

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SHANE WITHAM and ROBERT MAGINNIS

Plaintiffs

- and -

**FCA CANADA INC., FCA US LLC, ROBERT BOSCH INC., ROBERT BOSCH GMBH
and ROBERT BOSCH LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*



ORDER

THIS MOTION, made by the Plaintiffs for an Order approving the terms of a litigation funding agreement (the “Agreement”) entered into with Claims Funding International, PLC (“CFI”), was scheduled to be heard on September 14, 2018;

ON READING the motion record of the Plaintiffs dated August 10, 2018, the responding motion record of the defendants FCA Canada Inc. and FCA US LLC (collectively, “FCA”) dated August 10, 2018, the written submissions of the Plaintiffs and the written submissions of FCA;

AND ON BEING ADVISED that the Defendants do not oppose this Order;

1. **THIS COURT ORDERS** that:

(a) the Agreement is approved, subject to the terms and conditions herein;

- (b) CFI shall pay into court the following amounts, as Canadian funds or irrevocable letters of credit in a form acceptable to the Defendants and to the Accountant of the Superior Court of Justice, and in accordance with Rule 72.02 of the *Rules of Civil Procedure*, as security for the Defendants' costs of this action, on the dates specified:
- (i) \$250,000 CDN on or before 30 days after the date of this order;
 - (ii) an additional \$325,000 CDN by no later than 30 days after any order certifying this action as a class proceeding under the *Class Proceedings Act, 1992*; and
 - (iii) an additional \$1,000,000 CDN by no later than 90 days before the scheduled trial date;
- (c) counsel for the Plaintiff shall notify counsel for the Defendants forthwith upon the posting of security in accordance with the terms of this Order;
- (d) if CFI fails to provide security in accordance with the terms of this Order, the Defendants, or any one of them, may bring a motion to have the action stayed or dismissed;
- (e) CFI submits and attorns to the jurisdiction of the Ontario Superior Court of Justice for all purposes related to this litigation, including in relation to the enforcement of any costs order made in favour of the Defendants or any of them;

- (f) the Defendants shall have the right to directly claim against CFI to enforce payment of any costs awarded against the Plaintiffs for which CFI is responsible pursuant to the Agreement;
- (g) amounts posted pursuant to this Order shall be paid out to the Defendants in accordance with Rule 72.03 of the *Rules of Civil Procedure*, or as ordered by this Court;
- (h) the Defendants, or any of them, shall be at liberty to move to vary this Order at any time to increase the amount of security required to be posted by CFI, on notice to the Plaintiff and CFI who may oppose the motion;
- (i) nothing in this Order shall be interpreted as limiting the ability of the Defendants or any of them to seek to enforce any costs award against either the Plaintiff or CFI;
- (j) subject to further court order, no evidence obtained from a defendant and that is not part of the public record may be provided to CFI without the written consent of the defendant from which the evidence was obtained, provided that the Plaintiff and counsel for the Plaintiff may summarize and provide their comments and views on such evidence for the purposes of the reporting obligations set out in section 3 of the Agreement. To the extent any evidence obtained from the Defendants is provided to CFI, CFI shall be bound by Rule 30.1.01 of the *Rules of Civil Procedure* and shall be deemed to be a party to this action for the purposes of that Rule; and

- (k) the Plaintiff may communicate any formal settlement offers made by the Defendants, or any of them, to CFI, and those communications and their contents shall be kept confidential pursuant to section 5 of the Agreement;
- (l) this Order shall be without prejudice to the rights of the defendants, Robert Bosch LLC and Robert Bosch GmbH, to raise jurisdictional arguments, including *forum non conveniens*, in the action; and
- (m) this Order is made without costs.



The Honourable Justice Belobaba

September 17, 2018.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 20 2018

PER / PAR:



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceeding Act, 1992*

ORDER

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