

COURT FILE NO. 2001-09528
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF (APPLICANT) CHRISTOPHER HEARD
DEFENDANTS (RESPONDENTS) FIAT CHRYLSER AUTOMOBILES N.V.,
FIAT CHRYLSER AUTOMOBILES US LLC,
FCA CANADA INC.,
MOPAR & DESIGN, and
WOCO TECH USA, INC.



NB
C21136
CMH Feb 22, 2024

Brought under the Class Proceedings Act

DOCUMENT APPLICATION
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
21 King Street West, Suite 905
Hamilton, Ontario
L8P 4W7
Casey R. Churko
Tel: (306) 540-2284
Fax: (613) 713-2223



**FIRST NOTICE OF APPLICATION
(CLASS CERTIFICATION)**

NOTICE TO RESPONDENTS:

This *Application* is made against you. You are the Respondents.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the *Application* is heard as shown below:

Date	February 22 nd , 2024
Time	9:00 am

Where	Alberta Court of Queen's Bench 601 5 St SW Calgary, Alberta T2P 5P7
Before Whom	The Honourable Justice Robert J. Hall

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order certifying this proceeding as one or more multi-jurisdictional class proceedings on the terms proposed herein, or on any other suitable terms.

Grounds for making this *Application*:

(a) The pleadings disclose a cause of action.

2. FCA US and FCA Canada designed Ram 1500 and Jeep Grand Cherokee vehicles that FCA US manufactured in Michigan and that FCA Canada imported into and marketed throughout Canada through authorized dealers.

3. The vehicles use a conventional suspension with four points of attachment near each wheel. They consist of linkages and a spring/shock-based suspension.

(a) Ram 1500 trucks could be, and for class members were, equipped with Active-Level™ Four-Corner air suspension systems.

(b) Jeep Grand Cherokees could be, and for class members were, equipped with Quadra-Lift® air suspensions.

Both FCA systems are referred to as “Air Suspensions” herein.

4. From 2013, FCA US made, and FCA Canada marketed throughout Canada, Ram 1500 trucks that were available with Air Suspensions. From 2011, FCA US

made, and FCA Canada marketed throughout Canada, Class Vehicles that were available with Air Suspensions.

5. Each of FCA US and FCA Canada advertised, assembled, distributed, imported, leased, manufactured, offered, produced, promoted, provided, serviced, supplied, or trademarked Class Vehicles in Canada,¹ either directly or through authorized agents, dealers, employees, representatives, and salespersons.

6. Consumers paid a premium price of \$1,500 or more for Air Suspensions in Class Vehicles.²

7. Air Suspensions had air bags in all 4 corners of Class Vehicles, and not just at the rear like in other air suspension systems that FCA and other automobile manufacturers used in their trucks. 4 corner air suspensions were not available in Ram 2500, 3500, 4500, and 5500 trucks.

8. In comparison to other types of suspensions, the purpose and intended function of Air Suspensions included altering vehicle ride height and stiffness, better roadway deviation isolation, reduced fuel consumption, and better motion

¹ **British Columbia:** *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 1(1) (“supplier”) || **Alberta:** *Consumer Protection Act*, RSA 2000, c C-26.3, ss 1(1)(k) and (l) || **Saskatchewan:** *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, ss 2(i) and (h) || **Manitoba:** *The Business Practices Act*, SM 1990-91, c 6, s 1 (“supplier”) || **Ontario:** *Consumer Protection Act, 2002*, SO 2002, c 30, Sched. A, s 1 (“supplier”) || **Québec:** *Consumer Protection Act*, CQLR, c P-40.1, s 1(g) || **Newfoundland & Labrador:** *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, s 2(j) || **Nunavut:** *Consumer Protection Act*, RSNWT 1988 (Nu.), c C-17, s 72.1 (“supplier”).

² Only Ram 1500 Limited automatically came with Air Suspension.

control performance.

9. Air Suspensions in Ram 1500's were supposed to have 5 ride height settings that FCA marketed as having the following functions:

I.	Entry/Exit Mode: lowers the truck by 2 inches below Normal, to allow easy entry and exit for passengers and gear
II.	Aerodynamic: lowers the truck by 0.5 inches from Normal to improve fuel efficiency by 1%
III.	Normal: 8.7 inches of clearance, measured from the base of the door sill
IV.	Off-Road 1: lifts the truck by 1 inch above Normal to allow users to clear obstacles and impediments easier (such as in rocky or snowy environments)
V.	Off-Road 2: lifts the truck by 2 inches above Normal, for additional obstacle and impediment clearing above position IV

10. Air Suspensions in Jeep Grand Cherokees were supposed to have 5 modes:

I.	Park Mode: lowers the jeep 1.6 inches below Normal for easy ingress and egress
II.	Aero Mode: lowers the jeep 0.6 inches from Normal to adjust for optimal performance and fuel economy
III.	Normal: 8.1 inches of clearance
IV.	Off Road 1: lifts the jeep by 1.3 inches above Normal for added height in clearing obstacles
V.	Off Road 2: lifts the jeep by 2.6 inches over Normal

11. Air Suspensions are closed systems that are filled with nitrogen (an inert gas

that does not expand or contract with temperature variations). A closed system that uses nitrogen should not have moisture in it. When nitrogen levels get low, compressors at the back of Air Suspensions draw in external air to keep sufficient volume to maintain required pressure. In cold weather, they pull in moisture-filled air that causes condensation that freezes to ice that expands and that in turn prevents valves from operating, blocks or restricts air flow, and ruptures lines, valve connections, and other components.

12. Reasonably designed air suspension systems require an effective and proper dryer and purge system to absorb or expel water and moisture that accumulates. The dryer and purge systems in Air Suspensions in Class Vehicles were not properly designed, and they failed to perform their function as intended.

13. When Air Suspensions fail, they no longer perform the even ride height and roadway isolation function intended, which in turn causes:

- (a) reduced visibility near the vehicle that increases the risk of impacts;
- (b) a shift in weight distribution that can make towing, braking, and steering less stable (which increases the likelihood of a collision);
- (c) decreased traction which increases the likelihood of a collision due to the reduced ability to steer and brake; and
- (d) uneven tire wear and roadway vibrations that each increase the likelihood of tire failure and steering issues related to tire wear.

14. Air Suspension failure poses a danger to operators and occupants of the

Class Vehicles, other users of the road, and to Class Vehicles themselves. When air suspension systems leak, outside air with moisture enters the system, and causes mechanical failure of the compressor, blown fuses and valves, leaking hoses, and other mechanical failures.

15. Air Suspensions were not designed for use in cold temperatures. Air Suspension systems that draw in outside air suck in cold, moisture-filled winter air that freezes and thereby causes Air Suspensions to fail. Air Suspensions stop functioning as intended in temperatures below freezing. They are therefore unsuitable for use in Canadian winters.

16. When Air Suspensions fail, Class Vehicles can not or should not be driven. Air Suspensions that initially fail in cold weather subsequently fail in warmer weather and therefore cannot be safely driven in other seasons.

17. FCA knew that Air Suspensions in Class Vehicles can, would, did, and do fail to perform as intended in Canadian winters. The Defendants exchanged correspondence, reports, and other communications with their authorized dealers. They provided technical service bulletins to dealers about the defect.

18. At a reasonable cost, FCA could have designed or incorporated an alternate air suspension system into Class Vehicles that did not have the defect, including by altering the placement of dryers within the Air Suspension system.

19. The Defendants breached their duties of care to all class members by designing, manufacturing, and marketing Class Vehicles in Canada, or by subsequently failing to recall them once on the market.

20. The Defendants breached duties of care and consumer protection legislation by marketing Class Vehicles that were not fit for the purpose of ordinary operation in Canada.

21. By failing to disclose in their standardized class vehicle brochures, manuals, and other sources that they published and distributed throughout Canada that Air Suspensions fail to perform as intended in cold weather, the Defendants committed “deceptive acts or practices”,³ “unfair business practices”,⁴ and “unfair practices”,⁵ and made “false or misleading”⁶ representations.

22. As a result of the Defendants’ breaches of their duties of care, and their

³ **British Columbia:** *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 4(3)(b)(vi) (“deceptive act or practice”).

⁴ **Nunavut:** *Consumer Protection Act*, RSNWT 1988 (Nu.), c C-17, s 72.2(1) (“unfair business practice”) || **Manitoba:** *The Business Practices Act*, SM 1990-91, c 6, ss 2(1)(a) and 2(3)(p) (“unfair business practice”) || **Newfoundland & Labrador:** *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, s 7(1) (“unfair business practice”).

⁵ **Alberta:** *Consumer Protection Act*, RSA 2000, c C-26.3, s 6(4)(a) (“unfair practice”) || **Saskatchewan:** *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 ss 6(a) and 7(o) (“unfair practice”) || **Ontario:** *Consumer Protection Act, 2002*, SO 2002, c 30, Sched. A, ss 14(1) and (2)(14.) (“unfair practice”) || **Prince Edward Island:** *Business Practices Act*, RSPEI 1988, c B-7, s 2(a)(xiii) (“unfair practice”).

⁶ **Canada:** *Competition Act*, RSC 1985, c C-34, s 52(1) (“false or misleading” representation) || **Québec:** *Consumer Protection Act*, CQLR, c P-40.1, s 219 (“false or misleading representations”).

breaches of business practices, competition, and consumer protection legislation, all or some class members:

- (a) did not receive the Air Suspensions that they paid an additional premium price of at least \$1,500 for;
- (b) lost resale and trade-in value for their Class Vehicles;
- (c) incurred costs in attempting to repair Air Suspensions that failed;
- (d) paid to replace Air Suspensions with a coil spring or other traditional suspension system at a cost of approximately \$3,000 or more;
- (e) lost employment and leisure time by having to attend to repairs;
- (f) incurred additional transportation costs while waiting for repairs;
- (g) did not get the comfortable rides that FCA marketed Air Suspensions as being capable of providing, and in fact experienced bumpy rides that caused personal injury and body pain to class members and other occupants of Class Vehicles;
- (h) experienced damage to their Class Vehicles and parts thereof; and
- (i) suffered personal injury.

23. The Defendants instructed their authorized dealers to perform numerous operations in (failed) attempts to remedy the defect, including refilling the suspension system with nitrogen, pulling humidity from the system with multiple partial deflations, performing leak checks, and replacing the leaking component or installing an updated air compressor. The remedies do not work, and the defect is not remediable.

24. On behalf of class members, the Plaintiff claims:

- (a) compensatory damages at common law and by statute;⁷ and
- (b) exemplary and punitive damages at common law and by statute.⁸

(b) There is an identifiable class of 2 or more persons.

25. There is “some basis in fact” that there is an identifiable class (or classes) of 2 or more individuals who leased or purchased 2013-23 Ram 1500 trucks or 2011-23 Jeep Grand Cherokees with Air Suspensions (“**Class Vehicles**”) from an authorized FCA dealer (“**class members**”), or alternatively, such other class definition(s) as shall be proposed by counsel for the Plaintiff and/or determined by the Court.

(c) The claims of class members raise common issues.

26. There is a common design or other defect in the Air Suspensions that were installed in Class Vehicles that can (and did) cause them to fail during ordinary use in cold weather. The defect can manifest at any time and without warning.

⁷ **British Columbia:** *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 171(1) || **Alberta:** *Consumer Protection Act*, RSA 2000, c C-26.3, s 13(2)(b) || **Saskatchewan:** *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, s 93(1)(b) || **Manitoba:** *The Business Practices Act*, SM 1990-91, c 6, s 23(2)(a) || **Ontario:** *Consumer Protection Act, 2002*, SO 2002, c 30, Sched. A, s 18(1) || **Québec:** *Consumer Protection Act*, CQLR, c P-40.1, s 272 || **Prince Edward Island:** *Business Practices Act*, RSPEI 1988, c B-7, s 4(1) || **Newfoundland & Labrador:** *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, s 10(2)(b) || **Nunavut:** *Consumer Protection Act*, RSNWT 1988 (Nu.), c C-17, s 72.5(2)(b) || **Canada:** *Competition Act*, RSC 1985, c C-34, s 36(1).

⁸ **Alberta:** *Consumer Protection Act*, RSA 2000, c C-26.3, s 13(2)(c) || **Saskatchewan:** *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, s 93(1)(b) || **Manitoba:** *The Business Practices Act*, SM 1990-91, c 6, s 23(4) || **Ontario:** *Consumer Protection Act, 2002*, SO 2002, c 30, Sched. A, s 100(3) || **Québec:** *Consumer Protection Act*, CQLR, c P-40.1, s 272 || **Prince Edward Island:** *Business Practices Act*, RSPEI 1988, c B-7, s 4(2) || **Newfoundland & Labrador:** *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, s 10(2)(b) || **Nunavut:** *Consumer Protection Act*, RSNWT 1988 (Nu.), c C-17, s 72.5(2)(b).

27. There are different models and trim levels of Ram 1500s⁹ and Jeep Grand Cherokees,¹⁰ but,

- (a) each was (and is) available with Air Suspension;
- (b) there are no vehicles other than Class Vehicles that had similar defective Air Suspension systems;
- (c) the Air Suspensions used in Class Vehicles were the same or similar regardless of the different features available in different Ram 1500 and Jeep Grand Cherokee trim lines and model years;
- (d) each was commonly affected by the defect, regardless of other vehicle features and differences each model had; and
- (e) each was marketed with common consumer brochures and catalogs, owners' manuals, user guides, and warranty/maintenance booklets.

28. Different features that were available in different trim lines and model years did not eliminate or mitigate the common manifestation of the Air Suspension defect. Differences between the Ram 1500 and Jeep Grand Cherokee suspension systems and parts do not detract from the common issues analysis.

29. Air Suspensions in Ram 1500's and Jeep Grand Cherokees incorporated common (but not identical) parts, including compressors, temperature sensors, pressure relief valves, hoses, and spring assemblies.

⁹ Trim levels of Ram 1500's included (but were not limited to) Big Horn, HFE, Laramie, Laramie Limited, Laramie Longhorn, Limited, Limited Longhorn, Outdoorsman, Rebel, SLT, Sport, ST, SXT, Tradesman, TRX, available in Crew Cab, Quad Cab, and Regular Cab.

¹⁰ Trim levels of Jeep Grand Cherokee included (but were not limited to) High Altitude, Overland, Summit, Summit Reserve, and Trailhawk.

30. The defect in Air Suspensions manifested in common across Canada, regardless of the province or territory in which Class Vehicles were purchased or used. There are variations in climate zones across Canada, but Class Vehicles were (and are) unfit for use in the Canadian winter in each province and territory.

31. FCA distributed brochures and catalogs for each model year of the Class Vehicles that were common, though not identical. None of them disclosed that Air Suspensions can fail to perform as intended in Canadian winters.

32. There are common (but not identical) issues of fact and law to be determined on a balance of probabilities, as proposed by the Plaintiff (or as determined by the Court), including the following:

- (a) Do (or can) Air Suspensions fail during ordinary use in Canadian winters due to a design or other defect?
- (b) If so, does (or can) such failure pose an imminent danger to operators and occupants of the Class Vehicles, other users of the road, and to the Class Vehicles themselves?
- (c) Did any of the Defendants owe and breach a duty of care to Canadian consumers to design the Air Suspension systems for use in cold weather, or to ensure that Air Suspensions were suitable for installation in vehicles that FCA manufactured and intended to market in Canada?
- (d) Did and do the Air Suspension systems render the Class Vehicles unfit for ordinary operation in Canadian winters?
- (e) Did the Defendants disclose in any

- (i) consumer brochures or catalogs,
- (ii) owners' manuals,
- (iii) quick start guides,
- (iv) user's guides, and
- (v) warranty/maintenance booklets

that they distributed in any part of Canada that Air Suspensions in Class Vehicles can fail to perform as intended in Canadian winters? If not, did the Defendants thereby engage in

- (vi) "deceptive acts or practices" under the laws of British Columbia,
- (vii) "unfair business practices" under the laws of Nunavut, Manitoba, and Newfoundland & Labrador, and
- (viii) "unfair practices" under the laws of Alberta, Saskatchewan, Ontario, and Prince Edward Island; or make
- (ix) "false or misleading" representations under the laws of Canada and Québec?

(f) Were the Defendants' authorized dealers its agents in Canada for the sale of Class Vehicles to class members?

(g) Did the Defendants owe and breach a duty of care not to market Class Vehicles in Canada, or to recall Class Vehicles once marketed? If so, when and how?

(h) Did the manner in which the Defendants marketed Class Vehicles in Canada warrant an award of exemplary or punitive damages at common law or pursuant to business practices, competition, or consumer protection legislation?

33. Alternatively, there are additional or other common issues as will be otherwise determined by the Court.

(d) A class proceeding is the preferable procedure.

34. A class action is the preferable procedure for fairly and efficiently resolving the common issues.

(a) FCA's authorized dealers keep detailed records of the names, addresses, and contact information for class members, and the vehicle identification numbers, purchase prices and trade in values paid by or to class members. The Defendants and their authorized dealers keep detailed descriptions and an accounting of the costs of servicing and attempting to repair or replace the Air Suspensions in Class Vehicles, and the kilometres at which such repairs and replacements were performed.

(b) FCA's importing and marketing of federally regulated Class Vehicles in a common market to an inter-provincially mobile population was national. A single common issues trial will achieve judicial economy and avoid inconsistent decisions respecting FCA's common culpable acts and omissions across multiple provinces and territories.

(c) Due to common evidence, a common defect, a common Canadian market, and an interprovincially mobile population, the inquiry into whether Class Vehicles were unfit for use in Canadian winters is best examined and determined together in a single national class proceeding.

(d) Business practices and consumer protection legislation was common (though not identical) throughout Canada, and the *Competition Act* applied in all provinces and territories during the class period.

35. Individual issues can more fairly and efficiently be resolved using procedures directed under s 28 of the *Class Proceedings Act*, SA 2003, c C-16.5 than pursuant to any (or all) other reasonably available means.

(e) A representative plaintiff would fairly and adequately represent the class.

36. There is an individual who would fairly and adequately represent class members, can produce a workable method of notifying class members of and advancing the class proceeding, and does not have a conflict of interest on the common issues.

Material or evidence to be relied on:

37. *Affidavits of:*

(a) *Steven J. Becker* (2023-04-24);

(b) *Bobbie T.E. Halleart* (2023-01-24);

(c) *Stephen Penney* (2022-12-05);

(d) *Kris Ross* (2023-01-24);

(e) *Jeffrey Stacey* (2022-12-05);

(f) *Dustin Stuyt* (2022-12-05);

(g) *Jackie Urchyshyn* (2023-05-02);

(h) other class members from throughout Canada; and

(i) such other materials as shall subsequently be served and filed.

Applicable Rules:

38. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 2.9, 3.62(6), and 3.74(2).

Applicable Acts and Regulations:

39. *Class Proceedings Act*, SA 2003, c C-16.5.

Any irregularity complained of or objection relied on:

40. None.

How the *Application* is proposed to be heard or considered:

41. Orally before the Case Management Judge appointed under Rule 4.12(3).

DATED at Calgary, Alberta, this 13th day of February, 2024.



21 King Street West, Suite 905
Hamilton, Ontario
L8P 4W7

Casey R. Churko
Tel: (306) 540-2284
Fax: (613) 713-2223

Counsel for the Plaintiff

WARNING

If you do not come to Court either in person or by your Lawyer(s), the Court may give the Applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this *Application*, you or your Lawyer(s) must attend in Court on the date and at the time shown at the beginning of this *Application*. If you intend to give evidence in response to the *Application*, you must reply by filing an *Affidavit* or other evidence with the Court and serving a copy of that *Affidavit* or other evidence on the Applicant a reasonable time before the *Application* is to be heard or considered.