

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LUC LAFRENIERE

Plaintiff

and

**SUBARU LIMITED, SACL AUTO CANADA LTD. and
SUBARU CANADA, INC.**

Defendants

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

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date APR 11 2016

Issued by _____

Local Registrar

Address of court office: 45 Main Street E.
Hamilton, Ontario
L8N 2B7

TO: SUBARU LIMITED
100 Gloucester Street
Suite 501
Ottawa, Ontario
K2P 0A4

AND TO: SACL AUTO CANADA LTD.
6815 Davan Drive
Mississauga, Ontario
L5T 1L4

AND TO: SUBARU CANADA, INC.
5990 Falbourne Street
Mississauga, Ontario
L5R 3S7

DEFINITIONS

1. The following definitions apply for the purposes of this Statement of Claim:
 - (a) **“Class/Class Members”**, means all individuals who reside in Canada, except those who reside in Quebec, who own a Class Vehicle;
 - (b) **“Class Vehicles”**, means the Subaru 2011-2014 Forester, 2013 Legacy, 2013 Outback, 2012-2013 Impreza, and 2013 XV Crosstrek, collectively;
 - (c) **“CPA”**, means *Class Proceedings Act, 1992*, R.S.O. 1992, c.6.
 - (d) **“FB Engine”**, means the new generation of the Subaru Boxer engine;
 - (e) **“Luc”**, means the plaintiff, Luc Lafreniere;
 - (f) **“Subaru”**, means the defendants, Subaru Limited, SACL Auto Canada Ltd. and Subaru Canada, Inc., all federal corporations incorporated in Canada;
 - (g) **“SGA”**, means *Sale of Goods Act*, R.S.O. 1990, c. S.1.

CLAIM

2. Luc claims:
 - (a) an order certifying this action as a class proceeding and appointing him as representative plaintiff;
 - (b) a declaration that the Class Vehicles have defective engines that burn a substantial portion of their engine oil, producing increased emissions, a reduction in fuel

efficiency, and possibly significant damage to the engine, catalytic converter, and other vehicle components;

- (c) a declaration that Subaru breached its contract and/or warranty with him and Class Members;
- (d) a declaration that Subaru owed a duty to Luc and Class Members and breached the standard of care required and is liable for damages to be assessed;
- (e) a declaration that Subaru breached the *SGA* and similar/equivalent provincial legislation throughout Canada, as set-out in Appendix "A";
- (f) general damages for breach of contract and/or breach of warranty, in the amount of TWENTY MILLION DOLLARS (\$20,000,000.00), or such other sum as this Court may find appropriate in the circumstances;
- (g) in addition, or in the alternative, general damages for unjust enrichment in the amount of TWENTY MILLION DOLLARS (\$20,000,000.00);
- (h) an order granting a constructive trust in favour of Class Members as against Subaru in the amount of TWENTY MILLION DOLLARS (\$20,000,000.00);
- (i) aggravated, exemplary and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00);
- (j) prejudgment interest in accordance with Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (k) postjudgment interest in accordance with Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (l) the costs of this proceeding on a full indemnity basis, plus a premium/multiplier, as well as the costs of notice and of administering the plan of distribution of recovery in this action, plus disbursements and applicable taxes; and,
- (m) such further and other relief as this Court may deem just and appropriate in the circumstances.

PARTIES

- 3. Luc is a resident of Ottawa, Ontario.
- 4. Subaru is a designer, manufacturer and distributor of motor vehicles with its head office in Mississauga, Ontario.

OVERVIEW AND BACKGROUND

- 5. Luc brings this action on his own behalf and on behalf of all Class Members.
- 6. Subaru directly, or through its subsidiaries and/or related entities, designs, manufactures, markets, sells, leases, and distributes vehicles under the brand name Subaru throughout Canada.
- 7. In 2010, Subaru initiated the release of the FB Engine. Subaru represented that the new FB Engine was designed in order to improve “economy and performance.” The FB Engine is different from the conventional “V” engine design of other vehicles.

8. The FB Engine operates through a four-step process. First, the “intake stroke” begins with the inlet valve opening and a vaporized fuel mixture pulled into the combustion chamber by the downward motion of the piston. Second, the “compression stroke” begins with the inlet valve closing and the piston beginning its movement upward, compressing the fuel mixture in the combustion chamber. Third, the “power stroke” begins when the spark plug ignites the fuel mixture, expanding the gases and generating power that is transmitted to the crankshaft and ultimately to the wheels of the vehicle. Fourth, the “exhaust stroke” begins with the exhaust valve opening and the piston moving back down, allowing the exhaust gases to escape to the cylinder.
9. During the four-step process described above, engine oil is used to lubricate the piston and cylinder wall as the piston moves up and down. Engine oil is necessary to reduce wear on moving parts throughout the engine, improve sealing within the combustion chamber, and to cool the engine by carrying heat away from the moving parts. In the absence of sufficient engine oil, the engine cannot possess the necessary lubrication or cooling, leading to premature wear of internal parts, inadequate performance, and catastrophic engine failure.
10. The oil control strategy in the Class Vehicles does not work as intended, allowing engine oil to escape past the oil control ring and into the combustion area. This is because of the oil rings that do not integrate properly with the cylinders in which they operate.
11. Due to the lack of integration as between the oil rings and the cylinders, the FB Engine design is defective in that the oil control ring fails to wipe excess oil from the cylinder wall, and as a result, engine oil can then enter the combustion chamber of the engine. Once oil enters the combustion chamber, it is burned off rather than returned for further lubrication.

This has several negative effects on the functioning of the Class Vehicles: first, it leads to a decrease in engine performance; second, it also decreases fuel efficiency; third, it causes carbon deposits to form; finally, it can damage the engine and various ignition and emission components.

LUC'S CIRCUMSTANCES

12. On or about July 13, 2015, Luc purchased a 2014 Subaru Forester 4 cylinder 2.5i premium vehicle, with the FB Engine, with 22,900 km on it.
13. After driving 8,200 km (31,200 km total), on approximately October 11, 2015, an oil change was required. The oil notification light illuminated. The technician who performed the oil change confirmed that the oil level was very low. Luc paid \$102.54 for service at that time, which included 5.2L of oil.
14. After a further 7,600 km (38,800 km total), the oil light illuminated again. Luc took the vehicle to a Subaru dealership. The technicians confirmed the oil level to be very low.
15. Luc then subsequently attended at the dealership on or about March 9, 2016, pursuant to recommendations from the sales staff and was advised to have an oil change every 8,000 km instead of every 10,000 km. The vehicle software was also updated to make the oil warning light less sensitive. Luc paid \$217.25 for service to the vehicle that included 6L of oil.

NEGLIGENCE

16. Subaru negligently designed the FB Engine and related components of the Class Vehicles, resulting in substantially increased oil consumption, which leads to decreased engine performance, decreased fuel efficiency, the formation of carbon deposits, and subsequent damage to the engine and various ignition and emission components.

17. Subaru negligently designed the FB Engine and related components of the Class Vehicles, and has unjustly enriched itself by failing to cover the replacement costs of engines which burn an excess of oil. That negligence includes the following:
 - (a) it relied upon inadequate research and development in the design of the Class Vehicles;

 - (b) it failed to conduct proper and appropriate testing following the design stage to ensure that Class Vehicles operated properly;

 - (c) if proper testing was in fact conducted, Subaru ignored, misinterpreted or withheld the results from that testing;

 - (d) it knew or ought to have known that the oil control strategy in Class Vehicles does not work as intended;

 - (e) it knew or ought to have known that the oil rings in the FB Engine would not and do not integrate properly with the cylinders in which they operate;

 - (f) it knew or ought to have known that the FB Engine design is defective;

- (g) it knew or ought to have known that the oil control ring fails to wipe excess oil from the cylinder walls, resulting in engine oil entering the combustion chamber; and
 - (h) other particulars of the defective design of Class Vehicles which are within the knowledge of Subaru.
18. Subaru was negligent in the manufacture of FB Engine and related components of the Class Vehicles. That negligence includes the following:
- (a) installation of oil control rings that allow escape of engine oil into the combustion chamber;
 - (b) installation of oil rings that do not integrate properly with the cylinders in which they operate;
 - (c) manufacture of the FB Engine with oil control rings that fail to wipe excess oil from the cylinder wall allowing oil to enter the combustion chamber;
 - (d) manufacture of the FB Engine that burns-off oil which is allowed to enter the combustion chamber;
 - (e) manufacture of Class Vehicles which experience substantially increased oil consumption;
 - (f) other particulars of the negligent manufacture of the Class Vehicles within the knowledge of Subaru.
19. Subaru was negligent in failing to warn Luc and other Class Members of the defects in the Class Vehicles and the fact that such defects lead to decreased engine performance,

decreased fuel efficiency, formation of carbon deposits and damage to the engine and ignition and emission components.

20. Subaru was negligent in failing to recall Class Vehicles once it was aware of the problems associated with the negligent design and manufacture of the Class Vehicles.

BREACH OF CONTRACT AND BREACH OF STATUTE

21. Subaru expressly and impliedly warranted to Luc and Class Members that each Class Vehicle would operate free from defect or failure.
22. Subaru issued three relevant warranties with each Class Vehicle: “New Vehicle Limited Warranty”, a “Major Component Limited Warranty”, and an “Emission Control System Limited Warranty”.
23. Under the New Vehicle Limited Warranty, Subaru agreed to repair defects reported within the earlier of 36 months or 60,000 km.
24. Under the Major Component Limited Warranty, Subaru agreed to repair defects affecting various powertrain components through 60 months or 100,000 km.
25. According to the Warranty and Maintenance booklet, Major Components include:
 - engine block and all internal parts;
 - cylinder heads and valve trains;
 - oil pump;
 - oil pan;

- timing belt/chains or gears and cover;
 - water pump;
 - flywheel;
 - intake and exhaust manifold;
 - engine mounts;
 - seals and gaskets.
26. The piston rings, including the oil control rings, are “internal [engine] parts” and “oil seals”, bringing them within the scope of the Major Component Limited Warranty.
27. Subaru breached its contract and/or express or implied conditions and warranties with Luc and Class Members.
28. Subaru is in breach of contract with Luc and Class Members in that the negligent design and manufacture and resulting defect has rendered Class Vehicles unfit for their intended purposes.
29. Luc and Class Members rely upon the provisions of the *SGA* and similar/equivalent legislation in other jurisdictions.

DAMAGES

30. Luc and Class Members suffered damages by reason of Subaru’s breaches of contract, express and/or implied warranties and conditions, and negligence.

31. Luc and Class Members have suffered and continue to suffer damages including:
- (a) loss of resale value for the Class Vehicles;
 - (b) increased maintenance costs and increased frequency of maintenance;
 - (c) increased costs for engine oil replacement and change;
 - (d) increased fuel costs as a result of decreased fuel efficiency; and
 - (e) increased future maintenance costs arising from future damage to the engine and ignition/emission components.
32. Luc and Class Members claim aggravated, punitive and exemplary damages as a result of the conduct of Subaru.
33. Subaru knew of the defects in the Class Vehicles that failed and chose not to recall those vehicles to repair the defects. Subaru also failed or refused to cover replacement costs of engines which experience excessive oil consumption.

LEGISLATION

34. Luc and Class Members plead and rely upon the provisions of the following:
- (a) *SGA*;
 - (b) *CPA*; and
 - (c) the *Courts of Justice Act*, R.S.O. 1990, c.C.43.

SIMILAR/EQUIVALENT LEGISLATION

35. Luc and Class Members state that similar/equivalent legislation to the *SGA* exists and is applicable in other jurisdictions. Luc and Class Members plead and rely upon that similar/equivalent legislation as set out in Appendix "A".
36. The plaintiff proposes that this action be tried in Hamilton, Ontario.

April 8, 2016

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RCP-E 14A (June 9, 2014)

APPENDIX "A"

Sale of Goods Legislation

NEWFOUNDLAND AND LABRADOR

Sale of Goods Act, R.S.N.L. 1990, c S-6

NEW BRUNSWICK

Sale of Goods Act, R.S.N.B. 1973, c S-1

NOVA SCOTIA

Sale of Goods Act, R.S.N.S. 1989, c 408

PRINCE EDWARD ISLAND

Sale of Goods Act, R.S.P.E.I. 1988, c S-1

MANITOBA

The Sale of Goods Act, C.C.S.M. c S10

SASKATCHEWAN

Sale of Goods Act, R.S.S. 1978, c S-1, as amended

ALBERTA

Sale of Goods Act, R.S.A. 2000, c S-2

BRITISH COLUMBIA

Sale of Goods Act, R.S.B.C. 1996, c 410

YUKON TERRITORY

Sale of Goods Act, R.S.Y. 2002, c 198

NORTHWEST TERRITORIES

Sale of Goods Act, R.S.N.W.T. 1988, c S-2

NUNAVUT

Sale of Goods Act, R.S.N.W.T. (Nu) 1988, c S-2

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16-57037-CP

Court File No. ~~CP~~

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PROCEEDING COMMENCED AT
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STATEMENT OF CLAIM

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RCP-E 4C (July 1, 2007)