Subclass Members;

- i. a declaration that the Defendants have engaged in conduct contrary to Part VI of the *Competition Act*;
- j. damages pursuant to section 36 of the *Competition Act* including but not limited to the cost to retrofit the Vehicles with airbag modules not containing the Airbag Inflators;
- k. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- l. recovery of health care costs pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 (the "**HCCRA**"), and equivalent legislation in other provinces and territories throughout Canada;
- m. damages pursuant to section 2 of the *Family Compensation Act*, RSBC 1996, c 126 (the "**Family Compensation Act**"), and equivalent provisions of related enactments in other provinces and territories throughout Canada;
- n. punitive damages;
- o. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
- p. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

114. The Plaintiff and Class Members plead and rely on the *Class Proceedings Act*; the *Limitation Act*, SBC 2012, c 13; the *Court Order Interest Act*, RSBC 1996, c 79; the *Negligence Act*, RSBC 1996, c 318; the *Competition Act*, RSC 1985, c C-34; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 and related extra-provincial enactments; *Family Compensation Act*, RSBC 1996, c 126 and related extra-provincial enactments; *Health Care Cost Recovery Act*, SBC 2008, c 27 and related extra-provincial enactments; and the *Supreme Court Civil Rules* and related enactments.

Negligent Design

115. At all material times, ARC owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Vehicles containing the Airbag Inflators to design the Airbag Inflators in such a way that they would not pose a real and substantial danger to occupants of the Vehicles.

116. ARC designed the Airbag Inflators in such a way that the Airbag Inflators are defective and pose a real and substantial danger to occupants of the Vehicles. ARC therefore breached its duty to the Plaintiff and Class Members and was negligent.

117. The Alternative Airbag Inflator Design is an economically feasible design that is safer than ARC's original design of the Airbag Inflators.

118. ARC knew or ought reasonably to have known that the Airbag Inflators would pose a real and substantial danger to occupants of the Vehicles as a result of the Airbag Inflator Defect.

119. As a result of ARC's negligent design of the Airbag Inflators, the Plaintiff and Economic Subclass Members have suffered loss and/or damage in the amount of the reasonable cost of eliminating the real and substantial danger posed by the Airbag Inflator Defect, including but not limited to the costs of repairing and/or replacing the Airbag Inflators.

120. As a result of ARC's negligent design of the Airbag Inflators, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of housekeeping capacity, past and future;
- d. cost of future care;
- e. out of pocket expenses;

- f. damages “in trust” for service provided by family members, past and future; and
- g. damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related enactments outside of British Columbia.

121. At all material times ARC was in a close and proximate relationship with the Plaintiff and Class Members. The loss and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of ARC’s negligent design of the Airbag Inflators.

122. Within the context of the above claims made on their behalf against ARC, Class Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability of a manufacturer pursuant to articles 1468, 1469 and 1473 of the *Civil Code of Québec*, CQLR c CCQ-1991 (the “**Québec Civil Code**”). As the manufacturer of the Airbag Inflators, ARC is bound to make reparation for injury caused to Class Members in Quebec by reason of the Airbag Inflator Defect.

123. At all material times, the Vehicle Manufacturer Defendants owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Vehicles to design the Vehicles in such a way that they would not pose a real and substantial danger to occupants of the Vehicles. Further, they owed a duty to properly vet the safety and/or fitness of the components used in the manufacture of the Vehicles.

124. The Vehicle Manufacturer Defendants designed the Vehicles in such a way that the Vehicles are defective and pose a real and substantial danger to occupants of the Vehicles as a result of the Vehicle Defect and/or the Airbag Inflator Defect. The Vehicle Defendants did not properly vet the safety and/or fitness of the airbag components used in the manufacture of the Vehicles. The Vehicle Manufacturer Defendants therefore breached the duty owed by them to the Plaintiff and Class Members and were negligent.

125. The Alternative Vehicle Design is an economically feasible design that is safer than the Vehicle Manufacturer Defendants’ original design of the Vehicles.

126. The Vehicle Manufacturer Defendants knew or ought reasonably to have known that the Vehicles would pose a real and substantial danger to occupants of the Vehicles as a result of the Vehicle Defect and/or the Airbag Inflator Defect.

127. As a result of the Vehicle Manufacturer Defendants' negligent design of the Vehicles, the Plaintiff and Economic Subclass Members have suffered loss and/or damage in the amount of the reasonable cost of eliminating the real and substantial danger posed by the Vehicle Defect and/or the Airbag Inflator Defect, including but not limited to the costs of repairing and/or replacing the Airbag Inflators.

128. As a result of the Vehicle Manufacturer Defendants' negligent design of the Vehicles, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of housekeeping capacity, past and future;
- d. cost of future care;
- e. out of pocket expenses;
- f. damages "in trust" for service provided by family members, past and future; and/or
- g. damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related enactments outside of British Columbia.

129. At all material times the Vehicle Manufacturer Defendants were in a close and proximate relationship with the Plaintiff and Class Members. The losses and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of the Vehicle Manufacturer Defendants' negligent design of the Vehicles.

130. Within the context of the above claims made on their behalf against the Vehicle Manufacturer Defendants, Class Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability pursuant to articles 1468, 1469 and 1473 of the Québec *Civil Code*. As the manufacturer, distributor and/or supplier of the Vehicles containing the Airbag Inflators, the Vehicle Manufacturer Defendants are bound to make reparation for injury caused to the Class Members by reason of the Airbag Inflator Defect.

Failure to Warn

131. Further and in the alternative to the Plaintiff and Class Members' pleading of negligent design, at all material times ARC owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Airbag Inflators to warn of the risks associated with the reasonably foreseeable use of the Airbag Inflators. In particular, ARC owed a duty of care to warn the Plaintiff and Class Members that:

- a. the Airbag Inflators contained the Airbag Inflator Defect; and
- b. the Airbag Inflator Defect posed a real and substantial danger to occupants of the Vehicles.

132. ARC knew or ought reasonably to have known of the Airbag Inflator Defect, the danger posed by the Airbag Inflator Defect and that the Vehicles were unsafe.

133. By not warning Plaintiff and Class Members, ARC was negligent.

134. As a result of ARC's failure to warn particularized above, the Plaintiff and Economic Subclass Members have suffered loss and/or damages in the amount of the reasonable cost of removing the danger posed by the Airbag Inflator Defect, including but not limited to the costs of repairing and/or replacing the Airbag Inflators.

135. As a result of ARC's failure to warn particularized above, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a. personal injury;

- b. loss of income earning capacity, past and future;
- c. loss of housekeeping capacity, past and future;
- d. cost of future care;
- e. out of pocket expenses; and
- f. damages “in trust” for service provided by family members, past and future;
and
- g. damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related enactments outside of British Columbia.

136. At all material times ARC was in a close and proximate relationship with the Plaintiff and Class Members. The loss and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of ARC’s failure to warn.

137. Within the context of the above claim of failure to warn made against ARC, Class Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability of a manufacturer pursuant to articles 1468, 1469 and 1473 of the Québec *Civil Code*. As the Airbag Inflators lacked sufficient indications as the risks and dangers they involved as well as the means to avoid them, they did not afford the safety which a person is normally entitled to expect, ARC is bound as manufacturer of the Airbag Inflator to make reparation for the injury caused to the Class Member by reason of the safety defect of the Airbag Inflators.

138. Further and in the alternative to the Plaintiff and Class Members’ pleading of negligent design, at all material times the Vehicle Manufacturer Defendants owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable users of the Vehicles containing the Airbag Inflators to warn of the risks associated with the reasonably foreseeable use of the Airbag Inflators and/or the Vehicles. In particular, the Vehicle Manufacturer Defendants owed the Plaintiff and Class Members a duty of care to warn that:

- a. the Airbag Inflators contained the Airbag Inflator Defect;
- b. the Vehicles contained the Vehicle Defect;
- c. the Airbag Inflator Defect and/or the Vehicle Defect posed a real and substantial danger to occupants of the Vehicles; and
- d. the Vehicles were unsafe as a result of the Airbag Inflator Defect and/or the Vehicle Defect.

139. The Vehicle Manufacturer Defendants knew or ought reasonably to have known of the Airbag Inflator Defect and/or the Vehicle Defect, of the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and that the Vehicles were unsafe.

140. By not warning Plaintiff and Class Members, the Vehicle Manufacturer Defendants were negligent.

141. As a result of the Vehicle Manufacturer Defendants' failure to warn particularized above, the Plaintiff and Economic Subclass Members have suffered loss and/or damages in the amount of the reasonable cost of removing the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect, including but not limited to the costs of repairing and/or replacing the Airbag Inflators and/or the Vehicles.

142. As a result of the Vehicle Manufacturer Defendants' failure to warn particularized above, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of housekeeping capacity, past and future;
- d. cost of future care;
- e. out of pocket expenses;

- f. damages “in trust” for service provided by family members, past and future; and/or
- g. damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related enactments outside of British Columbia.

143. At all material times the Vehicle Manufacturer Defendants were in a close and proximate relationship with the Plaintiff and Class Members. The loss and/or damages suffered by the Plaintiff and Class Members were the reasonably foreseeable consequences of the Vehicle Manufacturer Defendants’ failure to warn.

144. Within the context of the above claim of failure to warn made against the Vehicle Manufacturer Defendants, Class Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability of a manufacturer, distributor, or supplier pursuant to articles 1468, 1469 and 1473 of the Québec *Civil Code*. As the Airbag Inflators lacked sufficient indications of the risks and dangers they involved as well as the means to avoid them, they did not afford the safety which a person is normally entitled to expect, the Vehicle Manufacturer Defendants are bound as manufacturers, distributors and/or suppliers of the Vehicles containing the Airbag Inflators, to make reparation for bodily, moral and material injuries caused to the Class Members by reason of the Airbag Inflator Defect.

145. Personal Injury Subclass Members resident outside of British Columbia seeking compensation for death caused and/or contributed to by one or more of the Defendants’ negligent design and/or failure to warn plead and rely on the equivalent provisions of family compensation legislation in their respective provinces and territories, namely: *Survival of Actions Act*, RSA 2000, c. S-27; *Fatal Accidents Act*, RSA 2000, c F-8; *The Survival of Actions Act*, SS1990-91, c. S-66.1; *The Fatal Accidents Act*, RSS 1978, c F-11; *The Fatal Accidents Act*, CCSM c F50; *Family Law Act*, RSO 1990, c F.3; *Quebec Civil Code*, CQLR c CCQ-1991, art. 1441 and 1442; *Survival of Actions Act*, RSPEI 1988, c S-11; *Fatal Accidents Act*, RSPEI 1988, c F-5; *Survival of Actions Act*, RSNL 1990, c S-32; *Fatal Accidents Act*, RSNL 1990, c F-6; *Survival of Actions Act*, RSNB 2011, c 227; *Fatal Accidents Act*, RSNB 2012, c 104; *Survival of Actions Act*, RSNS 1989, c. 453; *Fatal*

Injuries Act, RSNS 1989, c 163; *Survival of Actions Act*, RSY 2002, c. 212; *Fatal Accidents Act*, RSY 2002, c 86; *Fatal Accidents Act*, RSNWT 1988, c.F-3; and *Fatal Accidents Act*, RSNWT (Nu) 1988, c.F-3; each as amended from time to time and with regulations in force at material times.

Breaches of the Business Practices and Consumer Protection Act

146. The Vehicle Manufacturer Defendants breached the *BPCPA*.

147. The Plaintiff and Consumer Purchase Subclass Members in British Columbia purchased, leased and/or used the Vehicles for primarily personal, family and/or household purposes and are “consumers” within the meaning of section 1 of the *BPCPA*.

148. The Vehicles are “goods” within the meaning of section 1 of the *BPCPA*.

149. The Vehicle Manufacturer Defendants are “suppliers” within the meaning of section 1 of the *BPCPA*.

150. The sale (including leasing) and supply of the Vehicles in British Columbia is a “consumer transaction” within the meaning of section 1 of the *BPCPA*.

151. By the conduct set herein, the Vehicle Manufacturer Defendants have breached sections 4-5 of the *BPCPA*. The Vehicle Manufacturer Defendants’ actions constitute deceptive acts or practices. The Vehicle Manufacturer Defendants knew or ought to have known that their conduct was deceptive.

152. Section 5 of the *BPCPA* prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

153. In their marketing and supply of the Vehicles, the Vehicle Manufacturer Defendants have engaged in conduct contrary to, *inter alia*, subsections 4(3)(a)(i)-(ii) and (b)(vi) by:

- a. representing, expressly or by implication, that the Vehicles were safe; and

b. omitting to represent that:

- i. the Airbag Inflators contained the Airbag Inflator Defect;
- ii. the Vehicles contained the Vehicle Defect;
- iii. the Airbag Inflator Defect and/or the Vehicle Defect posed a real and substantial danger to occupants of the Vehicles; and
- iv. the Vehicles were unsafe as a result of the Airbag Inflator Defect and/or the Vehicle Defect.

154. The Plaintiff and Consumer Subclass Members in British Columbia have an interest in, and were the source of, the funds received from them by the Vehicle Manufacturer Defendants for the Vehicles obtained due to a breach or breaches of sections 4-5 of the *BPCPA*.

155. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that the Vehicle Manufacturer Defendants have breached sections 4-5 of the *BPCPA*.

156. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring the Vehicle Manufacturer Defendants to represent the risk posed by the Airbag Inflator Defect and/or the Vehicle Defect in their marketing and sale (including leasing) of the Vehicles.

157. As a result of the Vehicle Manufacturer Defendants' breaches of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia have suffered loss and/or damage and are entitled to damages under section 171 of the *BPCPA*, including but not limited to the cost of retrofitting the Vehicles with airbag modules not containing the Airbag Inflators.

158. In the alternative to damages under section 171, the Plaintiff and Consumer Subclass Members in British Columbia are entitled to a restoration under section 172(3)(a) of the *BPCPA* for some, or all, of the price paid by them for the Vehicles.

159. Consumer Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of the consumer protection legislation in their respective provinces and territories, namely: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, 2002, SO, c 30, Sch A; and *Consumer Protection Act*, RSPEI 1988, c C-19, *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, *Consumer and Protection Act*, CQLR c P-40.1, *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, *Consumer Protection Act*, RSNS 1989, c 92, *Consumers Protection Act*, RSY 2002, c 40, *Consumer Protection Act*, RSNWT 1988, c C-17 and *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17; each as amended from time to time and with regulations in force at material times, as set out in Schedule “B” to this Notice of Civil Claim.

Breaches of the Competition Act

160. The *Competition Act* applies to business transacted in Canada.

161. The Vehicle Manufacturer Defendants breached sections 52 of the *Competition Act*, as amended from time to time.

162. The Vehicles are each a “product” within the meanings of section 2 and 52(1) of the *Competition Act*.

163. The Vehicle Manufacturer Defendants’ marketing and sale (including leasing) of the Vehicles in Canada when the Vehicle Manufacturer Defendants knew or were reckless or willfully blind to the fact that the Vehicles were not safe is in breach of section 52(1) of the *Competition Act*. In particular, the Vehicle Manufacturing Defendants breached section 52(1) of the *Competition Act* by:

- a. representing, expressly or by implication, that the Vehicles were safe; and

- b. omitting to represent that:
 - i. the Airbag Inflators contained the Airbag Inflator Defect;
 - ii. the Vehicles contained the Vehicle Defect;
 - iii. the Airbag Inflator Defect and/or the Vehicle Defect posed a real and substantial danger to occupants of the Vehicles; and
 - iv. the Vehicles were unsafe as a result of the Airbag Inflator Defect and/or the Vehicle Defect.

164. This conduct was done for the purpose of promoting, directly or indirectly, the supply or use of the Vehicles and for the purpose of promoting, directly or indirectly, the Vehicle Manufacturer Defendants' business interests. Such marketing by the Vehicle Manufacturer Defendants was false or misleading in a material respect. The Vehicle Manufacturer Defendants' representations regarding the Vehicles consisted of representations accompanying the products and/or made available to the public under section 52(2) of the *Competition Act*, whether from Canada or from outside Canada under subsection 52(2.1) of the *Competition Act*.

165. As a result of the Vehicle Manufacturer Defendants' breaches of section 52 of the *Competition Act*, the Plaintiff and Economic Subclass Members acquired a product, namely the Vehicles, which had less value than the Plaintiff and Economic Subclass Members expected.

166. The Plaintiff and Economic Subclass Members have therefore suffered loss and damage including but not limited to the cost to retrofit the Vehicles with airbag modules not containing the Airbag Inflators, and are entitled to damages in that amount under section 36 of the *Competition Act*.

Health Care Costs

167. The Province of British Columbia provides coverage for health care services to British Columbia residents through the Medical Services Plan and Health Insurance BC.

168. Personal Injury Subclass Members in British Columbia are each a “beneficiary” within the meaning of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 and any amendments.

169. Personal Injury Subclass Members have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. The Plaintiff pleads the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial governments: *Health Care Cost Recovery Act*, SBC 2008, c 27; *Medicare Protection Act*, RSBC 1996, c 286; *Pharmaceutical Services Act*, SBC 2012, c 22; *Hospital Act*, RSA 2000, c H-12; *Crown's Right of Recovery Act*, SA 2009, c C-35; *The Health Administration Act*, RSS 1978, c H-0.0001 (formerly known as the *Department of Health Act*); *Health Services Insurance Act*, CSSM s H35; *Health Insurance Act*, RSO 1990, c H.6; *Home Care and Community Services Act*, 1994, SO 1994, c26; *Health Services Act*, RSNB 1973, c H-3; *Medical Services Payment Act*, RSNB 1973, c M-7; *Hospital Services Act*, RSNB 1973, c H-9; *Family Services Act*, SNB 1980, c F-2.2; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8; *Health Services Payment Act*, RSPEI 1988, c H-2; *Health Services and Insurance Act*, RSNS 1989, c 197; *Hospital Insurance Agreement Act*, RSN 1990, c H-7; *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3; *Medical Care Act*, RSNWT (Nu) 1988, c M-8; *Health Insurance Act*, CQLR c A-29; and *Hospital Insurance Act*, RSQ c A-28.

Punitive Damages

170. ARC’s conduct in misrepresenting the safety of and refusing to recall the Airbag Modules, especially when the Alternative Airbag Inflator Design reduces the risk of harm posed by the Airbag Inflators, was high-handed, outrageous and reckless and ARC is liable to pay punitive damages to the Plaintiff and Class Members as a result. ARC’s

refusal to heed the NHTSA's advice to recall generally the Airbag Inflator issued in 2023 is outrageous and reckless.

171. The Vehicle Manufacturer Defendants' conduct in misrepresenting the safety of and refusing to recall the Vehicles was high-handed, outrageous and reckless and the Vehicle Manufacturer Defendants are liable to pay punitive damages to the Plaintiff and Class Members as a result, in particular after the NHTSA's general advice in 2023 to recall the Airbag Inflator.

Joint and Several Liability

172. ARC and each of the Vehicle Manufacturer Defendants are jointly and severally liable for the actions and damages allocable to any of them.

Limitation Periods

173. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by the acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until the date that this notice of civil claim was filed. The harm is ongoing.

174. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v Godfrey*, 2019 SCC 42 to postpone the running of the limitation period until March 1, 2020.

175. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular sections 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, section 30 and the *Limitation Act*, RSBC 1996, c 266.

Service on the Defendants

176. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 the *Court Jurisdiction and Proceedings Transfer*

Act, SBC 2003, c 28 (the "**CJPTA**"), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

177. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: May 30, 2023



Signature of lawyer for plaintiff
Anthony A Vecchio, K.C.
Saro J Turner
Sam J Jaworski

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

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the Defendants ARC AUTOMOTIVE, INC., FCA US, LLC, FCA CANADA INC., STELLANTIS N.V., GENERAL MOTORS COMPANY, GENERAL MOTORS OF CANADA COMPANY, FORD MOTOR COMPANY, FORD MOTOR COMPANY OF CANADA, LIMITED, HYUNDAI AUTO CANADA CORPORATION, HYUNDAI MOTOR AMERICA INC., HYUNDAI MOTOR COMPANY, KIA CANADA INC., KIA AMERICA INC., KIA CORPORATION, BMW CANADA INC., BMW OF NORTH AMERICA, LLC, BAYERISCHE MOTOREN WERKE AG, MERCEDES-BENZ CANADA INC., MERCEDES-BENZ USA, LLC, MERCEDES-BENZ GROUP AG, VOLKSWAGEN GROUP CANADA INC., VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, AUDI CANADA INC., AUDI OF AMERICA INC., AND AUDI AG outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising from the negligent design of airbag modules, the defendants' failures to warn of the defective airbag modules and the defendants' failure to recall the defective airbag modules and/or the vehicles containing the airbag modules.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

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

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28

Court Order Interest Act, RSBC 1996, c 79

Privacy Act, RSBC 1996, c 373

SCHEDULE "A"
Affected Vehicle Models

Manufacturer	Make	Model	Model Year
BMW	BMW	i3	2014-2017
FCA	Chrysler	Town & Country	2001-2007
	Chrysler	PT Cruiser	2001-2002
	Dodge	Ram 1500	1998-1999
	Dodge	Ram 2500	1998-1999
	Dodge	Ram 3500	1998-1999
	Dodge	Caravan	2001-2007
	Dodge	Grand Caravan	2001-2007
	Jeep	Renegade	2015-2016
	Fiat	500x	2015-2016
Ford	Ford	Crown Victoria	2004-2011
	Mercury	Grand Marquis	2004-2011
	Lincoln	Town Car	2004-2011
GM	Buick	Enclave	2008-2017
	Buick	LaCrosse	2005-2009, 2017
	Buick	Rainier	2005-2007
	Buick	Rendezvous	2004-2007
	Buick	Terazza	2005-2007
	Cadillac	ATS	2013-2017
	Cadillac	CTS	2003-2007, 2014-2016
	Cadillac	Deville	2004-2005
	Cadillac	ELR	2014, 2016
	Cadillac	Escalade	2003-2016
	Cadillac	Escalade EXT	2003-2013
	Cadillac	Escalade ESV	2003-2014
	Cadillac	Seville	2003-2004
	Cadillac	SRX	2004-2009
	Cadillac	STS	2005
	Cadillac	STS and STS-V	2006-2007
	Cadillac	XLR	2004-2007
	Cadillac	XTS	2013-2016
	Chevrolet	Aveo	2004-2005

Chevrolet	Avalanche	2002-2013
Chevrolet	Cavalier	2003-2005
Chevrolet	Corvette C6	2005-2013
Chevrolet	Epica	2004
Chevrolet	Equinox	2005-2006
Chevrolet	Express	2003-2008
Chevrolet	Impala	2006-2010
Chevrolet	Malibu	2004-2005, 2008-2015
Chevrolet	Monte Carlo	2006-2010
Chevrolet	Silverado	2003-2013
Chevrolet	Suburban	2002-2014
Chevrolet	Tahoe	2003-2014
Chevrolet	SSR	2003-2006
Chevrolet	TrailBlazer	2004
Chevrolet	Trailblazer/EXT	2005-2009
Chevrolet	Traverse	2009-2017
Chevrolet	Venture	2004-2005
Chevrolet	Uplander	2005-2009
GMC	Acadia	2007-2016
GMC	Envoy	2004
GMC	Envoy/XL/XUV	2005-2009
GMC	Savana	2003-2008
GMC	Sierra	2003-2013
GMC	Yukon	2003-2013
GMC	Yukon XL	2003-2013
Hummer	H2	2003-2007
Hummer	H3	2006-2010
Hummer	H3T	2009-2010
Oldsmobile	Bravada	2004-2005
Oldsmobile	Silhouette	2004
Pontiac	Bonneville	2004-2005
Pontiac	G6	2005-2009
Pontiac	Montana	2004-2005
Pontiac	Montana SV6	2005-2009
Pontiac	Sunfire	2003-2005
Pontiac	Torrent	2006
Saab	9-7X	2005-2009

	Saturn	Aura	2007-2009
	Saturn	Outlook	2007-2010
	Saturn	Relay	2005-2009
	Saturn	Vue	2004-2007
Hyundai	Hyundai	Azera	2007-2011
	Hyundai	Elantra	2006-2016
	Hyundai	Elantra Touring	2007-2012
	Hyundai	Elantra GT	2012-2016
	Hyundai	Equus	2009-2012
	Hyundai	Genesis Coupe	2010-2015
	Hyundai	Sonata	2005-2010
	Hyundai	Tiburon	2002-2008
	Hyundai	Tucson	2004-2010
	Hyundai	XG350	2002-2005
Kia	Kia	Amanti	2006-2009
	Kia	Forte	2014-2016
	Kia	Magentis	2001-2006
	Kia	Rio	2009-2011
	Kia	Rondo	2007-2012
	Kia	Sedona	2006-2014
	Kia	Sportage	2005-2016
Mercedes-Benz	Smart	Fortwo	2008-2016
Volkswagen	Volkswagen	Golf	2016
	Volkswagen	Golf R	2016
	Volkswagen	Golf Wagon	2016
	Volkswagen	GTI	2016
	Audi	A3	2016
	Audi	A3 E-Tron	2016
	Audi	S3	2016
	Audi	TT	2016

SCHEDULE “B”
Related Extra-Provincial Statutes

Alberta

1. The Vehicle Manufacturer Defendants have breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the “***Alberta CPA***”). The Consumer Subclass Members in Alberta are “consumers” within the meaning of section 1 of the *Alberta CPA*. The Vehicles are “goods” within the meaning of section 1 of the *Alberta CPA*. The Vehicle Manufacturer Defendants are each a “supplier” within the meaning of section 1 of the *Alberta CPA*. The supply of the Vehicles is a “consumer transaction” within the meaning of section 1 of the *Alberta CPA*.

2. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached sections 5-6 of the *Alberta CPA*. The Vehicle Manufacturer Defendants’ actions are in violation of sections 6(4)(c), 6(4)(e), and 6(2)(c) and constitute “unfair practices”.

3. As a result of the Vehicle Manufacturer Defendants’ breaches of the *Alberta CPA*, the Consumer Subclass Members in Alberta are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to sections 7(1), 13(2)(b) and 142.1(2)(a) of the *Alberta CPA* and/or repayment of the amount by which the payments made by the Consumer Subclass Members in Alberta to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect pursuant to section 7(3), or in the alternative restitution of some, or all, of the price paid by them to the Vehicle Manufacturer Defendants for the Vehicles pursuant to sections 7(3), 13(2)(d)(ii) and 142.1(2)(c).

4. The Vehicle Manufacturer Defendants cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a “supplier” and a “consumer” in respect of a “consumer transaction” rendering such a clause void and unenforceable.

Saskatchewan

5. The Vehicle Manufacturer Defendants have breached *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the "**Saskatchewan CPABPA**"). Consumer Subclass Members in Saskatchewan are "consumers" within the meaning of section 2 of the *Saskatchewan CPABPA*. The Vehicles are "goods" within the meaning of section 2 of the *Saskatchewan CPABPA*. The Vehicle Manufacturer Defendants are each a "supplier" within the meaning of section 2 of the *Saskatchewan CPABPA*. The supply of the Vehicles are "transactions involving goods and services" within the meaning of section 2 and 5 of the *Saskatchewan CPABPA*.

6. By reason of the Vehicle Manufacturer Defendants' conduct, the Vehicle Manufacturer Defendants have breached sections 6-9 of the *Saskatchewan CPABPA*. The Vehicle Manufacturer Defendants' actions are in violation of sections 6(a), 7(a), 7(c), and 7(o) and constitute "unfair practices".

7. As a result of the Vehicle Manufacturer Defendants' breaches of the *Saskatchewan CPABPA*, the Consumer Subclass Members in Saskatchewan are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section 93(1)(b) of the *Saskatchewan CPABPA*, or in the alternative restitution of some, or all, of the amounts received by the Vehicle Manufacturer Defendants from the Plaintiff and Consumer Subclass Members in Saskatchewan through the sale (including leasing) of the Vehicles under section 93(1)(a).

8. The Vehicle Manufacturer Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 101 of the *Saskatchewan CPABPA* which invalidates any such clause or waiver, rendering it void.

Manitoba

9. The Vehicle Manufacturer Defendants have breached the *Business Practices Act*, CCSM, c. B120 (the "**Manitoba BPA**"). The Consumer Subclass Members in Manitoba are each a "consumer" within the meaning of section 1 of the *Manitoba BPA*. The Vehicles

are “goods” within the meaning of section 1 of the *Manitoba BPA*. The Vehicle Manufacturer Defendants are each a “supplier” within the meaning of section 1 of the *Manitoba BPA*. The supply of the Vehicles is a “consumer transaction” within the meaning of section 1 of the *Manitoba BPA*.

10. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached section 2 of the *Manitoba BPA*. The Vehicle Manufacturer Defendants’ actions are in violation of sections 2(1)(a)-(b) and 2(3)(a) and (c) and constitute “unfair business practices”.

11. As a result of the Vehicle Manufacturer Defendants’ breaches of the Manitoba BPA, the Consumer Subclass Members in Manitoba are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section 23(2)(a) of the *Manitoba BPA*, or in the alternative repayment of some, or all, of the purchase and/or leasing price paid for the Vehicles pursuant to section 23(2)(d).

Ontario

12. The Vehicle Manufacturer Defendants have breached the *Ontario Consumer Protection Act*, 2002, SO 2002, c 30, Sched A (the “**Ontario CPA**”). Consumer Subclass Members in Ontario are “consumers” within the meaning of section 1 of the *Ontario CPA*. The Vehicles are “goods” within the meaning of section 1 of the *Ontario CPA*. The Vehicle Manufacturer Defendants are each a “supplier” within the meaning of section 1 of the *Ontario CPA*. The supply of the Vehicles constitutes a “consumer transaction” within the meaning of section 1 of the *Ontario CPA*. The Vehicle Manufacturer Defendants made “representations” within the meaning of section 1 of the *Ontario CPA*.

13. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached sections 14 and 17 of the *Ontario CPA*. The Vehicle Manufacturer Defendants’ actions are in violation of sections 14(2)(1), 14(2)(3), and 14(2)(14) and constitute “unfair business practices” in breach of section 17.

14. As a result of the Vehicle Manufacturer Defendants' breaches of the *Ontario CPA*, the Consumer Subclass Members in Ontario are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and/or repayment of the amount by which the payments made by the Consumer Subclass Members in Ontario to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect pursuant to section 18(2) of the *Ontario CPA*.

15. The Vehicle Manufacturer Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to sections 7 and 8 of the *Ontario CPA*, which provide the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

16. The Plaintiff further pleads that the notice requirements pursuant to section 18(3) of the *Ontario CPA* are fulfilled by the filing of this Notice of Civil Claim, and in the alternative by the delivery of written notice to the Vehicle Manufacturer Defendants as set out in the Notice of Civil Claim. In the further alternative, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to section 18(15) of the *Ontario CPA*.

Prince Edward Island

17. The Vehicle Manufacturer Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"). Consumer Subclass Members in Prince Edward Island are "consumers" within the meaning of section 1 of the *PEI BPA*. The Vehicles are "goods" within the meaning of section 1 of the *PEI BPA*. The Vehicle Manufacturer Defendants made "consumer representations" within the meaning of section 1 of the *PEI BPA*.

18. By reason of the Vehicle Manufacturer Defendants' conduct, the Vehicle Manufacturer Defendants have breached sections 2 and 3 of the *PEI BPA*. The Vehicle

Manufacturer Defendants' actions are in violation of sections 2(a)(i), 2(a)(iii), and 2(a)(xiii) and constitute "unfair practices" in breach of section 3.

19. As a result of the Vehicle Manufacturer Defendants' breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect and/or repayment of the amount by which the payments made by them to the Vehicle Manufacturer Defendants for the Vehicles exceed the value that the Vehicles have as a result of the Airbag Inflator Defect pursuant to section 4(1) of the *PEI BPA*.

Newfoundland and Labrador

20. The Vehicle Manufacturer Defendants have breached the Consumer Protection and *Business Practices Act*, SNL 2009, c C-31.1 (the "***Newfoundland CPABPA***"). Consumer Subclass Members in Newfoundland are "consumers" within the meaning of section 2 of the *Newfoundland CPABPA*. The Vehicles are "goods" within the meaning of the *Newfoundland CPABPA*. The Vehicle Manufacturer Defendants are "suppliers" within the meaning of the *Newfoundland CPABPA*. The supply of the Vehicles constitutes a "consumer transaction" within the meaning of the *Newfoundland CPABPA*.

21. By reason of the Vehicle Manufacturer Defendants' conduct, the Vehicle Manufacturer Defendants have breached sections 7 and 9 of the *Newfoundland CPABPA*. The Vehicle Manufacturer Defendants' actions are in violation of sections 7(1)(a), 7(1)(c), and 7(1)(w) and constitute "unfair business practices" under section 9.

22. As a result of the Vehicle Manufacturer Defendants' breaches of the *Newfoundland CPABPA*, Consumer Subclass Members in Newfoundland and Labrador are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section 10(f) of the *Newfoundland CPABPA*, or in the alternative repayment of some, or all, of the purchase and/or leasing price paid by them to the Vehicle Manufacturer Defendants for the Vehicles under section 10(e).

23. The Vehicle Manufacturer Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPABPA*, which invalidates any such clause or waiver rendering it void.

Quebec

24. The Vehicle Manufacturer Defendants have breached the Consumer Protection Act, CQRL c P. 40-1 (the “**Québec CPA**”). Consumer Subclass Members in Québec are “consumers” within the meaning of section 1(e) of the *Québec CPA*. The Vehicles are “goods” within the meaning of section 1(d) of the *Québec CPA*. The Vehicle Manufacturer Defendants are “merchants” as well as “manufacturers” within the meaning of the *Québec CPA*. The supply of the Vehicles constitutes a consumer contract within the meaning of section 2 of the *Québec CPA*.

25. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached sections 219 and 228 of the *Québec CPA*. The Vehicle Manufacturer Defendants’ actions constitute “prohibited business practices” under section 219.

26. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached sections 37 and 38 of *Québec CPA*. The Vehicle Manufacturer Defendants breached the implied warranty as to fitness pursuant to section 37 and the implied warranty as to durability under section 38. For both of these breaches, section 53 of the *Quebec CPA* applies.

27. As a result of the Vehicle Manufacturer Defendants’ breaches of the *Québec CPA*, Consumer Subclass Members in Québec are entitled to a reduction of some, or all, of the purchase and/or leasing price paid by them to the Vehicle Manufacturer Defendants for the Vehicles under section 272 as well as damages equaling the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect.

28. The Vehicle Manufacturer Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 11.1 of the *Québec CPA*, which invalidates and prohibits any such clause or waiver rendering it void.

New Brunswick

29. The Vehicle Manufacturer Defendants have breached the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1 (the “***New Brunswick CPWLA***”). The Vehicle Manufacturer Defendants are each a “seller” within the meaning of section 1 of the *New Brunswick CPWLA*. The Vehicles are each a “consumer product” within the meaning of section 1 of the *New Brunswick CPWLA*. The contracts between the Vehicle Manufacturer Defendants for the supply of the Vehicles to dealerships or other intermediaries are each a “contract for the sale or supply of a consumer product” within the meaning of section 1 of the *New Brunswick CPWLA*.

30. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached sections 10 and 11 of the *New Brunswick CPWLA*. The Vehicle Manufacturer Defendants breached the implied warranty as to quality pursuant to sections 10(1) and (2) and the implied warranty as to fitness under section 11.

31. Section 23 of the *New Brunswick CPWLA* prescribes that any person who is not a party to a contract with the seller but who has suffered a consumer loss because of a breach of one or more warranties by the seller may recover damages against the seller if the loss was reasonably foreseeable at the time of the contract as liable to result from the breach. Consumer Subclass Members in New Brunswick can therefore recover damages for the loss incurred as a result of the Vehicle Manufacturer Defendants’ breach or breaches of warranties particularized above.

32. As a result of the Vehicle Manufacturer Defendants’ misconduct, Consumer Subclass Members in New Brunswick are entitled to damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect pursuant to section 15 of the *New Brunswick CPWLA*.

Nova Scotia

33. The Vehicle Manufacturer Defendants have breached the *Consumer Protection Act*, RSNS 1989, c 92 (the “***Nova Scotia CPA***”). The Vehicles are “goods” within the

meaning of section 2 of the *Nova Scotia CPA*. The Vehicle Manufacturer Defendants are each a “seller” within the meaning of section 2 of the *Nova Scotia CPA*. The contract for sale (including leasing) of the Vehicles is a “customer sale” within the meaning of section 26 of the *Nova Scotia CPA*. The Consumer Subclass Members in Nova Scotia are “purchasers” within the meaning of section 26 of the *Nova Scotia CPA*.

34. The Vehicle Manufacturer Defendants have breached sections 26(f) and 28A(1) of the *Nova Scotia CPA*. As a result of the Airbag Inflator Defect and/or the Vehicle Defect, the Vehicle Manufacturer Defendants have breached the implied condition that the Vehicles would be of merchantable quality pursuant to section 26(f). The Vehicle Manufacturer Defendants’ representations pertaining to the safety of the Vehicles detailed in the Notice of Civil Claim constitute express warranties pursuant to section 28A(1)(b) of the *Nova Scotia CPA* which, pursuant to section 28A(3), form part of the contract for sale or lease and each subsequent purchaser or lessee has the same rights under the express warranty as if they were the original purchaser lessee. As a result of the Airbag Inflator Defect and/or the Vehicle Defect, the Vehicle Manufacturers Defendants have breached the express warranty as to the safety of the Vehicles.

35. Consumer Subclass Members in Nova Scotia are therefore entitled to recover damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition under section 26(3)(f) and/or the express warranty under section 28A.

Yukon

36. The Vehicle Manufacturer Defendants have breached the *Consumers Protection Act*, RSY 2002, c 40 (the “***Yukon CPA***”). The Consumer Subclass Members are each a “buyer” within the meaning of section 1 of the *Yukon CPA*. The Vehicles are “goods” within the meaning of section 1 of the *Yukon CPA*. The Vehicle Manufacturer Defendants are each a “seller” within the meaning of section 1 of the *Yukon CPA*. The purchase and/or leasing of the Vehicles by the Consumer Subclass Members in Yukon from the Vehicle

Manufacturer Defendants constitutes a “retail sale” within the meaning of section 1 of the *Yukon CPA*.

37. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached the implied condition that the Vehicles would be of merchantable quality pursuant to section 58(1)(e) of the *Yukon CPA*.

38. Consumer Subclass Members in Yukon are therefore entitled to recover damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition under section 58(1)(e).

Northwest Territories

39. The Vehicle Manufacturer Defendants have breached the *Consumer Protection Act*, RSNWT 1988, c C-17 (the “***Northwest Territories CPA***”). The Consumer Subclass Members are each a “buyer” within the meaning of section 1 of the *Northwest Territories CPA*. The Vehicles are “goods” within the meaning of section 1 of the *Northwest Territories CPA*. The Vehicle Manufacturer Defendants are each a “seller” within the meaning of section 1 of the *Northwest Territories CPA*. The purchase and/or leasing of the Vehicles by the Consumer Subclass Members in the Northwest Territories from the Vehicle Manufacturer Defendants constitutes a “retail sale” within the meaning of section 1 of the *Northwest Territories CPA*.

40. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached the implied condition that the Vehicles would be of merchantable quality pursuant to section 70(1)(e) of the *Northwest Territories CPA*.

41. Consumer Subclass Members in the Northwest Territories are therefore entitled to recover damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition under section 70(1)(e).

Nunavut

42. The Vehicle Manufacturer Defendants have breached the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17 (the “**Nunavut CPA**”). The Consumer Subclass Members are each a “buyer” within the meaning of section 1 of the *Nunavut CPA*. The Vehicles are “goods” within the meaning of section 1 of the *Nunavut CPA*. The Vehicle Manufacturer Defendants are each a “seller” within the meaning of section 1 of the *Nunavut CPA*. The purchase and/or leasing of the Vehicles by the Consumer Subclass Members in Nunavut from the Vehicle Manufacturer Defendants constitutes a “retail sale” within the meaning of section 1 of the *Nunavut CPA*.

43. By reason of the Vehicle Manufacturer Defendants’ conduct, the Vehicle Manufacturer Defendants have breached the implied condition that the Vehicles would be of merchantable quality pursuant to section 70(1)(e) of the *Nunavut CPA*.

44. Consumer Subclass Members in Nunavut are therefore entitled to recover damages including but not limited to the cost to eliminate the danger posed by the Airbag Inflator Defect and/or the Vehicle Defect as a result of the Vehicle Manufacturer Defendants’ breaches of the implied condition under section 70(1)(e).