

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000997-193

(Class Action)  
SUPERIOR COURT

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**J. JONASSOHN**

*Petitioner*

-vs.-

**ZF TRW AUTOMOTIVE HOLDINGS CORP.**,  
legal person duly constituted having its head  
office at 12001 Tech Center Drive, City of  
Livonia, State of Michigan, 48150, U.S.A.

and

**ZF TRW CANADA LIMITED**, legal person  
duly constituted having its head office at  
16643 Highway 12, city of Midland, Province  
of Ontario, L4R 4L5

and

**TRW AUTOMOTIVE U.S. LLC**, legal person  
duly constituted having its head office at  
23855 Research Drive, City of Farmington  
Hills, State of Michigan, 48335-2642, U.S.A.

and

**TRW CANADA LIMITED**, legal person duly  
constituted having its head office at 16643  
Highway 12, city of Midland, Province of  
Ontario, L4R 4L5

and

**KIA CANADA INC.**, legal person duly  
constituted having its head office at 180 Foster  
Crescent, City of Mississauga, Province of  
Ontario, L5R 4J5

and

**HYUNDAI AUTO CANADA CORP.**, legal  
person duly constituted having its head office

at 75 Frontenac Drive, City of Markham,  
Province of Ontario, L3R 6H2

and

**TOYOTA CANADA INC.**, legal person duly  
constituted having its head office at One  
Toyota Place, City of Scarborough, Province  
of Ontario, M1H 1H9

and

**HONDA CANADA INC.**, legal person duly  
constituted, having its principal place of  
business at 180 Honda Boulevard, City of  
Markham, Province of Ontario, L6C 0H9

and

**FCA CANADA INC.**, legal person duly  
constituted having its head office at One,  
Riverside Drive West, City of Windsor,  
Province of Ontario, N9A 5K3

and

**MITSUBISHI MOTOR SALES OF CANADA,  
INC.**, legal person duly constituted having its  
head office at 181 Bay Street, Suite 4400, City  
of Toronto, Province of Ontario, M5J 2T3

*Respondents*

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

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

**I. GENERAL PRESENTATION**

## A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- all persons, entities, or organizations resident in Quebec who purchased or leased a Subject Vehicle equipped with an airbag control unit (“ACU”) designed and manufactured by ZF TRW, or any other group to be determined by the Court;

2. “Subject Vehicles” means all vehicles purchased or leased in Canada that contain airbags designed and manufactured by the ZF TRW Respondents including, but not limited to, the following vehicles known at present to be:

- Acura RLX 2014-2019
- Acura RLX Hybrid 2014-2019
- Acura TL 2012-2014
- Acura TLX 2015-2017
- Acura TSX 2012-2014
- Acura TSX Sport Wagon 2014
- Acura TSX Sportswagon 2012-2013
- Dodge Nitro 2010-2011
- Dodge Ram 1500 2009
- Dodge Ram 3500 2010
- Fiat 500 2012-2019
- Honda Accord 2013-2015
- Honda Accord Hybrid 2014-2015
- Honda Civic 2012-2015
- Honda Civic GX 2012-2015
- Honda Civic Hybrid 2012-2015
- Honda Civic SI 2012-2015
- Honda CR-V 2012-2016
- Honda Fit 2012-2017
- Honda Fit EV 2013-2014
- Honda Ridgeline 2012-2014
- Hyundai Sonata 2013-2019
- Hyundai Sonata Hybrid 2013-2019
- Jeep Compass 2015-2017
- Jeep Liberty 2010-2012
- Jeep Patriot 2015-2017
- Jeep Wrangler 2010-2018
- Kia Forte 2013
- Kia Forte KOUP 2013
- Kia Optima 2013-2019
- Kia Optima Hybrid 2012-2016



- Kia Sedona 2014
  - Mitsubishi Lancer 2013-2017
  - Mitsubishi Lancer Evolution 2013-2015
  - Mitsubishi Lancer Ralliart 2014-2015
  - Mitsubishi Lancer Sportback 2013-2016
  - Mitsubishi Outlander 2013
  - Ram 1500 2009-2012
  - Ram 2500 2010-2012
  - Ram 3500 2010-2012
  - Ram 4500 2011-2012
  - Ram 5500 2011-2012
  - Toyota Avalon 2012-2018
  - Toyota Avalon Hybrid 2013-2018
  - Toyota Corolla 2011-2019
  - Toyota Corolla IM 2017-2018
  - Toyota Corolla Matrix 2011-2013
  - Toyota Sequoia 2012-2017
  - Toyota Tacoma 2012-2019
  - Toyota Tundra 2012-2017
3. This case presents another example (similar to the Takata situation) of an airbag manufacturer and automakers putting profits ahead of safety and failing to disclose and properly address a dangerous and deadly airbag defect;
  4. It is estimated that over a million Canadian vehicles contain a defective airbag control unit (“ACU”) designed and manufactured by ZF TRW and then supplied to numerous vehicle manufacturers, including, but not limited to Kia, Hyundai, Toyota, Honda, FCA, and Mitsubishi (the “Vehicle Manufacturer Respondents”);
  5. The defect in the ACU occurs because its electrical component, the application-specific integrated circuit (“ASIC”), becomes overstressed by excess electrical energy generated during the crash. This ASIC defect then causes a failure in the ACU and neither the airbags nor the seatbelt pretensioners<sup>1</sup> will deploy in the event of an accident (the “Design Defect” or the “ACU Defect”);
  6. The Vehicle Manufacturer Respondents manufactured, distributed, and/or sold the Subject Vehicles with airbags which were plagued by serious, pervasive, and dangerous design and manufacturing defects, which place vehicle occupants at risk of serious injury and/or death;
  7. In addition, the Petitioner contends that the Respondents failed to disclose the Design Defect despite longstanding knowledge; the Respondents would have been aware of the issue since at least 2011, but failed to take any action until 2018, and even then, on an inadequate number of affected vehicles. The Respondents

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<sup>1</sup> A seatbelt’s pretensioner is a component of the seatbelt system that locks the seatbelt in place during a crash.

actively concealed the Design Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Subject Vehicles;

8. By reason of this unlawful conduct, the Petitioner and members of the Class:

(a) Purchased and/or leased Subject Vehicles that contained defective ZF TRW airbags,

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

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

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

## **B) The Respondents**

### **(i) The ZF TRW Respondents**

9. Respondent ZF TRW Automotive Holding Company (hereinafter “ZF TRW Co.”) is an American corporation with its head office in Livonia, Michigan. It is a global technology company that supplies systems for vehicles, including the airbags in the Subject Vehicles. The 2017 ZF TRW annual report states the following: “faulty products may translate into substantial financial losses on account of warranty obligations. ZF is also exposed to this risk in the field of safety relevant products such as airbags”, the whole as appears more fully from a copy of an extract from Respondent ZF TRW Corp.’s website at [www.zf.com](http://www.zf.com) and from a copy of extracts from the ZF TRW 2017 Annual Report, produced herein *en l’i*asse as **Exhibit R-1**;

10. Respondent ZF TRW Canada Limited (hereinafter “ZF TRW Canada”) is a Canadian corporation with its head office in Midland, Canada. It is a wholly-owned subsidiary of Respondent ZF TRW Co. that designs, manufactures, tests, markets, distributes, supplies, and sells airbags (Exhibit R-1);

11. Respondent TRW Automotive U.S. LLC (hereinafter “TRW U.S.”) is an American corporation with its head office in Farmington Hills, Michigan that designs, manufactures, tests, markets, distributes, supplies, and sells airbags;

12. Respondent TRW Canada Limited (hereinafter “TRW Canada”) is a Canadian Corporation with its head office in Midland, Ontario. It is a wholly-owned subsidiary of Respondent ZF TRW Co. that designs, manufactures, tests, markets, distributes, supplies, and sells airbags (Exhibit R-1);

13. During the Class Period, Respondents ZF TRW Co., ZF TRW Canada, TRW U.S., and TRW Canada (collectively, “ZF TRW”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, tested, marketed,

distributed, supplied, and/or sold all the defective airbags which may have been recalled by the NHTSA and/or by Transport Canada that are the subject of the present application for installation in the Subject Vehicles throughout Canada, including within the province of Quebec;

14. Given the close ties between the ZF TRW Respondents and considering the preceding, they are solidarily liable for the acts and omissions of the other;

**(ii) The Vehicle Manufacturer Respondents**

15. Respondent Kia Canada Inc. (hereinafter “Toyota Canada”) is a Canadian corporation with its head office in Mississauga, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-2**;

16. Kia Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Kia Forte 2013
- Kia Forte KOUP 2013
- Kia Optima 2013-2019
- Kia Optima Hybrid 2012-2016
- Kia Sedona 2014

17. Respondent Hyundai Auto Canada Corp. (hereinafter “Hyundai”) is a Canadian corporation with its head office in Markham, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-3**;

18. Hyundai Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Hyundai Sonata 2013-2019
- Hyundai Sonata Hybrid 2013-2019

19. Respondent Toyota Canada Inc. (hereinafter “Toyota”) is a Canadian corporation with its head office in Scarborough, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-4**;

20. Toyota Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Toyota Avalon 2012-2018
- Toyota Avalon Hybrid 2013-2018
- Toyota Corolla 2011-2019
- Toyota Corolla IM 2017-2018
- Toyota Corolla Matrix 2011-2013
- Toyota Sequoia 2012-2017
- Toyota Tacoma 2012-2019
- Toyota Tundra 2012-2017

21. Respondent Honda Canada Inc. (hereinafter “Honda”) is a Canadian corporation with its head office in Markham, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-5**;

22. Honda Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Honda Accord 2013-2015
- Honda Accord Hybrid 2014-2015
- Honda Civic 2012-2015
- Honda Civic GX 2012-2015
- Honda Civic Hybrid 2012-2015
- Honda Civic SI 2012-2015
- Honda CR-V 2012-2016
- Honda Fit 2012-2017
- Honda Fit EV 2013-2014
- Honda Ridgeline 2012-2014
- Acura RLX 2014-2019
- Acura RLX Hybrid 2014-2019
- Acura TL 2012-2014
- Acura TLX 2015-2017
- Acura TSX 2012-2014
- Acura TSX Sport Wagon 2014
- Acura TSX Sportswagon 2012-2013

23. Respondent FCA Canada Inc. (hereinafter “FCA”) is a Canadian corporation with its head office in Windsor, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-6**;

24. FCA Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Dodge Nitro 2010-2011



- Dodge Ram 1500 2009
- Dodge Ram 3500 2010
- Fiat 500 2012-2019
- Jeep Compass 2015-2017
- Jeep Liberty 2010-2012
- Jeep Patriot 2015-2017
- Jeep Wrangler 2010-2018
- Ram 1500 2009-2012
- Ram 2500 2010-2012
- Ram 3500 2010-2012
- Ram 4500 2011-2012
- Ram 5500 2011-2012

25. Respondent Mitsubishi Motor Sales of Canada Inc. (hereinafter “Mitsubishi”) is a Canadian corporation with its head office in Toronto, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-7**;

26. Mitsubishi Vehicles that are sold in Canada contain airbags manufactured by the ZF TRW Respondents and include, but are not limited to the following models:

- Mitsubishi Lancer 2013-2017
- Mitsubishi Lancer Evolution 2013-2015
- Mitsubishi Lancer Ralliart 2014-2015
- Mitsubishi Lancer Sportback 2013-2016
- Mitsubishi Outlander 2013

27. During the Class Period, Respondent Kia, Hyundai, Toyota, Honda, FCA, and Mitsubishi (collectively, “the Vehicle Manufacturer Respondents”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

### **C) The Situation**

#### **(i) The Airbag Control Unit (ACU) Defect**

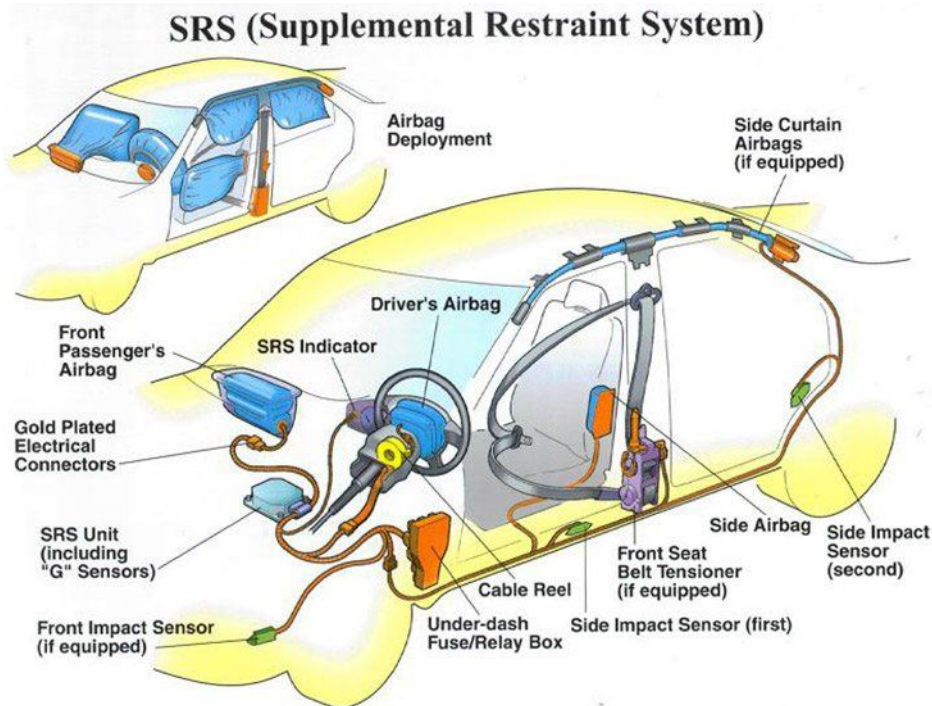
28. Airbags are a critical safety component in virtually every motor vehicle. Drivers and passengers reasonably expect that airbags will properly deploy if their vehicles are involved in an accident. When functioning properly, an airbag can mean the difference between life and death;

29. The airbag systems in the Subject Vehicles contain ACUs that sense when a vehicle crashes in order to determine whether airbag deployment is required, and if so, it



sends a signal to deploy the appropriate airbags and other supplemental restraints (i.e. the seatbelt pretensioner). The ACU is located in the passenger compartment and is electrically connected to crash sensors located at the front of the Subject Vehicles. Based on the results of the sensor, the ACU will deploy the appropriate airbag and other safety restraints to protect drivers and passengers from an accident or impact;

30. Below is a schematic representation of an airbag system<sup>2</sup>:



31. A crucial component of this crash detection system is an application-specific integrated circuit (“ASIC”), which is an electronic component contained in the ACU. When the ASIC is functioning properly, the ACU will monitor signals from other crash sensors in the Subject Vehicles to detect the severity of a crash, deploy the airbags if necessary, and engage the seatbelt pretensioners;

32. The ASIC in the Subject Vehicles’ ACUs are defective because they are susceptible to electrical overstress (“EOS”) which allows excess and harmful electrical signals produced during the crash to overload the ASIC and prevent the deployment of the airbag and the seatbelt pretensioners – thus, the ACU does not operate properly;

33. The ACU is intended to have electrical wiring and circuitry that prevents the transmission of harmful signals that may damage the ASIC; however, the Subject

<sup>2</sup> <http://12.acрте.chamas-naturatelier.de/dfe/air-bag-system-diagram.html>



Vehicles do not contain sufficient circuit protection to avoid electrical overstress, which results in the failure of the airbags to deploy when needed;

34. The defect with the ACU and ASIC exposes Class Members to the serious and life-threatening safety risk that their Subject Vehicle airbags could fail to deploy during an accident, resulting in injury or death;
35. It is estimated that in the U.S., as many as 12.3 million vehicles may have defective airbags that will not deploy in a crash and at least eight people may have already died as a result, as appears more fully from a copy of the NBC Los Angeles article entitled “US Expands Probe Into ZF-TRW Air Bag Failures to 12.3M Vehicles” dated April 23, 2019, produced herein as **Exhibit R-23**;

**(ii) Recalls and the Investigation**

36. On September 13, 2016, the U.S. National Highway Traffic Safety Administration (“NHTSA”) issued Recall No 16V-668 which applied to approximately 1,425,627 FCA vehicles and described the issue in the following manner:

Description of the Defect:	2010–2014 MY Chrysler 200, Chrysler Sebring and Dodge Avenger (“JS”), 2010–2014 MY Jeep Compass and Jeep Patriot (“MK”) and 2010–2012 MY Dodge Caliber (“PM”) vehicles may experience loss of airbag and seat belt pretensioner deployment capability in certain crash events due to a shorting condition resulting in a negative voltage transient that travels to the Occupant Restraint Controller (“ORC”) via the front impact sensor wires damaging an Application Specific Integrated Circuit (“ASIC”) in the ORC. The root cause of the failure was determined to be a combination of the relative susceptibility of the subject ORC ASIC to negative transients and the front acceleration sensor signal cross-car wire routing in certain crash events.
Description of the Safety Risk:	The potential loss of airbag and seat belt pretensioner deployment capability in such crash events may increase the risk of injury in a crash.

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-8**;

37. On September 14, 2016, Transport Canada issued Recall # 2016448 with respect to 139,513 FCA vehicles and stated:

“Recall Details: On certain vehicles in certain types of crashes, airbag and seatbelt pretensioner deployment capability may be lost due to a short in the front impact sensor wiring affecting Occupant Restraint Controller function. Failure of airbags and seatbelt pretensioners to deploy in a crash (when warranted) could increase the risk of injury.”

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-9**;

38. On February 27, 2018, NHTSA issued Recall No 18V-137 which applied to approximately 154,753 Hyundai vehicles and described the issue in the following manner:

Description of the Defect:	The subject vehicles are equipped with an Airbag Control Unit (“ACU”) which detects a crash signal and commands deployment of the airbags and seat belt pretensioner. In some airbag non-deployment allegations, electrical overstress (“EOS”) was observed on an Application Specific Integrated Circuit (“ASIC”) inside the ACU.
Description of the Safety Risk:	If the ACU circuitry is damaged, the airbags and seat belt pretensioners may not deploy in some crashes where deployment is necessary, increasing the risk of injury.

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-10**;

39. On March 16, 2018, the Office of Defects Investigation (“ODI”) of NHTSA opened an initial investigation into the ACU Defect as it related to the 2012-2013 Kia Forte and 2011 Hyundai Sonata. At the time, there had been six crashes with significant collision-related damage events involving Hyundai and Kia vehicles where airbags failed to deploy in frontal crashes. The crashes resulted in at least four fatalities and six injuries, the whole as appears more fully from a copy of the ODI Resume Investigation PE 18-003 dated March 16, 2018, produced herein as **Exhibit R-11**;

- 39.1 At the time, the NHTSA indicated certain Kia vehicles “also use similar ACU’s supplied by ZF-TRW” and there had been “a prior recall, 16V-668 where EOS appeared to be a root cause of air bag non-deployment in significant frontal crashes in certain Fiat Chrysler vehicles” (Exhibit R-11). Thus, while the investigation focused on certain Hyundai and Kia vehicles containing the ACU Defect, NHTSA identified ZF TRW as the supplier of the defective ACUs, putting the Vehicle Manufacturers on notice of the ACU Defect;



40. On May 15, 2018 Transport Canada issued Recall # 2018261 with respect to 41,067 Hyundai vehicles and stated:

“Recall Details: On certain gasoline and hybrid engine vehicles, the circuits within the airbag control unit may become damaged. This could cause the airbags and seat belt pretensioners to not deploy in certain collisions where deployment is warranted, which could increase the risk of injury to vehicle occupants.”

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-12**;

41. On June 1, 2018, NHTSA issued Recall No 18V-363 which applied to approximately 507,587 Kia vehicles and described the issue in the following manner:

Description of the Defect:	The Airbag Control Unit (“ACU”) detects crash severity and commands deployment of the advanced airbags and seatbelt pretensioners when necessary. The recalled vehicles are equipped with an ACU which contain a certain application-specific integrated circuit (“ASIC”) that may be susceptible to electrical overstress (“EOS”) during certain frontal crash events.
Description of the Safety Risk:	If the ASIC becomes damaged, the front airbags and seatbelt pretensioners may not deploy in certain frontal crashes where deployment may be necessary, thereby increasing the risk of injury.
Description of the Cause:	The ASIC component within the subject ACUs may be susceptible to EOS due to inadequate circuit protection.

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-13**;

42. On June 8, 2018 Transport Canada issued Recall # 2018301 with respect to 65,548 Kia vehicles and stated:

“Recall Details: On certain gasoline and hybrid engine vehicles, the circuits within the airbag control unit may become damaged. This could cause the airbags and seat belt pretensioners to not deploy in certain collisions where deployment is warranted, which could increase the risk of injury to vehicle occupants.”

The whole as appears more fully from a copy of said Recall Notice, produced herein as **Exhibit R-14**;



43. On April 19, 2019, the ODI upgraded the probe from a preliminary evaluation (“PE”) to an engineering analysis (“EA”), which is a step closer toward seeking recalls, and expanded the scope of the investigation to include the tier-one supplier and any manufacturers who installed this unit in production vehicles, the whole as appears more fully from a copy of the ODI Resume Investigation EA 19-001 dated April 19, 2019, produced herein as **Exhibit R-15**;

43.1 Such an upgrade of an NHTSA investigation occurs only after particular criteria are met signifying the need for an enhanced investigation. An Engineering Analysis entails “a more detailed and complete analysis of the character and scope of the alleged defect”, building on the information collected during the initial investigation. As a result of an Engineering Analysis, NHTSA may recommend a safety recall or work with a manufacturer to issue a safety recall, the whole as appears more fully from a copy of the NHTSA publication entitled “Motor Vehicle Defects and Safety Recalls: What Every Vehicle Owner Should Know”, produced herein as **Exhibit R-24**;

43.2 the ODI “identified two substantial frontal crash events (one fatal) involving Toyota products where EOS is suspected as the likely cause of the non-deployments.”<sup>18</sup> As explained by the ODI, “[t]he crashes involved a MY 2018 and a MY 2019 Corolla equipped with the subject ACU that incorporated higher levels of ASIC protection” where “both ACUs were found to be non-communicative (meaning the ACU could not be read with an Event Data Recorder) after the crash, a condition found in other cases where EOS occurred with other OEMs” (Exhibit R-15);

**(iii) The Respondents’ Prior Knowledge of the Design Defect**

44. Since as far back as 2011, there have been numerous non-deployment incidents caused by the defective ACUs. Yet despite involvement in investigations and knowledge of the ACU Defect, the Respondents have refused to recall vehicles containing the ACU Defect and have improperly narrowed the scope of the affected vehicles in order to save costs and avoid negative publicity;

45. Specific dates and incidents are set out in the following NHTSA reports:

- a) Hyundai Chronology (produced herein as **Exhibit R-16**);
- b) Kia Chronology (produced herein as **Exhibit R-17**);
- c) FCA Chronology (produced herein as **Exhibit R-18**);
- d) ZF TRW Chronology (produced herein as **Exhibit R-19**);

46. Despite knowledge of the ACU Defect, ZF TRW has continued to manufacture and sell the defective ACUs, which has resulted in numerous injuries and deaths. In addition, the Vehicle Manufacturer Respondents have continued to equip the Subject Vehicles with airbag systems containing the ACU Defect and to sell and

lease the Subject Vehicles, without disclosing the ACU Defect and its corresponding safety risks to Class Members;

46.1 The Respondents intentionally, and/or recklessly concealed from the Petitioner and Class Members the ACU Defect even though they knew or should have known that defects in design, manufacturing, materials and/or workmanship were causing the ACU Defect if Defendants had adequately tested the airbag systems in the Subject Vehicles;

46.2 Knowledge and information regarding the ACU Defect were in the exclusive and superior possession of the Respondents and that information was not provided to the Petitioner and Class Members. Based on pre-production testing, preproduction design or failure mode analysis, production design or failure mode analysis, post-collision inspections, NHTSA investigations, wrongful death and personal injury lawsuits, and early consumer complaints made to the Respondents' network of vehicle manufacturers, *inter alia*, the Respondents were aware (or could not have been unaware) of the ACU Defect in the Subject Vehicles and concealed the ACU Defect and safety risks from the Petitioner and Class Members;

**(iv) The Subject Vehicles Containing ZF TRW-Manufactured Airbags Were Sold as "Safe" and "Reliable"**

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

48. By way of example, Respondent Honda states:

(a) Acura: "Acura believes driving a luxury car should be a highly enjoyable experience. And while we tend to dwell on the more exhilarating aspects of our vehicles, we consider your safety a top priority. ... Safety has been top of mind with Acura engineers since day one. ... Over the years, we've added many advanced safety technologies to the list, and the vast majority of them are now standard on every model", and

(b) Honda: "Honda is committed to providing safety for everyone—that means crash protection not only for our own drivers and passengers, but also for the occupants of other vehicles, and injury mitigation for pedestrians." "As a leader, Honda looks beyond government regulations, studying real world situations to develop new safety technologies for everyone."

The whole as appears more fully from copies of two (2) extracts from Respondent Honda's websites [www.acura.com](http://www.acura.com) and from [www.corporate.honda.com](http://www.corporate.honda.com), produced herein *en liasse* as **Exhibit R-20**;

49. Purchasers and/or lessees of the Subject Vehicles were thus were led to believe their vehicles were safe and reliable vehicles;



50. However, as detailed above, millions of vehicles that contained defective ZF TRW-manufactured airbags were sold by the Vehicle Manufacturer Respondents and other automakers;

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

**(v) The Faulty Airbags and Related Quality Concerns Have Caused and Will Continue to Cause Values of the Subject Vehicles to Plummet**

52. A vehicle purchased or leased under the reasonable assumption that it is “safe” and “reliable” as advertised is worth more than a vehicle known to be subject to the risk of a possibly life-threatening failure of an airbag system. A vehicle purchased or leased under the assumption that it was produced in conformity with high safety standards is worth more than a vehicle produced in a system that promotes expedience over quality and safety and hides known defects. Moreover, vehicle owners and/or lessees have a reasonable expectation that automakers will abide by federal, statutory, and civil law obligations to affirmatively disclose known defects in a timely manner;

53. Unfortunately, this did not happen and, as a result, all purchasers and/or lessees of the Subject Vehicles overpaid for their vehicles at the time of purchase. As news of the dangerous and defective airbag systems, and the Respondents’ quality control issues surfaced in 2014, the value of the Subject Vehicles has diminished and will continue to do so;

54. As detailed above, there has been extensive reporting about the defective airbags in recent months, raising public awareness of their defect and the safety implications;

55. These news reports detailing the utter lack of regard for customers’ safety exhibited by ZF TRW and the Vehicle Manufacturer Respondents have materially negatively impacted the value of the Subject Vehicles, including the Petitioner’s and Class Members’ vehicles;

56. ZF TRW and the Vehicle Manufacturer Respondents knew or should have known that the ZF TRW airbags installed in millions of vehicles were defective. Both ZF TRW and the Vehicle Manufacturer Respondents, who concealed their knowledge of the nature and extent of the defects from the public, have shown a blatant disregard for public welfare and safety;

**(vi) Summative Remarks**

57. As a result of the defective airbags, owners and lessees of the affected cars have suffered loss of value of their vehicles due to the stigma associated with such horrific injuries and deaths related to the ZF TRW product;
58. As a result of ZF TRW's and the Vehicle Manufacturer Respondents' misconduct, the Petitioner and the Class Members were harmed and suffered actual damages in that the Subject Vehicles have potentially deadly airbags that pose an ongoing threat to drivers and passengers and have drastically diminished the value of the cars in which they are installed;
59. The Petitioner and the Class Members did not receive the benefit of their bargain as purchasers and/or lessees received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations. Class Members did not receive vehicles that would reliably operate with reasonable safety, and that would not place drivers and occupants in danger of encountering an ongoing and undisclosed risk of harm, which could have been avoided through the exercise of reasonable precaution and forthrightness. A vehicle purchased or leased under the reasonable assumption that it is "safe" as advertised is worth more than a car – such as the Subject Vehicles – that is known to contain a ZF TRW airbag. Therefore, all purchasers and/or lessees of the Subject Vehicles overpaid for their vehicles. Furthermore, the public disclosure of the defective ZF TRW airbags has caused the value of the Subject Vehicles to materially diminish. Purchasers or lessees of the Subject Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the defects been disclosed;
60. The Petitioner and the Class Members that he seeks to represent suffered economic damages by purchasing and/or leasing the Subject Vehicles; they did not receive the benefit of the bargain, and are therefore entitled to damages;
61. Canadian customers were never compensated for damages incurred as a result of purchasing and/or leasing the Subject Vehicles containing the defective ZF TRW airbags;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

62. On March 30, 2018, the Petitioner purchased a new 2018 Kia Optima SXL Turbo 3 (VIN no. 5XXGV4L26JG250413) containing a ZF TRW airbag from Spinelli Kia at 4463 boulevard des Sources, in Roxboro, Quebec for the sale price of \$35,510 plus taxes<sup>3</sup>, the whole as appears more fully from a copy of the Sale Contract dated August 30, 2018, produced herein as **Exhibit R-21**;
63. At the time of sale, the Petitioner was under the impression that he was buying a vehicle that was free of any design or manufacturing defects; unbeknownst to him,

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<sup>3</sup> The final acquisition cost was \$27,844.88 as the Petitioner was given a trade-in allowance of \$11,306.80 for his 2013 Kia Optima.



he overpaid for the purchase price as the vehicle was in fact suffering from a Design Defect;

64. Petitioner has discovered that several class actions were filed in the United States due to the Design Defect and due to the Respondents' failure to disclose, despite longstanding knowledge of its existence and predisposition to failure, the whole as appears more fully from a copy of the Class Action Complaints, produced herein, *en liasse*, as **Exhibit R-22**;
65. Petitioner has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the Vehicle itself, substantially lower resale values associated with the vehicle because the problems with the airbag have become notoriously defective in the industry, pain and suffering, and trouble and inconvenience;
66. Had Petitioner known about the Design Defect, he either would not have purchased the vehicle and certainly would not have paid such a high price;
67. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
68. In consequence of the foregoing, the Petitioner is justified in claiming damages;

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

69. Every member of the Class has purchased and/or leased a Subject Vehicle containing a defective ZF TRW airbag;
70. Each member of the Class is justified in claiming at least one or more of the following as damages:
  - a. Overpayment of the purchase price and/or lease payments of the Subject Vehicles,
  - b. Lower resale value/ diminished value of the Subject Vehicles,
  - c. Loss of use of the Subject Vehicles and expenditures for rental vehicles,
  - d. Pain and suffering,
  - e. Trouble and inconvenience, and
  - f. Punitive and/or exemplary damages;



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

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

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

72. Petitioner is unaware of the specific number of persons who purchased and/or leased the Subject Vehicles; however, it is safe to estimate that it is in the millions;

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

74. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

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

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

77. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice;

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

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

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

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

a) Is the airbag system in the Subject Vehicles defective?



- b) Did the Defendants know or should they have known about the airbag defects, and, if yes, how long have the Defendants known of the defects?
- c) Did the Vehicle Manufacturer Defendants misrepresent the Subject Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Subject Vehicles?
- d) Are the Defendants responsible for all related damages (including, but not limited to: the diminished value of the Subject Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Subject Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Subject Vehicles and in what amount?
- e) Should an injunctive remedy be ordered to force the Vehicle Manufacturer Defendants to notify, recall, repair and/or replace the defective airbag systems in Class Members Vehicles, which have not yet been recalled, free of charge?
- f) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?

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

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

82. The action that the Petitioner wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and declaratory judgment;

83. The conclusions that the Petitioner wishes to introduce by way of an application to institute proceedings are:

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

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

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

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



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

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

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

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

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

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

A) Petitioner requests that he be attributed the status of representative of the Class

84. The Petitioner is a member of the Class;

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

86. The Petitioner has the capacity and interest to fairly and properly protect and represent the interest of the members of the Class;

87. The Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

88. The Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

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



90. The Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
91. The Petitioner understands the nature of the action;
92. The Petitioner's interests are not antagonistic to those of other members of the Class;
93. The Petitioner is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
94. The Petitioner has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;
95. The Petitioner, with the assistance of his attorneys, has created a webpage at [www.clg.org](http://www.clg.org) wherein other Class Members can enter their coordinates to join the class action and be kept up to date on its development;
- B) Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
96. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
97. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
98. The present application is well founded in fact and in law.

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

**GRANT** the present application;

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

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

- all persons, entities, or organizations resident in Quebec who purchased or leased a Subject Vehicle equipped with an airbag control



unit (“ACU”) designed and manufactured by ZF TRW, or any other group to be determined by the Court;

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

- a) Is the airbag system in the Subject Vehicles defective?
- b) Did the Defendants know or should they have known about the airbag defects, and, if yes, how long have the Defendants known of the defects?
- c) Did the Vehicle Manufacturer Defendants misrepresent the Subject Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Subject Vehicles?
- d) Are the Defendants responsible for all related damages (including, but not limited to: the diminished value of the Subject Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Subject Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Subject Vehicles and in what amount?
- e) Should an injunctive remedy be ordered to force the Vehicle Manufacturer Defendants to notify, recall, repair and/or replace the defective airbag systems in Class Members Vehicles, which have not yet been recalled, free of charge?
- f) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Montreal, June 25, 2019

(S) Andrea Grass

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CONSUMER LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for the Petitioner

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