



S E 251654

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

Between

REFORUS WOOD SYSTEMS INC.

Plaintiff

and

**TOYOTA INDUSTRIES CORPORATION,
TOYOTA MATERIAL HANDLING N.A.,
TOYOTA MATERIAL HANDLING, INC.,
TOYOTA MOTOR CORPORATION, and
TOYOTA CANADA INC.**

Defendants

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

NOTICE OF CIVIL CLAIM

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

- (c) 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

- (d) 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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. This case exposes another emissions cheating scheme, this time with respect to off-road vehicles such as forklifts and construction equipment.
2. The Defendants manufacture engines used in forklifts and other construction machinery. Between 2007 and 2020, they misrepresented their engines' true emissions levels as well as their "output" (e.g., torque and power) to regulators and customers. To obtain regulatory approval, the Defendants were required to perform specific tests on their engines and honestly and accurately report the results of those tests to regulators. In breach of their obligations, the Defendants:

- (a) fabricated emissions testing results and submitted them to regulators;
 - (b) modified the engine control unit (“**ECU**”) software in test engines so that they performed differently in certification tests than they would in real-world use (i.e. the Defendants equipped their engines with a defeat device);
 - (c) replaced parts during emissions testing with the intention and effect of generating incorrect emissions values that are inconsistent with real-world use;
 - (d) used different engines for tests than those that were used in production-model vehicles; and
 - (e) cheated on “output tests” designed to measure torque, horsepower, and other important performance metrics.
3. All of this is illegal. The Defendants deceived regulators in order to sell illegal engines. In doing so, they also deceived their customers who thought they were purchasing emissions-compliant vehicles that met certain performance standards.
 4. The Defendants have publicly admitted to much of the alleged misconduct. On January 29, 2024, a Special Investigation Committee (or “**SIC**”) released a report describing how the Defendants lied to regulators and cheated their customers (“**SIC Report**”).
 5. While the SIC Report focuses largely on Japan, the Defendants’ misconduct effected vehicles sold in Canada. Indeed, the SIC was convened following a US Environmental Protection Agency (“**EPA**”) investigation.
 6. Canadians paid for vehicle features they did not receive and they purchased or leased vehicles that were unlawful to sell. The plaintiff seeks to bring a class proceeding to compensate class members for their losses.

The Plaintiff and the Class

7. The plaintiff, Reforus Wood Systems Inc. ("**Reforus**"), is a private company incorporated pursuant to the laws of British Columbia that specializes in state of the art building technologies.
8. The plaintiff leased a Toyota forklift, model year 2007-2011, and subsequently purchased the forklift. At the time that it acquired the forklift, the plaintiff believed that the forklift would meet or exceed regulatory emissions requirements for its useful life, and that the forklift's emissions control system was durable and free from defects.
9. Prior to acquiring the forklift, the plaintiff did not know that the forklift's emissions control system had defects. The plaintiff would not have leased or purchased the forklift, or would have paid less for it, had it known that the forklift did not comply with emissions standards.
10. The plaintiff seeks to represent a class consisting of all persons who purchased or leased a vehicle containing a Toyota off-road gasoline/liquid petroleum gas (or "LPG") or diesel powered engine, model years 2007 to 2020 ("**Class Vehicles**", owners or lessors of which are "**Class Members**"). This includes engine models 1KD, 1ZS, 4Y, 1FS, 1DZ, 3Z, 15Z, and 1FZ, which were used in forklifts such as the Core IC Diesel Pneumatic; the Mid and Large IC Diesel Pneumatics; the Core IC Cushion and Core IC Pneumatic; and the Large IC Cushion; Box Car Special; Paper Roll Special; Mid IC Pneumatic; and Large IC Pneumatic.

The Defendants

11. Toyota Industries Corporation ("**TICO**") is a Japanese corporation with its principal place of business located in Japan. TICO designs, develops, manufactures, and sells construction equipment and Toyota-branded forklifts and forklift engines. TICO is an affiliate of Toyota Motor Corporation ("**TMC**"). TICO performed diesel engine development, design, and testing work for the Class Vehicles in conjunction with TMC.

12. TICO engineered, designed, developed, manufactured, and tested the engines in the Class Vehicles. TICO exported the Class Vehicles' engines (and potentially certain complete Class Vehicles) with the knowledge and understanding that they would be sold throughout Canada, including British Columbia, through formal channels of trade. TICO also reviewed and approved the marketing, and advertising campaigns designed to sell the Class Vehicles in British Columbia and throughout Canada.
13. TICO performed the required regulatory emissions and performance tests for the Class Vehicles to be sold in Canada, including British Columbia. TICO obtained regulatory certification in the United States, and then relied on these certifications to obtain Canadian certifications.
14. Toyota Material Handling N.A. ("**TMHNA**") is an Indiana corporation with its principal place of business located in Columbus, Indiana. TMHNA is a wholly-owned subsidiary of TICO. TMHNA engages in business including manufacturing, parts distribution, and sales and marketing through dealerships throughout the United States and Canada, including British Columbia.
15. Toyota Material Handling, Inc. ("**TMH**") is a California corporation with its principal place of business located in Columbus, Indiana. TMH is a wholly-owned subsidiary of TMHNA. TMH engages in business, including manufacturing, research and development, sales, and parts distribution, in the United States and Canada, including British Columbia.
16. TMH is registered in British Columbia as an Extraprovincial Company pursuant to Part 11 of the *Business Corporations Act*, SBC 2002, c 57. TMH manufactured many of the complete Class Vehicles using engines shipped from TICO in Japan into Canada.
17. TMC is a Japanese corporation with its principal place of business in Japan. Toyota is one of the largest vehicle manufacturers in the world and is in the business of designing, developing, manufacturing, and selling automobiles and

component parts. TMC is an affiliate corporation of TICO and owns approximately 25% of TICO's voting shares.

18. Toyota Canada Inc. ("Toyota Canada") is a Canadian corporation with its principal place of business located in Toronto, Ontario. Toyota Canada is registered in British Columbia as an Extraprovincial Company pursuant to Part 11 of the *Business Corporations Act*, SBC 2002, c 57.
19. TMC and TICO design and develop engines together. In or around 2014, the companies consolidated their diesel engine development functions under TICO, with TICO being responsible for producing new diesel engines for both companies in a joint business structure. TMC is responsible for developing "base technologies" common to both diesel and gasoline engines, and TICO is responsible for the diesel engine development and production. TMC also uses TICO to conduct testing for emissions certification purposes.
20. TICO, TMC, TMHNA, TMH and Toyota Canada (collectively "**Toyota**" or the "**Defendants**") operate as a joint entity, each contributing to the joint business of designing, developing, manufacturing, and selling the Class Vehicles, including performing testing and reporting to Canadian regulators, including Environment and Climate Change Canada. The Defendants are inextricably interwoven with that of the other, and each is the agent of the other, for the purpose of designing, developing, manufacturing, marketing and selling the Class Vehicles in Canada, including British Columbia.

Toyota's Misconduct

The Regulations and Toyota's Cheating

21. Canada introduced emission standards for off-road engines in 2006, through the *Canadian Environmental Protection Act*, 1999, SC 1999, c 33 ("**CEPA**") and the enactment of the *Off-Road Compression-Ignition Engine Emission Regulations*, SOR/2005-32 (the "**Regulations**"). The Regulations apply to the Class Vehicles.

22. The Regulations apply to both diesel and gasoline/LPG engines and are intended to reduce the amount of pollution off-road engines emit. For example, the Regulations lowered the amount of diesel particulate matter that diesel engines are allowed to emit, and lowered the amount of carbon monoxide, hydrocarbons and nitrogen oxides (“**NOx**”) both diesel and gasoline engines are allowed to emit. The Regulations prescribed increasingly more stringent standards, described as Tier 2, Tier 3 and Tier 4, which came into force in 2006, 2012, and 2015 respectively.
23. The Regulations harmonize Canada’s emission standards and test methods with the United States by expressly adopting sections of the *Code of Federal Regulations* of the United States into Canadian law.
24. The Regulations also harmonize Canada’s approval process with that of the United States. Once an engine obtains regulatory approval from the EPA, the manufacturer does not need to redo the testing in order to sell the vehicle concurrently in Canada. The manufacturer can rely on its EPA approvals to obtain regulatory approval in Canada.
25. Toyota relied on certifications obtained from the EPA and the California Air Resources Board (“**CARB**”) to obtain regulatory approval in Canada for the Class Vehicles. In doing so, Toyota provided Canadian regulators with copies of the records it submitted to the EPA and CARB in support of its application for the EPA and CARB certifications (“**Records**”).
26. The Records included the results of certain emissions tests Toyota was required to perform on the engines in the Class Vehicles, including deterioration durability testing. The Regulations set out the required testing processes, which are the same in Canada as they are in the United States.
27. Deterioration durability tests are used to determine how an emissions control system performs over time. These tests have been mandated in Canada since 2006 because the Regulations require off-road engines (and therefore the Class

Vehicles) to comply with emissions standards over their useful life. Deterioration durability tests are the method by which regulators can determine whether engines comply with this requirement in the Regulations. Deterioration durability tests are performed by mounting an engine to a bench and running it for a prescribed number of hours on a prescribed testing cycle and testing the emissions at prescribed intervals.

28. In the process of conducting the deterioration tests (and other emissions tests) on the engines used in the Class Vehicles, Toyota engaged in a wide range of cheating strategies to meet the emissions standards. For example, with respect to some or all of the Class Vehicles:
- (a) Toyota used estimates based on “theoretical studies” as opposed to actual test results.
 - (b) Toyota ran tests on engines that ultimately were not used in the Class Vehicles sold to the public. Toyota nonetheless relied on those test results to obtain certification for Class Vehicles.
 - (c) When running the deterioration tests, if an engine looked like it would not pass, Toyota replaced parts and modified settings to try to pass the test. For example:
 - (i) During durability testing of diesel engines, when NO_x emissions became too high, Toyota replaced the O₂ sensor in the test vehicle with an O₂ sensor with a different calibration. This was intended to – and had the effect – of generating incorrect emissions values that are inconsistent with real-world use.
 - (ii) During durability testing, Toyota replaced virtually an entire engine part way through the test (keeping only the initial catalyst and the O₂ sensor).

- (iii) During other durability testing, Toyota replaced key emissions-related components that were failing, such as the catalyst.
 - (d) Toyota also fabricated important emissions numbers that were not based on actual test results.
 - (e) Toyota modified the ECU software in test engines so that they performed differently in certification tests than they would in real-world use. The ECU oversees and manages the engine's operations, including emissions-related functions such as fuel injection and air intake. This amounts to using a "defeat device", contrary to s. 9(2) of the Regulations.
 - (f) Toyota cheated on "output tests" designed to measure torque, horsepower, and other important performance metrics.
29. The results obtained by the above misconduct were recorded in the Records and provided to Canadian regulators. Canadian regulators authorized Toyota to import, manufacture and sell the Class Vehicles in Canada, including British Columbia, based on the information Toyota provided in the Records.

Toyota's Misrepresentations

30. Toyota's misrepresentations to Canadian regulators are inextricably linked to Toyota's misrepresentations to Class Members. Toyota misrepresented the Class Vehicles' emissions levels and performance to its customers. Toyota represented that the Class Vehicles were emissions compliant with all regulatory standards and that they were legal to sell (and use) in Canada (collectively, the "**Representations**").
31. The Representations were false and Toyota knew or ought to have known they were false.

Breach of Warranty

32. The Defendants provide Class Members with a 1 year or 2000 hours basic warranty over all factory installed options (excluding tires) on the Class Vehicles.

The warranty covers defects in material and workmanship and, either expressly or implicitly, warrant that the Class Vehicles comply with the Regulations.

33. The Defendants breached the terms of their express or implied warranty coverage by failing to replace or otherwise remedy the defective nature of the Class Vehicles' engines. Because the Defendants could not fix the underlying issues and comply with their warranty obligations, they purposely hid this information from Class Members.

Damages

34. The Plaintiff and Class did not receive the vehicles they paid for and reasonably expected to receive. But for the Defendants' conduct, the Class would not have purchased or leased the Class Vehicles, or they would have paid less for their Vehicles. The Plaintiff and Class's losses include:

- (a) overpaying for vehicles that did not perform as represented and reasonably expected;
- (b) paying for features Class Members did not receive but reasonably expected to receive;
- (c) increased maintenance and repair costs because the Class Vehicles were not as durable as represented;
- (d) purchasing vehicles with defective emissions systems;
- (e) loss of warranty coverage to remedy the defective emissions systems; and
- (f) out of pocket transaction costs.

(collectively, "**Damages**")

35. The Damages were sustained in British Columbia and in the rest of Canada.

PART 2: RELIEF SOUGHT

36. The Plaintiff, on its own behalf and on behalf of the Class, seeks:
- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff;
 - (b) a declaration that the Defendants, and each of them, made fraudulent or negligent misrepresentations;
 - (c) a declaration that the Defendants engaged in a conspiracy to (i) violate the Regulations, (ii) import and/or manufacture the Class Vehicles and/or components of the Class Vehicles into Canada, and (iii) market and sell them unlawfully in Canada, to the detriment of the Plaintiff and Class;
 - (d) a declaration that the Defendants violated *CEPA* by importing, manufacturing and/or selling the Class Vehicles and/or components of Class Vehicles into Canada;
 - (e) a declaration that the Defendants violated s. 52 of the *Competition Act*, RSC 1985, c C-34 ("**Competition Act**");
 - (f) a declaration that the Defendants breached its express and implied warranties in relation to the Class Vehicles;
 - (g) a declaration that the Defendants have each been unjustly enriched by the unlawful sale of the Class Vehicles;
 - (h) a declaration that Class Members are entitled to rescind their contracts for the Class Vehicles;
 - (i) an order that the Defendants account for and make restitution to the Plaintiff and the Class;
 - (j) general and special damages;
 - (k) statutory damages pursuant to *CEPA* and the *Competition Act*,

- (l) damages for breach of warranty;
- (m) punitive damages;
- (n) the costs of administering and distributing an aggregate damage award;
- (o) costs of the prosecution of this proceeding pursuant to s. 40 of *CEPA*;
- (p) costs of the investigation and prosecution of this proceeding pursuant to s. 36 of the *Competition Act*;
- (q) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (r) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Misrepresentations

Fraudulent Misrepresentation

- 37. The Representations are false. Toyota made the Representations knowing they were false or without an honest belief in their truth, or recklessly as to whether they were true or false.
- 38. Toyota made the Representations intending to deceive the Plaintiff and the Class.
- 39. The Representations were material to the Plaintiff's and Class's decisions to purchase or lease the Class Vehicles. Indeed, the Class could not have purchased the Class Vehicles but for the Defendants deceiving regulators. The Representations are inextricably linked to the Toyota's deception of regulators.
- 40. The Plaintiff and Class suffered the Damages as a result of the Representations.

Negligent Misrepresentation

- 41. In the alternative, the Defendants were in a proximate and special relationship with the Plaintiff and Class that gave rise to a duty of care by virtue of, among other things:

- (a) their design and manufacture of the engines and Class Vehicles in question;
 - (b) their skill, experience and expertise in the design and manufacturing of engines and vehicles generally;
 - (c) their complete control over the submissions made to regulators and their participation in regulatory testing of the Class Vehicles; and
 - (d) their complete control over the promotion and marketing of the Class Vehicles, and the need for the Class to rely on the Representations to have been able to purchase a Class Vehicle.
42. The Representations are untrue, inaccurate, or misleading and the Defendants made the Representation negligently. The Plaintiff and Class reasonably relied on the Representations when purchasing or leasing the Class Vehicles.
43. The Plaintiff and Class suffered the Damages as a result of the Representations.

Breach of the Competition Act

44. The Defendants breached s. 52 of the *Competition Act*, and thereby committed an unlawful act because the Representations:
- (a) were made for the purpose of promoting the supply or use of the Class Vehicles for the business interests of the Defendants;
 - (b) were made to the public; and
 - (c) were false and misleading in a material respect.
45. The Plaintiff and Class suffered the Damages as a result of the Defendants' unlawful breach of s. 52 of the *Competition Act* and seek compensation for the Damages, as well as their costs of investigation, pursuant to s. 36 of the *Competition Act*.

Conspiracy

46. The Defendants and others, including the Defendants' officers, directors and agents, and co-conspirators that are known to the Defendants but unknown to the Plaintiff, conspired in Japan, the U.S. and Canada, to deceive regulators and intentionally designed, manufactured, distributed, marketed, promoted, advertised, and sold the Class Vehicles in Canada, including British Columbia, which do not comply with the Regulations.
47. The Defendants' predominant purpose for engaging in the conspiracy was to obtain regulatory approval for the Class Vehicles so that they could sell them and profit. The Defendants intended to cause harm to the Plaintiff and the Class by selling them the Class Vehicles, which the Defendants knew or ought to have known did not comply with Regulations and would cause the Class to suffer the Damages.
48. To carry out the conspiracy, the Defendants acted in concert with one another and each directed their own and each other's agents, servants and employees to knowingly or unknowingly carry out unlawful and wrongful acts including:
 - (a) coordinating a design and manufacturing strategy to equip the Class Vehicles with engine systems that are not durable and that emit more emissions than the Regulations allow;
 - (b) coordinating a regulatory compliance strategy that involved deliberately misleading and lying to regulators about the Class Vehicles in order to unlawfully import, manufacture and/or sell the Class Vehicles in Canada including British Columbia; and
 - (c) coordinating a marketing strategy to mislead the Class about the performance and regulatory compliance of the Class Vehicles.
49. The purpose and result of the conspiracy was to deceive the Plaintiff and Class Members into purchasing or leasing the Class Vehicles at an inflated price and to

thereby increase the Defendants' profits at the expense of the Class. The Defendants knew or ought to have known that the Class would not pay the selling or lease price for the Class Vehicles if they were aware that the Representations were false. The Defendants knew or ought to have known that the Class would be injured by the conspiracy.

Unjust Enrichment

50. The Plaintiff and the Class are entitled to claim and recover based on equitable and restitutionary principles.
51. The Defendants caused the Plaintiff and Class to pay money for a defective or illegal product that should not have been offered for sale or, in the alternative, for which they should have paid less than they did.
52. As a result, the Defendants were enriched by the payment or overpayment.
53. But for the Defendants' conduct, the Plaintiff and Class would not have purchased or leased the Vehicles, or they would have paid less for their Vehicles. This overcharge was transferred to the Defendants through the distribution channel and enriched them.
54. The Plaintiff and Class suffered a corresponding deprivation by paying more money for the Vehicles than they would have if they had been aware of the Defendants' conduct, including that the Representations were false.
55. There is no juristic reason justifying the Defendants' enrichment and the Class's corresponding deprivation. Any contract between the members of the Class and the seller of a Vehicle is void as a result of the Defendants' conduct.
56. Members of the Class are entitled to restitution and/or a disgorgement of profits as a result of the Defendants' unjust enrichment.

Breach of the CEPA

57. The Defendants imported, manufactured and/or sold the Class Vehicles into Canada in violation of the Regulations, including the requirements under *CEPA*. Had the Defendants not violated *CEPA*, the Class either would not have bought the Class Vehicles or the Class Vehicles would have been free from defects that caused a diminution of their value. The Class have therefore suffered loss or damage as a result of the Defendants' contravention of *CEPA*.
58. Pursuant to s. 40 of *CEPA*, the Class suffered loss and damage as a result of the Defendants' contraventions of *CEPA* and as such, the Defendants are liable to pay an amount equal to their loss or damage arising from those contraventions.

Breach of Express or Implied Warranty

59. The Defendants expressly or impliedly warranted to the Plaintiff and Class that the Class Vehicles:
- (a) were free from defects; and
 - (b) were designed, built and equipped to conform at the time of sale with the Regulations.
60. The Defendants provided the Plaintiff and Class with a uniform written warranty that covered any repair connected to a manufacturer's defect in material or workmanship.
61. Despite and contrary to the foregoing warranties, the Class Vehicles did not comply with the Regulations, and the Defendants concealed or failed to disclose this non-compliance.
62. The Class Vehicles are defective under the express or implied terms of the warranty and the Defendants cannot comply with their warranty obligations because the defects are inherent flaws with the Class Vehicles.

63. The Defendants have breached their warranties to the Class, and as a result the Class Members suffered the Damages.

Punitive Damages

64. The Plaintiff asserts that the Defendants' conduct was high-handed and deliberate, and warrants awards of aggravated and punitive damages.

Fraudulent Concealment

65. The Defendants intentionally and fraudulently concealed the existence of their unlawful conduct from the public, including the Plaintiff and the Class. The affirmative acts of the Defendants were fraudulently concealed and carried out in a manner that precluded detection.
66. Because the Defendants' conduct was kept secret, the Plaintiff and the Class were unaware of the Defendants' unlawful conduct.

Plaintiff's address for service:

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Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 04/MAR/2025



Signature of lawyer
for plaintiff

Jen Winstanley

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

The Plaintiff claims the right to serve this pleading on Toyota Industries Corporation, Toyota Motor Corporation, Toyota Material Handling N.A., and Toyota Material Handling, Inc., pursuant to s. 10(e), (f), (g), (h) and (i) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

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.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

The defendants knowingly made false representations to Canadian regulators and the class about the emissions and performance the Vehicles, which representations caused the class members to purchase the Vehicles at inflated prices and suffer loss for which the class members seek damages and/or restitution. Further, the defendants breached warranties to the class members thereby causing loss and damage.

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

THIS CLAIM INVOLVES:

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

1. *Competition Act*, RSC 1985, c 34;
2. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28; and
3. *Class Proceedings Act*, RSBC 1996, c 50